



## Terms of Service

THESE TERMS OF SERVICE ("TERMS OF SERVICE") ARE A BINDING AGREEMENT BETWEEN CRUSHBANK, LLC ("CRUSHBANK," "WE," OR "US") AND YOU ("CUSTOMER" OR "YOU") (EACH REFERRED TO AS A "PARTY" OR THE "PARTIES"), PERTAINING TO, AMONG OTHER THINGS, THE ACCESS TO AND USE OF ALL OF THE CRUSHBANK SYSTEMS, APPLICATIONS AND SERVICES, INCLUDING WITHOUT LIMITATION, ITS KNOWLEDGE DATABASE OFFERINGS (COLLECTIVELY, "SERVICES") MADE AVAILABLE OR PROVIDED FROM THIS WEBSITE (OR ANY SUBDOMAINS THEREOF) OR SOCIAL MEDIA ACCOUNTS HELD OR OPERATED BY CRUSHBANK, INCLUDING WITHOUT LIMITATION WWW.CRUSHBANK.COM (COLLECTIVELY, THE "SITE"). BY ACTIVATING, PURCHASING, ACCESSING OR USING ANY OF THE SITE OR THE SERVICES, CUSTOMER ACKNOWLEDGES ITS CONSENT TO BE BOUND BY THE FOLLOWING TERMS AND PROVISIONS OF THESE TERMS OF SERVICE. THESE TERMS OF SERVICE INCORPORATE BY REFERENCE: (1) CRUSHBANK'S PRIVACY POLICY ("PRIVACY POLICY") AND (2) ALL SPECIAL TERMS OF SERVICE PERTAINING TO A PARTICULAR SERVICE OFFERED BY CRUSHBANK (AS THEY MAY BE MODIFIED BY CRUSHBANK FROM TIME TO TIME) (COLLECTIVELY, "THIS AGREEMENT"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A PERSON, COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE LEGAL ENTITY TO THIS AGREEMENT AND ALL USERS WHO OPEN USER ACCOUNTS UNDER SUCH ENTITY'S ACCOUNT, IN WHICH CASE "YOU" SHALL MEAN SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST SELECT THE "DO NOT ACCEPT" BUTTON AND YOU MAY NOT USE THE SERVICES.

### Binding Terms

To uphold the quality and reputation of CrushBank and its Services, Customer's use thereof is subject to this Agreement. If Customer is found to be in violation of any terms of this Agreement at any time, as determined by CrushBank in its sole discretion, CrushBank may warn Customer, suspend the affected Service, or terminate Customer's accounts. Please note that CrushBank may change the Terms of Service at any time, and, while CrushBank may send written notice of any such changes as required by applicable law, it is Customer's responsibility to keep up-to-date with and adhere to the posted Terms of Service. Your continued use of the Site following any such change constitutes your acknowledgement of such change and your agreement to follow and be bound by the modified terms and conditions, if any. All capitalized terms used herein have the meanings stated in this Agreement, unless stated otherwise.

### Electronic Signature Consent to These Terms and Online Agreements

Your access and use of the Services will be managed through your account on the Site. CrushBank relies on an electronic signature process as official authorization for your agreement as well as any changes to these Terms of Service or any transactions conducted in the Site. By accessing this Site and, where prompted clicking "I Agree" or "Click to Consent," you agree to conduct each transaction by electronic means and CrushBank and you hereby state that electronic signatures shall have the same force and effect as an original signatures with respect to these Terms and all written agreements entered into between you and CrushBank on the Sites. You may revoke approval of this electronic signature process at any time with prior written notice to CrushBank from your account; however this will result in CrushBank's suspension or termination of the Services absent your acknowledgment of agreement or consent by other valid legal means.

