

## **Terms and Conditions (EMEA/APAC) — through 24 May 2018**

### **1. LICENCE 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, Crimson Hexagon hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable, right and licence, to access and use, solely for its internal business purposes, (i) the Subscription Service identified on the Order Form (the “Service”), on a hosted basis, in accordance with the user documentation provided with the Service (“Documentation), and (ii) the Documentation, each 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 Crimson Hexagon 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 Effective Date and will continue until the services as described in the Order Form and any Statements of Work (“SOW(s)”) have been completed, expired or terminated.

2.2 Term and Renewal of Orders. The Subscription Term described in each Order Form will commence upon the Order Form Effective Date and continue as set forth therein (“Initial Term”) and 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 five percent (5%), unless the parties agree otherwise in writing.

2.3 Termination for Breach. This Agreement and any Service may be terminated if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receipt of notice of the breach from the non-breaching party.

2.4 Termination by Crimson Hexagon. Crimson Hexagon may terminate this Agreement immediately upon written notice to Customer in the event Customer breaches Section 4.1, 4.2 or 4.3, develops, markets, sells or offers for sale a product or service that is competitive with the Service, or is purchased by a competitor of Crimson Hexagon.

### **3. FEES; PAYMENT TERMS; OVERDUE PAYMENTS**

Subscription Fees and any other fees for professional services are specified on the Order Form. Customer agrees to pay any pre-approved reasonable travel and living expenses incurred in connection with the provision of services under a SOW. Unless otherwise set forth on the Order Form or a SOW, all fees will be invoiced upon the Effective Date of the Order Form. Payment terms are Net 30 days from the date of receipt of invoice. Pricing is exclusive of taxes (including VAT), which shall, if applicable, be separately stated on the invoice and paid by Customer. If any fees or charges under any Order Forms are not received from Customer by the due date, then at Crimson Hexagon’s discretion, (a) such amounts may accrue late interest at the rate of three percent (3%) above the Bank of England base rate, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and (b) Customer shall pay on demand all out-of-pocket costs (including attorney fees) reasonably incurred by Crimson Hexagon to collect such fees or charges. If any amount owing by Customer under this Agreement is fifteen (15) or more days overdue, Crimson Hexagon may, without limiting its other rights and remedies, suspend Services to Customer until such amounts are paid in full.

### **4. RESTRICTIONS; PROPRIETARY RIGHTS; THIRD PARTY CONTENT**

4.1 Restrictions. 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 except as otherwise permitted by applicable law; (ii) encumber, transfer, manufacture, distribute, sell, sublicense, assign, provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use (except as expressly provided herein) the Service or Documentation; (iii) copy, modify, adapt, translate, incorporate into or with other software, or create a derivative work of any part of the Service or Documentation; (iv) circumvent, violate or exceed any user limits (in terms of quantities, named users or otherwise), timing, monitor or other use restrictions that are set forth in the Order Form or Documentation or that are built into the Service (v) use the Service for a purpose not intended by this Agreement or violate the licence restrictions set forth in this Agreement, including without limitation the Order Form or (vi) use the Service in a manner that damages, disables, degrades the performance of or overburdens the Service for use by other customers of Crimson Hexagon.

4.2 Ownership. The Service is the proprietary intellectual property of Crimson Hexagon that contains trade secrets and is protected by copyright law. Subject to any licence granted hereunder, Crimson Hexagon 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 Crimson Hexagon. Crimson Hexagon shall own all rights, title and interest in any deliverables created by Crimson Hexagon under a SOW, but all such deliverables shall be licenced to Customer for use in connection with Customer's use of the Service hereunder.

4.3 Third Party Content. Crimson Hexagon licences content ("Third Party Content") from various third party providers (Third Party Providers"). Customer agrees that it will not: (i) use any Third Party Content (in aggregate form or otherwise) in connection with any online advertising network, advertising exchange, or data broker, (ii) remove or alter any proprietary notices, copyright notices or marks from the Third Party Content or (iii) display any Third Party Content that may create a false or misleading impression as to the origin or value of such Third Party Content. In addition, Customer shall and shall require its users to, comply with the Twitter Terms of Service located at <http://twitter.com/tos>, the Twitter privacy policy located at <http://twitter.com/privacy>, and the Twitter Rules located at <http://www.twitter.com/rules>. Customer shall defend, indemnify and hold harmless Crimson Hexagon from any claims arising from Customer's use of the Third Party Content or breach by Customer of Third Party Provider terms of service, rules and policies. Crimson Hexagon may at its option immediately terminate Customer's access to and use of Third Party Content in the event of Customer's breach of this Agreement.

4.4 Customer Analysis. Subject to Crimson Hexagon's ownership of the Service and Third Party Providers' ownership of Third Party Content, Customer retains all rights, title and interest in Customer's own analysis of information and data generated from queries employed by Customer in its use of the Service.

