Rizikon Assurance Terms of Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY.

The Rizikon Assurance Terms of Service are a contract between you (the Customer) and us (Crossword Cybersecurity plc or “Crossword”) describing the terms under which we will provide Rizikon Assurance to you. The Terms of Service consists of the following documents:

Main Terms: These contain the core legal and commercial terms that apply to your subscription

Service Level Agreement: This sets out the guaranteed minimum service levels we offer.

Data Processing Agreement: This explains how we process your data.

All of the above documents can be found at <https://www.global.rizikon.io/legal-stuff>

Your Order Form: This is the Crossword-approved form created following your purchase of one of our products or services through our online payment process or via in-app purchase. It contains all of the details about your purchase, including your subscription term, products purchased and your fees. You’ll find your Order Form(s) [here].

These terms are very important - we will not provide our products and services to you unless you agree to them. By using Rizikon Assurance, you are agreeing to these terms.

We periodically update these terms. If you have an active Rizikon Assurance subscription, we will let you know when we do via an email [or in-app] notification.

You can find archived versions of the Terms of Service [here](https://legal.hubspot.com/legal-stuff/archive?hsLang=fr).

MAIN TERMS

1. **Interpretation**

The definitions and rules of interpretation set out in clause 20 below apply in this Agreement.

## Services

* 1. Subject to the terms of this Agreement, during the Term Crossword shall provide you with the Services, by providing Authorised Users with access to and use of the Platform, for the purpose of supporting your internal business operations.
	2. Crossword guarantees minimum service levels, as set out in the Service Level Agreement (“SLA”). The SLA sets forth your sole remedies for lack of availability or inadequate performance of the Services.
1. **Hosting**
	1. The Services shall be hosted by Crossword on a platform provided by Amazon Web Services in a manner that ensures that Customer Content is kept securely and separate from the content of other Crossword customers. The infrastructure may be either:
		1. shared with other Crossword customers; or
		2. where so stated in the Order form, dedicated infrastructure managed by Crossword which provides for the logical and physical separation of the Services from other customers using Crossword’s services.

## Usage

* 1. Crossword hereby grants to the Customer (and any affiliates of Customer named in the Order Form) a non-exclusive, non-transferable right, with the right to grant authorisation to Third Parties and Authorised Users, to access the Platform and use the Services and the Documentation during the Term solely for the Customer's internal assurance procedures.
	2. Customer accepts that Crossword may require Authorised Users to agree to its terms of use (which it may update from time to time), prior to being granted access to the Platform and the Documentation.
	3. The Customer undertakes that:
		1. the maximum number of Third Parties that it authorises to access the Platform shall not exceed the number it has purchased, as set out in the Crossword price list current at the time the relevant order was placed;
		2. the total number of Customer User accounts created will be no more than 10 Customer Users per 1000 Third Party Users; and
		3. It will pass on to Third Parties and Authorised Users any recommendations issued by Crossword from time to time in relation to best practice for use of the Services.
	4. If Customer wishes to authorise additional Users in excess of the number set out in the Order form it shall notify Crossword in writing. Crossword shall evaluate such request and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Crossword approves the request, Crossword shall activate the additional Users within 5 Business Days.
	5. If at any time the Customer exceeds the amount of permitted Users, it shall pay the excess fee set out in the Order form.
	6. If at any time the Customer exceeds the amount of disk storage space specified in the Order form, Crossword shall charge the Customer, and the Customer shall pay, Crossword's then current excess data storage fees. The excess data storage fees current at the Effective Date are set out the Order form.
1. **Warranties**
	1. Crossword represents and warrants that:
		1. it will provide the Services in a professional manner consistent with general industry standards and that the Services will perform substantially in accordance with the Documentation.
		2. it shall adhere to the Service Levels as set out in the Service Level Agreement; and
		3. it has and will maintain all necessary rights, licences, consents, facilities and resources necessary for the performance of its obligations under this Agreement.