### Account Set-Up

Establishing Account. Browsing of the Site's public pages is currently provided free of charge to any person. However, access to the Services will require an account to be first established and activated. You may sign up for an account by completing the online forms required by CrushBank and following the directions for submit a request to become a customer and set up an account. As part of the account activation process, you may certify that you are 18 years of age or older. When you register for an account, you will be asked to create a unique user name and password, and enter a valid email address for your account. You will be asked whether you have read and agree to abide by these Terms and any additional terms set forth on the account set up page. If you answer "I agree" and you otherwise are eligible, your account may be activated. If you answer "I Do Not Agree" or otherwise are not eligible, your account will not be activated and you will not be permitted to access the Services online.

Activation. CrushBank reserves the right to decline to activate an account for any person for any reason. If your account is activated, you will receive a notification email immediately after you register and you must confirm your email address and acceptance of this Agreement by clicking on the confirmation link in the notification email. Once you have confirmed, you will be permitted to log in, view, load, post, and use the Services and the specific features of each feature of the Services for which you have been registered. By making such confirmation, you acknowledge that you have read these Terms, understand your rights and obligations, and agree to be bound by these Terms. You acknowledge that certain Services will be provided subject to additional terms and conditions (or a separate written agreement only) and you agree that you will abide by such additional terms and conditions applicable to those Services.

Password Protection. You must have a password to access the Services online via your account. You are responsible for maintaining the secrecy of your password and protecting against unauthorized use of your password. You also are responsible for all activities that occur under your password and user name or your account made by you or others. You will immediately notify CrushBank if your password is lost, stolen, disclosed to an unauthorized third party or otherwise has been compromised or if there is any other breach of security. You must ensure that you exit from your account at the end of each session. You will be permitted to access only those portions of the Services and the Site for which you have been granted permission to use by CrushBank.

Account Requirements. In consideration of your use of the Site and the Services, you agree to: (i) provide true, accurate, current, and complete information about yourself as prompted by our account activation form; and (ii) maintain and promptly update such account information to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect that such account information is untrue, inaccurate, not current or incomplete, we reserve the right to suspend or terminate your account and refuse any and all current or future use of the Site or the Services or any portion thereof.

## **Definitions**

All capitalized terms shall have the meanings defined below unless otherwise specified in this Agreement or an Order Form.

"Application" means the databases, interfaces, engines, libraries and other features, functionality and software components (including updates and upgrades) offered by CrushBank and all APIs and API-related code sets provided by CrushBank. The Application includes the IBM-Watson knowledge database engine.

"Covered Communication" means any written, oral or pictorial (including pictures, photographs, video, illustrations and symbols) review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services or conduct of CrushBank by Customer or a Named User.

"Customer" means the person or entity who is purchasing the Subscription Services.

"Customer Data" means any data that a Named User inputs into or processes using the Application or the Subscription Services.

"Customer App" means any application, interface or other website content accessing or connected to the Application from the Customer Site.

"Customer Site" means the base URL through which the Subscription Services may be made available to Customer via an applicable program interface (API).

"Internal Use" means any use for Customer's or Named Users' internal business and non-commercial purposes only, excluding any use within the operational infrastructure of such entity or any use that would result in direct financial benefit to Customer or Named User.

"Named Users" means an employee or agent of Customer who has been issued an user identification and password by CrushBank at Customer's request. Named Users will be authorized to use the Subscription Services solely for the benefit of Customer (and not for the benefit of themselves or any third party).

"Order Form" means each order form or sales quote for placing orders for the purchase of the Subscription Services or any invoice for additional features or services offered by CrushBank referencing this Agreement.

"Output Data" means any output data or report created by a Named User's access to the Application.

"Subscription Service" means online software service providing access and use of the Application to be performed by CrushBank in accordance with this Agreement and the applicable Order Form.

## **Subscription Services**

Subscription Services. CrushBank will make available to Customer and its Named Users the Subscription Services subject to the user or processing limitations and the subscription term set forth in the Order Form. Customer and its Named Users may access and use the Application and the Subscription Service for Internal Use. Customer acknowledges that the Subscription Services are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by CrushBank regarding future functionality or features other than as specifically noted on the Order Form.