4.5 Feedback. Crimson Hexagon may, without restriction, use, reproduce, copy, sell, licence, distribute, publicly display or perform, incorporate into the Services, or otherwise exploit any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the operation of the Services.

4.6 Attribution. All digital or printed copies of reports, analyses, output, other materials or information generated or produced by the Service shall include the following attribution to Crimson Hexagon: "Source: Crimson Hexagon."

## 5. PUBLICITY

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

## **6. CONFIDENTIALITY**

Each party 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 business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement ("Confidential Information") and each party 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. Thus in addition to all other remedies available at law or in equity, the disclosing party 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. The recipient shall be liable to the disclosing party for any use or disclosure in violation of this Section by recipient or its affiliates, employees, third party service providers or any other related party. Confidential Information shall not include information that (a) is already known prior to the disclosure by the owning party; (b) is or becomes publicly known through no breach of this Agreement; (c) is independently developed without the use of the other party'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 the recipient, under any legal obligation of confidentiality; or (e) the recipient receives written permission from the disclosing party for the right to disclose any Confidential Information.

## **7. WARRANTIES AND DISCLAIMERS**

7.1. Crimson Hexagon Warranties. Crimson Hexagon warrants that (i) it has the legal power to enter into this Agreement; and (ii) during the Subscription Term for which payment was received by Crimson Hexagon, the functionality of the Service will not be materially decreased (other than temporary loss of functionality due to maintenance work), provided that Customer's exclusive remedy for a breach of such warranty shall be termination of this Agreement in accordance with Section 2.3.

7.2. Customer Warranties. Customer warrants that (i) it has the legal power to enter into this Agreement; and (ii) it has the lawful right to store and transmit the Customer Data into the Subscription Service.

7.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FURTHER, CRIMSON HEXAGON MAKES NO WARRANTIES REGARDING ANY CONTENT OR DATA PROVIDED BY CRIMSON OR THROUGH THE SERVICE, INCLUDING WITHOUT LIMITATION THE TYPE, QUANTITY OR QUALITY OF DATA OR

CONTENT THAT WILL BE MADE AVAILABLE. CRIMSON HEXAGON CANNOT GUARANTEE THAT THE SERVICE WILL NOT CONTAIN OBJECTIONABLE CONTENT.

## **8. LIMITATION OF LIABILITY**

THE CUMULATIVE LIABILITY OF CRIMSON HEXAGON TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO CRIMSON HEXAGON UNDER THE APPLICABLE ORDER FORM WITHIN THE YEAR PRECEDING THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL CRIMSON HEXAGON 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 CRIMSON HEXAGON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT. NOTHING IN THIS AGREEMENT SHALL EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE, FRAUD OR FRAUDULENT MISREPRESENTATION, ANY BREACH OF SECTION 12 OF THE GOODS ACT 1979 OR SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982 OR ANY OTHER MATTERS THAT CANNOT BE EXCLUDED AS A MATTER OF LAW.

## **9. INDEMNIFICATION**

If a third party claims that the Subscription Service infringes any intellectual property rights of any third parties, Crimson Hexagon will defend Customer against such claim at Crimson Hexagon's expense and pay all damages finally awarded through judgment or settlement, provided that Customer promptly notifies Crimson Hexagon in writing of the claim, allows Crimson Hexagon sole control of the defense and/or settlement, and cooperates with Crimson Hexagon in, the defense or settlement of such action. If such a claim is made or appears possible, Crimson Hexagon may, at its option, secure for Customer the right to continue to use the Subscription Service, modify or replace the Subscription Service so that it is non-infringing, or, if neither of the foregoing options is available in Crimson Hexagon's reasonable opinion, terminate this Agreement and refund to Customer any unamortized pre-paid fees for use of the Subscription Service. Crimson Hexagon 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 Subscription Service other than as specified in the applicable Documentation; (iii) modification of the Subscription Service by any person other than as authorized in writing by Crimson Hexagon; or (iv) the combination, operation or use of the Subscription Service with other product(s) or services not supplied by Crimson Hexagon, where the Subscription Service would not by itself be infringing. THIS PARAGRAPH STATES CRIMSON HEXAGON'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

## **10. GENERAL**

10.1 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 or Statement of Work, then, unless otherwise provided herein, the terms and conditions of such Order Form or Statement of Work will control solely with respect to the Services covered by such Order Form or Statement of Work. Any purchase orders issued by Customer shall be deemed to be for Customer's convenience only and, notwithstanding

acceptance of such orders by Crimson Hexagon, shall in no way change, override, or supplement this Agreement.

10.2 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.

10.3 Independent Contractor. Crimson Hexagon 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.

10.4 Notices. All notices or other communications required to be given hereunder shall be in writing and delivered either by UK 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.

