Threater Terms of Service

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VIEW MSP TERMS OF SERVICE

Threater, Inc.

TERMS OF SERVICE AGREEMENT

IMPORTANT: UNLESS OTHERWISE AGREED IN WRITING SIGNED BY BOTH PARTIES, THIS TERMS OF SERVICE AGREEMENT (THE "AGREEMENT") GOVERNS ALL USE BY YOU AND THE BUSINESS ENTITY THAT YOU REPRESENT (COLLECTIVELY, "CUSTOMER") OF THE SOFTWARE (THE "SOFTWARE") PROVIDED BY Threater, Inc. ("Threater") AS A SERVICE TO CUSTOMER.

Threater IS WILLING TO PROVIDE THE SERVICES TO CUSTOMER ONLY UPON THE TERMS CONTAINED IN THIS AGREEMENT. BY REQUESTING AN EVALUATION OF THE SERVICES, SUBMITTING AN ORDER FOR THE SERVICES, OR BY USING ANY PART OF THE SERVICES, CUSTOMER IS BINDING ITSELF TO ALL TERMS OF THIS AGREEMENT.

1. Definitions.
    1. "Aggregated Statistics" means data and information related to Customer's use of the Service that is used by Threater in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Service.
    2. "Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Service has been purchased hereunder.
    3. "Threater IP" means the Service, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Threater IP includes Aggregated Statistics and any information, data, or other content derived from Threater monitoring of Customer's access to or use of the Service, but does not include Customer Data.
    4. "Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.
    5. "Documentation" means written information contained in user or technical manuals, training materials, and specifications specifically pertaining to the Software and made available by Threater for use with the Software or the Equipment in any manner.
    6. "Equipment" means hardware purchased by Customer for use with Software, as described in any Order.
    7. "Order" means Customer's purchase order for Services accepted by Threater.
    8. "Services" means the software-as-a-service offering of Software to Customer, as provided in connection with Equipment.
    9. "Software" means Threater proprietary software as described in any Order, and shall include computer programs, including firmware, as provided to Customer by Threater and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by Threater.
    10. "Support Services" are defined in Exhibit A.
    11. "Term" is defined in Section 10 hereof.
2. Access and Use.
    1. License. Subject to and conditioned upon compliance with the terms and conditions of this Agreement, Threater grants to Customer during the Term a nonexclusive and nontransferable license to use the Software and the Documentation for which Customer has paid any and all required license fees, as further described in any applicable Order. Customer's license to use the Software shall be limited to, and Customer shall not use the Software except in connection with, the Equipment and for Customer's internal business purposes only. Customer has no license or right use any additional copies of Software or Upgrades unless Customer, at the time of Acquiring such Software or Upgrade, has paid all applicable fees as described in the applicable Order for such Software or Upgrades. Unless otherwise agreed in writing by the Parties, title to Equipment delivered to Customer pursuant to this Agreement will pass to Customer upon delivery to carrier.
    2. Use Restrictions. Customer shall not use the Services for any purposes other than as described herein. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
    3. Reservation of Rights. Threater reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Threater IP.

    4. Suspension Notwithstanding anything to the contrary in this Agreement, Threater may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Threater reasonably determines that (A) there is a threat or attack on any of the Threater IP; (B) Customer's or any Authorized User's use of the Threater IP disrupts or poses a security risk to the Threater IP or to any other customer or vendor of Threater; (C) Customer, or any Authorized User, is using the Threater IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Threater's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Threater has suspended or terminated Threater's access to or use of any third-party services or Equipment required to enable Customer to access the Services; or (iii) in accordance with Section 4(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). Threater shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Threater shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Threater will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

    5. Aggregated Statistics Notwithstanding anything to the contrary in this Agreement, Threater may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Threater and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Threater. Customer acknowledges that Threater may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Threater may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

3. Customer Responsibilities. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

4. Fees and Payment.

    1. Fees. Customer shall pay Threater the fees ("Fees") as set forth in each Order without offset or deduction. Fees are noncancelable and nonrefundable, except as expressly set forth herein. Customer shall make all payments hereunder within thirty (30) days of the date of invoice. If Customer fails to make any payment when due, without limiting Threater's other rights and remedies: (i) Threater may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Threater for all costs incurred by Threater in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for sixty (60) days or more, Threater may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

    2. Taxes All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Threater's income.

5. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, Equipment, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. Intellectual Property Ownership

    1. Threater IP. Customer acknowledges that, as between Customer and Threater, Threater owns all right, title, and interest, including all intellectual property rights, in and to the Threater IP.

    2. Customer Data. Threater acknowledges that, as between Threater and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Threater a non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Threater to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

    3. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Threater by mail, email, telephone, or otherwise, suggesting or recommending changes to the Threater IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Threater is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

7. Limited Warranty and Warranty Disclaimer

    1. Threater warrants, during the Term, that the Software will operate in accordance with the Documentation in all material respects. Threater does not warrant Equipment, but will pass through to Customer, if and as permissible, any manufacturer's warranty applicable to Equipment. Threater's sole obligation and Customer's sole remedy for any breach of the foregoing warranties shall be the repair or replacement of Software so that the Software

operates in accordance with the foregoing warranty. If Customer has purchased Support Services, Threater will provide RMA services with respect to Equipment as described in Exhibit A.