Consulting Services. Customer may, at any time, request CrushBank to perform additional consulting services regarding the Application (including data processing and analysis and assistance with developing interfaces to the Application). CrushBank will evaluate Customer's request and, if it agrees to perform these additional consulting services, Customer and CrushBank shall execute an additional Order Form.

Use of Customer Data and Output Data. Customer shall be responsible for the accuracy, integrity and correctness of all Customer Data input into the Application, and Customer shall be solely responsible for the back-up or archival, maintenance and support of all Customer Data. Customer represents to CrushBank that it will not (and it will not permit a Named User to) load or process any data comprising (i) FERPA or FERPA-related information, (ii) any protected health information ("PHI") as such term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA," found at Public Law 104-191), and certain privacy and security

regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as modified by the Final Omnibus Rule effective as of March 26, 2013 (collectively the "HIPAA Regulations") found at 45 C.F.R. Parts 160, 162 and 16, or (iii) any personally identifiable information, including name, address, phone number, e-mail address, date of birth, social security number, credit card information, driver's license number, passport information, account numbers, and any other information that could reasonably identify a person, and any breach of the foregoing representation shall be material. Customer acknowledges that the accuracy of the Output Data will depend on the accuracy, integrity and correctness of the Customer Data. Customer may use the Output Data solely for its internal business purposes and not for resale to third parties. If Customer creates any Customer App, Customer authorizes CrushBank to copy, transmit, interface to, disclose, analyze and display the Customer App as necessary or desired for CrushBank to provide the Subscription Services or to market, promote or improve the use of the Application to or by its customers and potential customers during and after the subscription term set forth in the Order Form. Customer further authorizes CrushBank to copy, transmit, process, disclose, analyze and display all Customer Data processed through the Application as necessary or desired for CrushBank to provide the Subscription Services or to market, promote or to improve the use of or add to the Application to or by its customers and potential customers during and after the subscription term of each Order Form. Customer authorizes CrushBank to use its name, trademarks, service marks and logos, and any content and information (including screenshots and video captures from any use of Application) as necessary or desired for CrushBank to provide the Subscription Services or to market, promote or improve the use of the Application to or by its customers and potential customers during and after the subscription term set forth in the Order Form.

Freedom to Use Ideas. Notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, and other data, information and materials processed, collected or developed in and during Customer's use of the Application or the performance of the Subscription Services under any Order Form may be used by CrushBank, without an obligation to account, in any way CrushBank deems appropriate, including by or for itself or its customers. Nothing in this Agreement will preclude or limit CrushBank from providing software, materials, or services for itself or other customers, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Customer or any Customer Data or Customer App. The terms of confidentiality in this Agreement will not prohibit or restrict CrushBank's right to develop, use or market products or services similar to or competitive with the Customer App. Customer acknowledges that CrushBank may monitor and collect data related to the use of the Subscription Services for analysis, verification and system operations maintenance in accordance with CrushBank's privacy policies and procedures. Customer acknowledges that CrushBank will enter into contracts with other customers who may or may not be within the same market or territory as Customer and that nothing in this Agreement or any Order Form shall restrict or limit CrushBank from offering or performing data, software, material or services similar in nature to the Application and Subscription Services for any other person or entity in any industry both during and after the term of this Agreement.

CrushBank IP. Customer acknowledges and agrees that as between Customer and CrushBank, title to and ownership of the Application, CrushBank's proprietary technology, and all intellectual property rights relating thereto, including without limitations, copyrights, hardware designs, algorithms, software, website content and "look and feel", software and user-interface designs, architecture, documentation (both printed and electronic), network designs, know-how, libraries, skill sets, data, databases, trademarks, patents, trade names, trade dress, methodologies, trade secrets, confidential information and any related intellectual property rights and goodwill associated with the foregoing throughout the world (whether owned by CrushBank or licensed to CrushBank from a third party), and all Output Data used in the Services or incorporated into any deliverables, and any derivatives, improvements, enhancements or extensions of, and any feedback or suggestions to, any of the foregoing, conceived, reduced to practice, or developed whether alone or jointly with others by CrushBank or Customer or Named Users (collectively, "CrushBank's IP"), are and will remain vested in CrushBank at all times and for all purposes. Customer and Named Users acknowledge and agree that the IBM Watson engine embodied in CrushBank's IP is owned by International Business Machines and used under license by CrushBank.