10.5 Assignment. This Agreement may not be assigned by Customer without Crimson Hexagon's prior written consent; provided, however, that Customer may upon written notice to Crimson Hexagon assign this Agreement pursuant to a merger, acquisition or sale of Customer's business or assets provided the assignee is not a competitor of Crimson Hexagon.

10.6 Compliance with Laws. Each party will be responsible for compliance with all legal requirements related to its performance under this Agreement, including without limitation all applicable export laws, data protection, privacy and disclosure of data and information.

10.7 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.

10.8 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 England, without regard to conflict of law principles, and shall be subject to the exclusive jurisdiction of the courts of England, and each party consents to the exclusive personal jurisdiction and venue of such courts.

10.9 Third Parties Rights. Except as specifically set forth in this Agreement, a person who is not a party to this Agreement shall have no right to enforce or receive the benefit any of the terms of this Agreement under the Contracts (Third Party Rights) Act 1999.

10.10 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 period such employee was engaged in the performance of this Agreement and for one (1) year after such engagement. 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.

10.11 Survival. The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 3, 4 and 6 through 10.

## SUBSCRIPTION SUPPORT AND SERVICE LEVEL POLICY

Service Levels and Credit. Crimson Hexagon's failure to make the Service Available at least 99.5% of the time in any calendar month during the Subscription Term, excluding scheduled maintenance windows, shall be deemed a service level default ("**Service Level Default**"). For purposes of this SLA, "**Available**" means that Users are able to access and use the material features and functions of the Service.

In the event of a Service Level Default, Customer's exclusive remedies shall to receive a credit against Subscription fees paid or payable by Customer (a "**Service Level Credit**") and, in the event Customer is eligible for a 100% Service Level Credit during any calendar month during the Subscription Term, to terminate the Subscription. Service Level Credits are calculated as a percentage of the prorated monthly Subscription fee set forth in the applicable Order Form(s), as set forth below.

Percentage of time in calendar month (excluding scheduled maintenance windows) during which Service is Available	Percentage of prorated monthly Subscription Fee constituting Service Level Credit
At least 99.50%	0%
98.00 – 99.49%	10%
95.00 – 97.99%	25%
93.00 – 94.99%	50%
Less than 93%	100%

A Service Level Credit shall not be payable unless Customer requests it within 30 days following the end of the calendar month in which the Service Level Default occurred. Service Level Credits shall be applied against the next invoice, or if Customer has made final payment to Crimson Hexagon for the Subscription and no further invoices will be issued, Crimson Hexagon shall refund to Customer the applicable Service Level Credit within 30 days of Customer's request.

In the event Customer is eligible for a 100% Service Level Credit during any calendar month during the Subscription Term, Customer may terminate the Subscription without penalty upon written notice to Crimson Hexagon. In the event of such a termination by Customer, Crimson Hexagon shall refund to Customer any prepaid fees covering the remainder of the Subscription Term after the effective date of termination.

## 2. Scheduled Maintenance and Notifications

### Standard Maintenance Windows

No more than eight hours per month, to take place during weekends or between 12:00 AM and 6:00 AM EST on weekdays.

### Notification of Scheduled Maintenance Downtime

a. Crimson Hexagon will notify Customer of any scheduled maintenance downtime which will cause the total scheduled maintenance downtime for the month to exceed eight hours or which will occur outside the standard maintenance windows specified above. Except in cases of emergency, notification will be provided at least three business days prior to such downtime.

b. In cases of emergency, Crimson Hexagon will use commercially reasonable efforts to notify Customer of a planned downtime as soon as practicable.

### **3. Reporting**

a. Crimson Hexagon shall, upon Customer's request from time to time, provide a written report regarding Crimson Hexagon's compliance with the performance requirements specified above. Crimson Hexagon shall also provide such other information with respect to the performance of the Service as mutually agreed upon by the parties from time to time, and in conformity with reporting Crimson Hexagon provides to its other customers utilizing the Service. Customer may independently audit the report at its expense.

b. Representatives of Crimson Hexagon and Customer shall meet as often as may be reasonably requested by either party, but no less often than once each calendar quarter, to review Crimson Hexagon's performance of Services and to discuss technical plans, system performance, service levels and for any other matters related to the Agreement that may be reasonably requested by either Crimson Hexagon or Customer.

### **4. Technical Support**

Crimson Hexagon provides access to technical support via email and phone by a services representative upon the following terms:

a. Requests received during "Coverage Hours" (1:00 AM – 8:00 PM EST, Monday – Friday, excluding holidays) will be responded to within 3 hours.

b. Requests received outside Coverage Hours will be responded to on the next business day.

In addition to the above, Crimson Hexagon uses monitoring services to continually check on the operating status of the Service, 24 hours per day, 7 days per week. In the event the Service is not Available, on-call staff are automatically notified of the issue via email and text message. Response time is within 15 minutes; resolution time depends on the complexity and severity of the problem.