## Fees and payment

* 1. In consideration for the provision of the Services, Customer shall pay Crossword the Subscription Fees and any other fees listed in the Order form. The Subscription Fees will remain fixed during the initial term.
	2. Fee Adjustments at Renewal. Upon renewal, we may increase your fees up to our then-current list price. If this increase applies to you, we will notify you at least thirty (30) days in advance of your renewal and the increased fees will apply at the start of the next renewal term. If you do not agree to this increase, you can choose to terminate your subscription at the end of your then-current term by giving the notice required in the ‘Notice of Non-Renewal’ section below.
	3. Payment by credit card. If you are paying by credit card, you authorize us to charge your credit card or bank account for all fees payable during the Term. You further authorize us to use a third party to process payments, and consent to the disclosure of your payment information to such third party.
	4. Payment against invoice. If you are paying by invoice, we will invoice you no more than forty-five (45) days before the beginning of the Term and each subsequent billing period, and other times during the Term when fees are payable. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order Form.

* 1. You shall pay all invoices issued hereunder within 30 days of the date of the invoice.
	2. If Crossword has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of Crossword:
		1. Crossword may, without incurring any liability to you, disable your password, account and access to all or part of the Services (including access for the Third Parties) and Crossword shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
		2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid.
	3. All amounts and fees stated or referred to in this Agreement shall be payable in pounds sterling and are exclusive of value added tax, which shall be added to Crossword's invoice(s) at the appropriate rate.

## Customer's other obligations

* 1. Customer shall provide Crossword with all co-operation and access to all such information as may be reasonably required by Crossword in order for it to provide the Services. In particular, Customer shall:
		1. accept all bug fixes, updates and improvements that Crossword makes to the Services from time to time;
		2. ensure that the Authorised Users use the Services and the Documentation in accordance with the terms of this Agreement; and
		3. ensure that its network and systems comply with the relevant specifications provided by Crossword from time to time.
	2. Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Platform, the Services and the Documentation and, in the event of any such unauthorised access or use, promptly notify Crossword.
	3. Customer shall only use the Services for lawful purposes.
	4. Customer shall not access, store, distribute or transmit any Malware or any material on or via the Platform that is illegal, unlawful, harmful, threatening, defamatory, discriminatory, obscene, infringing, harassing or racially or ethnically offensive. Crossword reserves the right to disable access to any material that breaches the provisions of this clause.
1. **Proprietary rights**
	1. As between Crossword and the Customer, the Customer shall own all right, title and interest in and to all of the Customer Content and shall have sole responsibility for the legality, reliability, integrity and quality of the Customer Content.
	2. Each of Crossword and Customer shall retain its rights in its Background IPR. For the avoidance of doubt, Crossword and/or its licensors own and shall retain all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

## Credit information

* 1. The Services may include access to credit and other information about Third Parties (the **Credit Information**”) that is supplied by a third party supplier through the Platform. The Customer agrees that it shall only access and use Credit Information for the purpose of credit checking, know your customer checks, compliance, data verification and enhancement and other lawful business due diligence purposes.
	2. The Credit Information is not intended to be used as the sole basis for decision-making and is provided on an "as is" basis without warranties of any kind, whether express or implied. Specifically, Crossword gives the Customer no warranty or assurance about the contents of the Credit Information. The Information may be incorrect or out of date and therefore any use of the Information is at the Customer’s own risk.
	3. The Customer acquires no database or other intellectual property rights in the Credit Information.
1. **Indemnity**
	1. Each party (as an indemnifying party) shall indemnify the other, its directors and employees (as indemnified parties) against all losses arising out of any claim:
		1. brought by either a third party or an indemnified party, and
		2. arising out of the indemnifying party's wilful misconduct or gross negligence.
	2. Crossword shall indemnify, defend and hold harmless Customer, its directors and employees against all and any claims by a third party alleging:
		1. that the Services or Documentation infringe any third party Intellectual Property Rights; or
		2. that Crossword, its employees or sub-contractors have infringed any applicable Data Protection laws.
	3. Crossword’s obligation in clause 10.2 is conditional on the following:
		1. Crossword shall be given prompt notice of any actual, threatened or suspected claim of which the Customer becomes aware;
		2. the Customer shall provide reasonable co-operation to Crossword in the defence and settlement of such claim, at Crossword's expense; and
		3. Crossword shall be given sole authority to defend or settle the claim.
	4. In no event shall Crossword, its employees, agents and sub-contractors be liable to the Customer to the extent that an alleged infringement of Intellectual Property Rights is based on:
		1. a modification of the Services or Documentation by the Customer ; or
		2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Crossword; or
		3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Crossword or any appropriate authority.
	5. Customer agrees to indemnify, defend and hold Crossword and its directors and employees harmless from any claim, including reasonable legal fees, made by any third party in connection with the Customer’s use of Credit Information, whether in breach of this Agreement or otherwise.