Customer Obligations. Customer will not knowingly take any action inconsistent with CrushBank's rights in and to the Application and CrushBank's IP. Customer shall not (i) permit any third party to access the Application or the Subscription Services except as permitted herein or in an Order Form, (ii) repurpose the Application (or any data therein) for Customer's own use or otherwise create derivative works based on the Application or the Subscription Services, (iii) copy, frame or mirror any data or content of the Application or Subscription Services, other than copying or framing on Customer's own intranets on the Customer Site, (iv) reverse engineer the Application or Subscription Services, or (v) access the Application or Subscription Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Application or Subscription Services. Customer shall (1) be responsible for Named Users' compliance with this Agreement, (2) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer or its Named Users acquire Customer Data, (3) use commercially reasonable efforts to prevent unauthorized access to or use of the Application or the Subscription Services, and notify CrushBank promptly of any such unauthorized access or use, and (4) use the Subscription Services only in accordance with CrushBank's user documentation and applicable laws and government regulations. Customer shall not (a) make the Application or Subscription Services available to anyone other than Named Users, (b) sell, resell, rent or lease the Application or Subscription Services, (c) use the Subscription Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights, (d) use the Subscription Services to store, process or transmit viruses, worms, bots, data mining code, or other harmful or malicious code, files, data, scripts, agents or programs, (e) interfere with or disrupt the integrity or performance of the Subscription Services or third party

data contained therein, or (f) attempt to gain unauthorized access to the Application or the Subscription Services or their related systems or networks. Customer shall and it shall cause its User to comply at all times with CrushBank's acceptable use policy, as published or made available from CrushBank. Customer agrees to indemnify, hold harmless, and defend CrushBank, its officers, directors, employees, agents, affiliates, subsidiaries, successors, users, and assigns from and against any and all claims, demands, damages, costs, and expenses, including reasonable legal fees and expenses incurred by CrushBank, in connection with a breach of any of the limitations and obligations set forth in this Agreement by Customer or its Named Users and any access or use of the Services and the Site by Customer or its Named Users or anyone accessing the Services and the Site via the account passwords established by Customer or its Named Users.

Consumer Review Fairness Act. The Consumer Review Fairness Act gives Customer and Named Users certain protection against "gag" clauses prohibiting the disparagement of a service provider's service offerings. The parties acknowledge and agree that, notwithstanding anything to the contrary herein, no clause in these Terms of Service shall be constructed to (i) prohibit or restrict the ability of, or impose a penalty or fee against, Customer or a Named User from engaging in any Covered Communication or (ii) transfer or require Customer or a Named User to transfer to CrushBank any intellectual property rights in any otherwise lawful Covered Communication other than the non-exclusive license set forth in this clause; provided however that: (1) the foregoing shall not affect (A) any duty of confidentiality imposed by law, (B) any civil actions for defamation, libel or slander or any similar causes of action, or (C) CrushBank's right to remove or refuse to display publicly on an Internet website or webpage owned, operated or otherwise controlled by CrushBank any Covered Communication that contains the personal information or likeness of any person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic, or is unrelated to the goods and services offered by or available at CrushBank's Internet websites or webpages; and (2) the foregoing shall not apply to the extent that the clause in these Terms of Service prohibits disclosure or submission of (A) trade secrets or commercial or financial information obtained from any person and considered privileged or confidential, (B) personnel and medical files and similar information, the disclosure of which would constitute a clearly and unwarranted invasion of personal privacy, (C) records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly and unwarranted invasion of personal privacy, (D) content that is unlawful or otherwise meets the requirements of subsection (2)(C) above, or (E) content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications or files. Customer and each Named User grants CrushBank, its successors and assign, the non-exclusive, perpetual, irrevocable, fully-paid, royalty-free right to copy, use, reproduce, edit, display, or commercially exploit any Covered Communication, in whole or in part, in any media (including Internet) whether now know or hereafter created, without the requirement of an accounting or prior written notice to Customer or a Named User by CrushBank.