   2. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a), SOFTWARE AND EQUIPMENT IS PROVIDED "AS IS" AND Threater HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. Threater SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a), Threater MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, EQUIPMENT, OR ANY EQUIPMENT OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

   3. Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Equipment, the Software or any other Equipment or service delivered by Threater. Customer acknowledges and agrees that Threater has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

8. Indemnification

   1. Threater Indemnification.
      i. Threater shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies Threater in writing of the claim, cooperates with Threater, and allows Threater sole authority to control the defense and settlement of such claim.
      ii. If such a claim is made or appears possible, Customer agrees to permit Threater, at Threater's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Threater determines that neither alternative is reasonably available, Threater may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.
      iii. This Section 8(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Threater or authorized by Threater in writing; (B) modifications to the Services not made by Threater; or (C) Customer Data.

   2. Customer Indemnification. Customer shall indemnify, hold harmless, and, at Threater's option, defend Threater from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Threater or authorized by Threater in writing; or (iv) modifications to the Services not made by Threater, provided that Customer may not settle any Third-Party Claim against Threater unless Threater consents to such settlement, and further provided that Threater will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

   3. Sole Remedy. THIS SECTION 8 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9. Limitations of Liability. IN NO EVENT WILL Threater BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, EQUIPMENTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER Threater WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL Threater's AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO Threater UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. Term and Termination

    1. Term. This Agreement shall continue until terminated in accordance with this Section 10, or until termination is mutually agreed in writing. Each Order hereunder will have such term as is defined therein. At the end of such initial term, such Order will automatically renew for additional one-year periods unless earlier terminated pursuant to the provisions hereof, or unless either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the then-current term of such Order.

    2. Termination. In addition to any other express termination right set forth in this Agreement:
       i. Threater may terminate this Agreement or any Order hereunder without penalty or liability (A) immediately upon written notice to Customer if breaches any of its obligations under Section 2(b) or Section 5; (B) effective upon 30 days' written notice of Customer's breach of any other term of this Agreement, including payment obligations, and such breach remains uncured by the end of such 30 day notice period; or (C) immediately upon written notice if continuing to perform under this Agreement could, in Threater's sole discretion, result in Threater's non-compliance with any applicable law, rule or regulation.
       ii. either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or
       iii. either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

    3. Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Threater IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Threater IP and certify in writing

to the Threater that the Threater IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

4. Survival. Sections 1, 5, 6, 7, 8, 9, 10, and 11 survive any termination or expiration of this Agreement.

11. Miscellaneous

    1. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.
    2. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth in the Order. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email, or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
    3. Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
    4. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
    5. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
    6. Governing Law; Submission to Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to or application of choice of law rules or principles. Any controversy or claim arising under or related to this Agreement shall be settled by arbitration in the Commonwealth of Virginia, United States of America in accordance with the arbitration rules of the American Arbitration Association before a single arbitrator and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Threater and Customer shall each select an arbitrator, and those two selected arbitrators will select the single arbitrator to hear the controversy or claim.
    7. Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Threater, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
    8. Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.
    9. US Government Rights. US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
    10. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 5 or, in the case of Customer, Section 2(b), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

EXHIBIT A SUPPORT SERVICES

This Support Services Document sets forth the terms and conditions under which Threater will provide technical support services ("Support Services") for the Software and Equipment sold and/or licensed pursuant to the Agreement between Threater and Customer. Threater reserves the right not to support Equipment which were not purchased via an authorized Threater distributor or reseller. Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.

SUPPORT PLANS

With respect to and to the extent purchased under any applicable Order, Threater will provide telephone support with response times as follows:

Support Offerings	**PREMIUM**	**STANDARD**
Business Hours Availability	Mon – Fri, 8am to 5pm CT (excluding holidays)	
After Hours Availability	Yes – 24x7x365	No
Call Response Times		
Severity 1 – Critical Equipment is down, critically affects Customer Equipmention environment. No workaround available yet.	≤ 1 hour	≤ 1 Business hour
Severity 2 – High Equipment is impaired, Customer Equipmention up, but impacted. No workaround available yet.	≤ 2 hours	≤ 2 Business hours
Severity 3 – Medium A Equipment function has failed, Customer Equipmention not affected. Support is aware of the issue and a workaround is available.	≤ 4 Business hours	≤ 4 Business hours
Severity 4 – Low Non-critical issue. Does not impact Customer business. Feature, information, documentation, how-to and enhancement requests from Customer.	≤ 8 Business hours	≤ 8 Business hours
Contact Support:	**Website: helpdesk.threater.com** **Toll Free US: +1.855.765.4925 ext. 2**	