## Limitation of liability

* 1. Except as specifically provided in this Agreement:
		1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use;
		2. Crossword shall not be responsible for any unauthorised access to Customer Content as a result of the security of login credentials being violated due to the negligence of the Customer or any Third Party User;
		3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
		4. the Services and the Documentation are provided to the Customer on an "as is" basis.
	2. Neither party shall be liable to the other, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
	3. Crossword's total aggregate liability:
		+ 1. in respect of Service Failures or Chronic Service Failure shall be as detailed in paragraph 4 (“Service Credits”) of the SLA.
			2. in respect of all other claims (other than for claims which are the subject of indemnity under clause 10.1 and 10.2 above), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or non performance of this Agreement **shall be limited to the total fees paid under this Agreement** during the 12 months immediately preceding the date on which the claim arose.
	4. Nothing in this Agreement excludes the liability of Crossword:
		1. for death or personal injury caused by Crossword's negligence; or
		2. for fraud or fraudulent misrepresentation.

## Term and termination

* 1. This Agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a “Renewal Period”), unless:
		1. either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
		2. it is otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the Term.

* 1. Customer may terminate this Agreement with immediate effect on written notice to Crossword if a Chronic Service Failure occurs.
	2. Crossword may terminate with immediate effect on written notice to Customer if Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
	3. If Crossword reasonably believes that the Customer has breached any provision of this Agreement, or otherwise poses a risk to the proper provision of the Services to other customers, Crossword may suspend the Customer’s access to the Platform and Services whilst it investigates the potential breach or risk.
	4. Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
		1. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
		2. the other party commits an act of insolvency or has a receiver, administrator or administrative receiver appointed over its assets or income or if an order is made, a petition is presented to any Court or a resolution is passed for liquidation and winding up of the other party in any jurisdiction to which it is subject or if the other party ceases trading.
	5. On termination of this Agreement for any reason:
		1. all licences granted under this Agreement shall immediately terminate, Customer shall immediately cease all use of the Services and/or the Documentation and Crossword shall be entitled to prevent Authorised Users from accessing the Services and Platform;
		2. each party shall return and make no further use of any equipment, property, Documentation, Confidential Information and other items (and all copies of them) belonging to the other party;
		3. Crossword shall be entitled, at its own cost, to destroy or otherwise irretrievably dispose of any of the Customer Content in its possession in accordance with applicable data protection laws. If Crossword receives, no later than ten days after the effective date of termination a written request for the delivery to the Customer of the most recent back-up of the Customer Content, Crossword shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of receipt of such a request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination. The Customer shall pay all reasonable expenses incurred by Crossword in returning Customer Content; and
		4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

## Confidentiality

* 1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
		1. is or becomes publicly known other than through any act or omission of the receiving party;
		2. was in the other party's lawful possession before the disclosure;
		3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
		4. is independently developed by the receiving party, which independent development can be shown by written evidence.
	2. Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
	3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
	4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4 it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
	5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Crossword's Confidential Information. Crossword acknowledges that Customer Content shall be considered Confidential Information.
	6. Unless otherwise stated in the Order form, the existence of a relationship between the parties is not confidential information. For the purposes of marketing or publicising Crossword’s services, Crossword may wish to disclose that it has performed the Services for Customer, in which event Crossword may identify Customer and may indicate only the general nature of the Services and any details which have properly entered the public domain.
	7. The above provisions of this clause [1](#_bookmark9)3 shall survive termination of this Agreement, however arising.
1. **Audit**
	1. Crossword reserves the right to audit Customer’s and Authorised Users use of the Platform from time to time to establish if the terms of this Agreement are being adhered to or to respond to security concerns. Such audit shall be at Crossword’s expense.
2. **Third party products and services**

 The Services may enable or assist the Customer to access the website content of third-party websites via the Platform. Crossword does not endorse or approve any third-party website made available via the Platform, and is not responsible for the content or use of any such third-party website, or any contract entered into by the Customer with any such third party. Customer acknowledges it is Customer’s responsibility to satisfy itself that it wishes to obtain any product or service before doing so.

## General

##  Crossword shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by any acts, events, omissions or accidents beyond its reasonable control.