## **Fees and Payment**

Fees. CrushBank's fees for providing the Subscription Services during the relevant subscription term, as well as the fees for any additional consulting services to be rendered to Customer, will be set forth in the applicable Order Form. CrushBank reserves the right to charge (or increase) fees for any features or functionality of the Application (including updates and upgrades) made available to Customer as part of the Subscription Services during the relevant subscription term, and Customer agrees to pay such additional fees set forth in the applicable Order Form. Except as otherwise specified herein or in an Order Form, (i) fees are based on Subscription Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) fees due in arrears for the number of User or processing subscriptions purchased will be calculated based upon the greater of (a) the minimum number of Users or subscriptions set forth in the applicable Order Form or (b) the highest number of Users or subscriptions activated or set up by Customer during the relevant subscription term stated on the Order Form. Customers' use of the Subscription Services may be subject to additional fees for Application usage in excess of the Usage Limits set forth in the Order Form. CrushBank will invoice Customer for all fees due according to the payment schedule set forth in the Order Form and payment for all undisputed amounts will be due and payable to CrushBank within thirty (30) days following the date of each invoice. Customer shall be responsible for payment of all U.S. Federal, State and local taxes applicable to the furnishing and use of the Application and Subscription Services. Customer agrees to indemnify CrushBank from any claims, demands or liability made against CrushBank for any such taxes.

Late Payments. Any payment not received within thirty (30) days after the invoice date will accrue interest at a rate equal to the lesser of 1.5% per month or the highest rate permitted by applicable law. If Customer is more than fifteen (15) days delinquent in its payments, CrushBank may, upon written notice to Customer, modify the payment terms to require advance payment for the full amount of the fees for the remainder of the term of each Order Form, suspend Customer's access to the Application and Subscription Services, and/or require other assurances to secure Customer's payment obligations due hereunder.

Payment Online. The Site may allow for online payment on your account. This payment feature is provided by a third party vendor and use of this feature is subject to this Agreement to the extent the terms set forth in this Agreement are not contrary to the forms or other service agreements between you and the third party vendor. In order to make payments online, you must submit the necessary contact and payment information, including, without limitation, your name, address, payment account information (i.e., credit card, debit card, ACH account, etc.), and email. You are responsible for the accuracy of the information in your account(s) supplied by you to CrushBank. By providing such information to CrushBank by any means (e.g.: email, fax, telephone, mail, etc.), you represent that such information shall be accurate, complete, and correct and that you have lawful right to provide such information to CrushBank for use by

CrushBank and its authorized vendors. You must be 18 years of age or over. By using the Site's payment method, you confirm that you possess the legal authority to enter into the conditions of use for the Site, including, without limitation, instructing CrushBank or its authorized vendors to collect any payments from a credit or debit card or ACH account, and to use the Services and the Site in accordance with this Agreement. Billing occurs at the time of payment or shortly thereafter. You agree that you are responsible for all charges incurred by your use of the Services and the Site and you expressly authorize CrushBank to charge the credit card or ACH account provided by you or listed on your account for any outstanding fees or costs due to CrushBank.

### **Beta or Demo Uses – Non-GA Services**

From time to time, CrushBank may invite Customer to try, at no charge, its services that are not generally available to its customers ("Non-GA Services") under a separate Order Form and/or additional terms and conditions required by CrushBank. Customer may accept or decline any such trial in its sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. CrushBank may discontinue Non-GA Services at any time in its sole discretion and may never make them generally available to its customers (including Customer).