You must register Equipment for which you have purchased support at https://helpdesk.threater.com, or any successor site thereto, as specified by Threater ("Support Website") to access the features and benefits available to such Equipment. In connection with Customer's purchase of a Support Plan described above, Threater shall provide the services as set forth in the table entitled "Support Plans and Services Offered" above, including:

- Remote Technical Support
  - Telephone support available during the times specified for the Support Plan.
  - Support cases created via the web will have a response time based on the severity classification as set forth in the table entitled "Support Plans and Services Offered" above.
- Secure Web Access
  - Access to the Support Website to acquire the latest software versions, fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.
  - Threater will use commercially reasonable efforts to ensure that the Support Website) is available 24×7. Threater reserves the right to modify the Support Plans offered so long as such modification does not result in degradation of service. Please refer to the Support Website for the most current support plan descriptions.

ADDITIONAL SUPPORT

In addition to the telephone support described above and conditional upon payment of applicable fees, Threater will:

- Maintain and support the list of releases defined as the currently-supported releases on the Support Website. Unless otherwise stated on the Support Website, "currently supported" as used herein means the current version and any other version released less than nine (9) months prior to the date of support request.
- Make available all publicly-released versions and updates of the Software.
- Verify defects in the Software identified and submitted by customers.
- Correct material defects in the Software for the currently-supported version of the Software.
- Provide access to Threater online support through the Support Website including, but not limited to, knowledge base/FAQ, case management and software downloads.
- Provide technical telephone support during Business Hours.
- Provide a return and repair service for Equipment defects.

RMA POLICY AND PROCESS

- Customer Support
  In the event Equipment exhibits signs of problems or failure, Customer must contact Threater Customer Support by phone at 1-855-765-4925 or via email at support@threater.com. The Threater Customer Support Agent will assist Customer to troubleshoot and verify that an RMA is required, and the warranty status of the Equipment. If the Support Agent cannot correct the problem by remote support methods and determine that the problem is the result of Equipment failure under manufacturer's warranty, the Customer Support Agent will send Customer the RMA form that must be completed and submitted to Threater Support via email at support@threater.com.

- RMA Form
  If the RMA Form is received by 4:00 p.m. Central Time, Threater will process the RMA form the same business day; otherwise, it will be processed by the next business day. If the RMA forms is accepted and Equipment is under manufacturer's warranty, Customer will receive an email with the RMA form and guidelines on how to return the Equipment. The RMA form will contain the following information:
    - Company Name
    - Shipping Address
    - Contact Name
    - Contact Phone Number
    - Contact Email Address
    - Problem Description
    - Equipment Model Number
    - Equipment Serial Number
    - RMA Number
    - Ship Date
- Replacement Equipment will be shipped no later than the next business day after acceptance of RMA and confirmation of manufacturer's warranty. Threater will notify Customer via email upon shipment of the replacement Equipment, including a tracking number for the package. The RMA items must be received from Customer within thirty (30) calendar days of the RMA Date, and proper packaging must be used at all times when returning Equipment to Threater:
- A return shipping label provided by Threater for use in returning the RMA item(s) shall be used for the return package; the original Equipment packaging or reasonable equivalent shall be used such that it shall withstand the rigors of shipping to Threater's designated support facility; the RMA form, including the RMA number, must be included in the return package; the outside of the package must be marked prominently with the term "RMA".
- Threater will pay shipping costs incurred to return the failed device to Threater, with the exception of duties and taxes, where applicable. Threater will pay all shipping costs to ship replacement Equipment to Customer, except for duties or taxes required to clear customs.
- In the case of European Union RMAs: All failed Equipment must be returned to Threater according to the return instructions that are included with the RMA Form. These return instructions will help you comply with the WEEE (Waste Electrical and Electronic Equipment) directive. If you have any questions regarding the return of a device, please contact support@threater.com.
- RMA Closing
  If Threater does not receive the RMA requested items with an open, valid RMA form and RMA number included inside the package within thirty (30) calendar days of the RMA date, the RMA will be closed, and Customer will be billed for the replacement Equipment. Only the specific items listed on the RMA will be accepted. All other items will be returned to Customer at Customer's expense.

CUSTOMER OBLIGATIONS

During the term of this agreement, you must:

- Operate at the then-current release of the Software; and
- Use reasonable efforts to isolate and collect all error and log files to enable Threater to fulfill its obligations herein.

LIMITATIONS

- The following services are expressly excluded from the Support Plans:
    - Repair or replacement of Equipment required as a result of causes other than normal use, including without limitation:
        1. repair, maintenance or modification of the Equipment by persons other than Threater-authorized personnel;
        2. accident or negligence of your fault;
        3. user error or misuse of the Equipment; or
        4. causes external to the Equipment such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Threater.
    - Maintenance or technical services for any third-party software or hardware, where such third-party software or hardware was not provided by Threater.
    - Replacement of Equipment, including hardware components, as a result of new hardware requirements resulting from new Software releases.
    - Support of versions not "currently supported", as defined in Section 2 above.

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