##  No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

##  If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

* 1. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty that is not set out in this Agreement.
	3. The Customer shall not, without the prior written consent of Crossword, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
	4. Crossword may at any time assign, transfer, charge or sub-contract with all or any of its rights or obligations under this Agreement, provided that if Crossword sub-contracts any of its obligations hereunder, it shall remain liable to the Customer for performance of such obligations.
	5. Nothing in this Agreement is intended to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name of or otherwise to bind the other in any way.
	6. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
1. **Amendment**
	1. We may update and change any part or all of these Terms of Service, including the fees and charges associated with the use of the Services (but, your fees and charges won’t change during the Term except as we explain in the ‘Fees’ section above.) If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted \_\_\_\_\_\_\_\_\_\_\_\_\_ and we will let you know via email or in-app notification.
	2. The updated Terms of Service will become effective and binding on the next business day after it is posted. When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. If you would like to receive an email notification when we update the Customer Terms of Service, complete the form found at \_\_\_\_\_\_\_\_\_\_\_
	3. If you do not agree with a modification to the Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Terms of Service prior to modification for the remainder of your current term. Upon renewal, the Terms of Service published by us on our website will apply.

## Notices

Any notice required to be given under this Agreement shall be in writing and shall be sent:

* To Crossword, at the at its registered office (currently 6th Floor 60 Gracechurch Street, London, United Kingdom, EC3V 0HR) by pre-paid first-class post or recorded delivery
* To you: your address as provided in our Subscription account information for you. We may give electronic notices by general notice via the Platform and may give electronic notices specific to you by email to your e-mail address(es).

## Governing law and jurisdiction

This Agreement and any dispute arising out of it shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of this Agreement.

##  Interpretation

## The following definitions and rules of interpretation apply in this Agreement.

**Agreement:** these Main Terms and all materials referred or linked to in here.

**Authorised Users**: Customer Users and Third Party Users.

**Background IPR:** the Intellectual Property Rights of either Crossword or Customer which are in existence as at the Effective Date or which are developed independently of the Services .

**Business Day**: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Chronic Service Failure:** when the Uptime Percentage (as defined in the SLA) falls below 50% in two consecutive quarters.

**Commencement Date:** the date upon which the Customer’s access to the Services commences, as specified in the Order Form.

**Confidential Information**: secret or confidential commercial, financial, marketing or technical information, know-how or trade secrets in any form, which are disclosed orally or in writing by one party to the other together with any reproductions of such information.

**Credit Information**: has the meaning set out in Clause 9.1.

**Crossword** means Crossword Cybersecurity plc registered in England and Wales with company number 08927013; and

**Customer Content**: the data inputted by the Customer, Authorised Users, or Crossword on the Customer's behalf for the purpose of using the Services.

**Customer User**: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

**Documentation**: the documents marked “Rizikon Assurance Product Documentation” and made available to the Customer by Crossword which set out a description of the Services and the user instructions for the Services.

**Effective Date**: the date of this Agreement.

**Initial Term**: the initial term of this Agreement as set out in the Order form.

**Intellectual Property Rights**: all copyright, trade marks, patents and any other intellectual property rights, in each case whether registered or unregistered and including all applications for such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Malware**: any thing or device which may be harmful to any computer software, hardware or network, or adversely affect the user experience. It includes worms, trojan horses, viruses, spyware and other similar things or devices.

**Platform**: the data, software (including the Software) and hardware used by Crossword to deliver the Services.

**Quarter**: a period of three consecutive months commencing on the Commencement Date and each subsequent period of three consecutive months thereafter.

**Quarter Dates**: the Commencement Date and thereafter the first day of each Quarter.

**Renewal Period**: the period described in clause 12.1.

**Service Credits**: as defined in the SLA.

**Service Failure**: a failure by Crossword to deliver any part of the Services in accordance with the Service Levels.

**SLA**: the service level agreement [insert link]

**Service Levels**: the service levels to which the Services are to be provided, as set out in the SLA.

**Services**: the on-line subscription services, which include the hosted provision of the Software.

**Software**: online Rizikon Assurance software applications

**Order form**: the Customer's order for the Services.

**Subscription Fees**: the annual subscription fees payable by the Customer to Crossword as set out in the Order form.

**Term**: has the meaning given in clause 12 (being the Initial Term together with any subsequent Renewal Periods).

**Third Party**: a person with which the Customer is conducting business, including but not limited to suppliers and clients, and to which the Customer wishes to issue an assessment.

**Third Party Users**: officers, directors or employees of a Third Party who have been issued login credentials by the Customer for the purposes of completing an assessment, pursuant to a Third Party Subscription