### **Service Levels**

Support Hours. Customer will designate a single support contact who will contact CrushBank for all support inquiries. Requests for support should be directed to the technical supports or to the contact phone number listed on the Order Form. CrushBank responds to support questions from 9 am to 5 pm (Eastern Time) Monday-Friday, excluding CrushBank-observed holidays and weekends ("Normal Business Hours"). CrushBank will respond to service requests and correct documented or reproducible errors or provide a Work Around in accordance with the severity level reasonably assigned by CrushBank during Normal Business Hours. Correction/Workaround requirements will be met by either resolving the issue within the correction/workaround time or continuously working on the issue until the problem is resolved. For purposes of support:

A. A Severity 1 Error or Catastrophic Outage: (i) causes the Application to cease operating or operating in any material respect; or (ii) is likely to directly or indirectly delete, impair, damage or corrupt (collectively with (i), "Damage") any system or Customer Data. A Severity 1 Error will also include any error in the Application that poses directly or indirectly imminent harm to any system or Customer Data or Output Data. CrushBank shall respond to Customer's support ticket within one (1) business day, and use commercially reasonable efforts to correct the error or provide a Work-Around within three (3) business days.

B. A Severity 2 Error or Business Stoppage: (i) causes a significant function of the Application to be impaired although it still operates; (ii) may cause Damage to any system or User Data or Output Data; or (iii) may have a material adverse impact on Customer's business. CrushBank shall respond to Customer's support ticket within one (1) business day, and use commercially reasonable efforts to correct the error or provide a Work-Around within five (5) business days.

C. A Severity 3 Error or Business Disruption causes a minor function of the Application to be impaired which adversely affects, or is likely to adversely affect, Customer's business. CrushBank shall respond to Customer's support ticket within one (1) business day, and use commercially reasonable efforts to correct the error or provide a Work-Around within the next two releases of Application.

D. As used for support, a "Work-Around" means a temporary work-around, patch or bypass supplied by CrushBank in order to temporarily correct the error; provided, however, that: (i) the functionality, compatibility or use of the Application is not adversely affected; and (ii) the Work-Around is not unduly burdensome to Customer's Named Users. Notwithstanding the availability of a Work-Around, CrushBank will continue to work to fix the error during Normal Business Hours and, in any event, provide Customer with the applicable permanent correction within: (i) ten (10) business days for a Severity 1 or 2 Error; or (ii) within next two releases for a Severity 3 Error; provided that CrushBank agrees that the minor function is commercially reasonable to correct in the next releases for all customers, including Customer.

Maintenance and Technical Standards. CrushBank agrees to maintain the accessibility of the Application via CrushBank's website in a manner consistent with capacity and performance standards set forth herein and current telecommunications and Internet industry standards, as the same may change from time to time. For measurements required herein, CrushBank may assume a stable, standard T1 connection to the Internet and measurements made at random times throughout the day. Upon request, CrushBank will provide Customer with a list of minimum recommended and technical equipment standards for access to and use of the Application, and Customer acknowledges that optimal performance will not be available if recommended standards are not met by Named Users of the Application. Under no circumstances will CrushBank be liable for any damage or loss resulting from a cause over which CrushBank does not have control, including, without limitation, failure of electronic or mechanical equipment or communications lines, telephone or other interconnect problems, general inoperability of the Internet, unauthorized access, theft, operator error, severe weather, earthquakes, and strikes or other labor problems.

Service Availability. While CrushBank will use commercially reasonable efforts to maintain access to the Application from CrushBank's website 24 hours per day 7 days a week, CrushBank represents that access to the Application for Customer and its

Named Users will be maintained at an availability standard of 99% as measured over the course of a calendar month, excluding standard exceptions. Standard exceptions to the 99% service-availability standard include scheduled maintenance, maintenance downtime to resolve extraordinary technical problems with any software or the host operating environment, force majeure (including state or federally declared natural disasters in CrushBank's physical locations), or technical difficulties attributable to any non-CrushBank computer hardware, or technical difficulties attributable to Customer's interface with the Application or the Customer Site unless such technical difficulties are the direct fault of CrushBank. In the event that the service-availability standard in a calendar month falls below 99%, Customer may request in writing a report of availability from CrushBank and if such report confirms the downtime, Customer may request a credit against future fees equal to ten percent (10%) of that portion of the fee corresponding to the month in which such failure occurred. Customer must request a report and credit within thirty (30) days from the end of the month in which such failure occurred. The foregoing shall be Customer's sole remedy and CrushBank's sole liability for breach of the performance standards set forth in this clause.

Suspension of Service. CrushBank reserves the right to suspend access to the Application or the Subscription Services at any time to Customer or enforce against the Customer App or the Customer Site if CrushBank concludes that Customer is in violation of this Agreement, or the Customer App or the Customer Site is negatively impacting the performance of the Application. CrushBank may or may not notify Customer in advance of such suspension. Enforcement may be both automated and manual, and can include disabling Named User access, restricting access to Application functionality, requirement that Customer delete Customer Data, or any other similar action deemed appropriate by CrushBank.

#### **LIMITATIONS ON LIABILITY AND WARRANTIES.**

Limitation of Liability. IN NO EVENT SHALL CRUSHBANK BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, LOST SAVINGS, LOST DATA, COMMERCIAL LOSS OR BUSINESS INTERRUPTIONS INCLUDING LOSS OR DELAY OF BUSINESS OPERATIONS OR OTHER INCIDENTAL OR CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES INCURRED BY CUSTOMER UNDER ANY CIRCUMSTANCES WHATSOEVER EVEN IF CRUSHBANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDIES PROVIDED IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

Disclaimer of Warranties. THE APPLICATION AND SUBSCRIPTION SERVICES ARE PROVIDED BY CRUSHBANK ON AN "AS-IS" "WITH ALL FAULTS" BASIS WITH NO WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, CrushBank MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SUITABILITY, QUIET ENJOYMENT, NON-INFRINGEMENT, ORIGINALITY, OR FITNESS FOR A PARTICULAR PURPOSE, IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALINGS BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE. IN NO EVENT SHALL INDEMNIFICATION BE PROVIDED FOR A CLAIM FOR BREACH OF WARRANTY AGAINST CRUSHBANK.

Cumulative Liability. CRUSHBANK'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM FOR, OR ALLEGEDLY CAUSING, THE DAMAGES DURING THE TERM OF THIS AGREEMENT.

Exception. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY WITH RESPECT TO ANY LOSSES OR DAMAGES INCURRED CUSTOMER TO THE EXTENT CAUSED BY AN ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY CRUSHBANK.

Allocation of Risk. EACH PARTY ACKNOWLEDGES THE ALLOCATION OF RISK SET FORTH HEREIN AND THAT THE PARTIES WOULD NOT HAVE EXECUTED THE ORDER FORM WITHOUT THESE LIMITATIONS OF LIABILITY.

#### **Term And Termination**

Term and Termination. This term of this Agreement shall commence on the Effective Date and continue in effect for as long as an Order Form is in effect referencing this Agreement. Each Order Form shall continue throughout the term designated in the Order Form unless earlier terminated as set forth below. If the Order Form provides for automatic renewal at the end of the initial term or any renewal term, then either party may terminate the Order Form by giving the other party written notice of non-renewal at least thirty (30) days before the expiration of the initial term or the then-current renewal term. Termination of this Agreement shall effectively terminate all Order Forms; however, the termination of an Order Form does not effect a termination of any other Order Forms referencing this Agreement, unless specified in the notice of termination by the party.

Immediate Termination. Either party may terminate the Order Form at any time and without prior notice if such party has obtained or discovered credible evidence that the other party has engaged in fraudulent, criminal, grossly negligent, willful, or otherwise intentional misconduct, or has knowingly violated any law or regulation, in connection with the business relationship of the parties or the performance of its obligations hereunder.

Termination for Breach. The Order Form may be terminated by the non-breaching party if a party breaching a material term of the Order Form or these Terms of Service fails to cure such breach within thirty (30) days following written notice of breach from the non-breaching party specifying in reasonable detail the nature of such breach.

Effect of Termination. If the Order Form is terminated by CrushBank as a result of Customer's breach, in addition to any other remedies that CrushBank may have, all amounts owed by Customer and unpaid as of the date of such termination shall be immediately due and payable to CrushBank. Any provision contained in these Terms of Service that, by its nature, is intended to survive expiration or termination shall so survive. Upon termination, CrushBank will take prompt action to delete all proprietary Client Data from Watson container.

## **Confidentiality**

Definition of Confidential Information. As used in this Agreement, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include Customer App, CrushBank's Confidential Information shall include CrushBank's IP, and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of it and its affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its affiliates and their legal counsel and accountants without the other Party's written consent.

Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **General Provisions**

Governing Law. The Order Form and this Agreement will be governed by and construed in accordance with the laws of the State of New York (without regard to any conflict of laws rule or principle that might refer governance or construction of this Agreement to the laws of another jurisdiction). Venue for any action hereunder shall be proper only in Manhattan, New York or Southern District of New York.

Entire Agreement. This Agreement and each Order Form (together with any policies or documents referenced herein) shall constitute the entire and integrated agreement between the parties with respect to the Application and the Subscription Services and any materials or services provided by CrushBank to Customer hereunder. There are no understandings or agreements relating thereto that are not fully expressed herein, and no change or waiver is valid unless it is in writing and executed by the party against whom it is sought to be enforced.

Force Majeure. In the event either party is prevented from performing, or is unable to perform, any of its obligations hereunder due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence. In the event that a party's performance is prevented or delayed for more than thirty (30) days, then the other party may terminate the Order Form delivery of written notice to the non-performing party.

Severability. If a court of competent jurisdiction finds any provision of an Order Form or this Agreement to be unenforceable, the remaining provisions will be enforced, with substitution as necessary to give reasonable overall effect to the terms of the Order Form and this Agreement.

Injunctive Relief. The parties understand and agree that, due to the highly competitive nature of the computer software industry, the breach of any covenants set forth in each Order Form or this Agreement may cause irreparable injury to CrushBank for which no adequate remedy at law will be available. Therefore, CrushBank will be entitled, in addition to such other remedies as it may have hereunder, to a temporary restraining order and preliminary injunctive relief for any breach or threatened breach of an Order Form or this Agreement.

Business Relationship. Neither an Order Form nor this Agreement create any agency, employment, joint venture, partnership,

representation, or fiduciary relationship between the parties. No party has the authority to, nor will a party attempt to, create any obligation on behalf of another party as a result of an Order Form or this Agreement.

**Authority.** Each individual executing the Order Form on behalf of an entity hereby represents and warrants to the other party that such individual is duly authorized to execute, and to deliver, the Order Form on behalf of that entity and that such execution and delivery makes this Agreement and each Order Form a valid and binding obligation of the entity for all purposes.

**Notices.** All notices shall be sent by certified mail, return receipt requested, to Customer and CrushBank at the addresses and to the attention of the persons designated on the Order Form. CrushBank also may communicate with Customer through alerts and email in the Subscription Services or from CrushBank's website. Customer must ensure that all email addresses associated with Customer's account are current and Customer's system will not filter out these alerts or emails.

**Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of, but with prior written notice to, the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

**Publicity.** CrushBank may post a customer case study or issue a press release(s) regarding the purchase of the Subscription Services by Customer and the business relationship established under this Agreement at any time during and after the term of this Agreement. CrushBank expressly prohibits any use, reference to, or other affiliation of its name, trademarks, service marks or trade names with Customer or Named Users or any third party, except, in each instance, as expressly authorized in writing by the CEO or President of CrushBank and subject to CrushBank's quality control.

### **Claims of Copyright Infringement**

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that any materials submitted to the Service and/or the Site infringe your copyright, you (or your agent) may send CrushBank a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works located on the Site are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow CrushBank to locate the material on the Site; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed by CrushBank against you, the DMCA permits you to send CrushBank a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.loc.gov/copyright/> for details. Notices and counter-notices with respect to the Site should be sent to [legal@crushbank.com](mailto:legal@crushbank.com). We suggest that you consult your legal advisor before filing a notice or counter-notice. Also, be aware that there can be penalties for false claims under the DMCA.

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