



Hex Service Agreement

Last updated: September 14, 2023

HEX TECHNOLOGIES, INC. ("HEX") PROVIDES THE HEX SERVICE (AS DEFINED BELOW) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS HEX SERVICE AGREEMENT (THIS "AGREEMENT" OR THE "TERMS") AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. PLEASE READ THESE TERMS CAREFULLY. BY CLICKING "I ACCEPT", BY EXECUTING OR SUBMITTING ANY ORDER FORM (AS DEFINED BELOW), OR BY ACCESSING OR USING THE HEX SERVICE IN ANY MANNER, CUSTOMER (AS DEFINED BELOW): (A) ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THESE TERMS AND BY SUCH OTHER TERMS, CONDITIONS, POLICIES, AND DOCUMENTS THAT MAY BE INCORPORATED HEREIN BY REFERENCE, INCLUDING, WITHOUT LIMITATION, THE HEX PRIVACY POLICY, AVAILABLE AT <https://learn.hex.tech/docs/security/privacy-policy>; (B) AFFIRMS THAT YOU ARE AT LEAST 18 YEARS OF AGE (OR HAVE REACHED THE AGE OF MAJORITY IN THE JURISDICTION WHERE YOU RESIDE); AND (C) IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER ORGANIZATION, REPRESENT AND WARRANT THAT YOU HAVE THE ORGANIZATIONAL AND LEGAL AUTHORITY TO ACCEPT THESE TERMS ON SUCH COMPANY'S OR OTHER ORGANIZATION'S BEHALF AND TO BIND SUCH COMPANY OR ORGANIZATION.

1. Service

- 1.1 **Service Usage Rights.** Subject to the terms and conditions of this Agreement, including payment by Customer of the Fees, Hex hereby grants to Customer, during the Term of the applicable Order Form, a limited, non-exclusive, non-transferable, non-sublicensable, worldwide license for its Authorized Users to access and use the Service, solely for Customer's internal business purposes up to the permitted metrics listed in the Order Form. Any license overages will be charged in accordance with Section 3.3. Hex shall make available the Service over the Internet as SaaS. Access credentials for the Service may not be shared with third parties. Customer shall be responsible for all use of the Service by Authorized Users. Customer hereby grants Hex a nonexclusive, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up license to extract, process, display, copy, store, transmit, modify, and otherwise access and use the Customer Data solely for purposes of providing the Service and making the Service available to Customer and its Authorized Users, and for such other purposes as may be set forth herein during the Term.
- 1.2 **Service Restrictions.** Customer agrees to access and use the Service solely for Customer's internal business purposes, in accordance with the Documentation, and in accordance with all applicable laws. Customer shall not (and shall ensure that Customer's Authorized Users do not): (i) copy, reproduce, frame, mirror, modify, decompile, disassemble, create derivative works based on, or reverse engineer the Service or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to any of the Service, or use any part of the Service for time sharing or similar purposes for the benefit of any third party; (iii) sell, resell, rent or lease the Service; (iv) remove any copyright or proprietary notices contained in the Service or any output thereof; (v) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the Service; (vi) access the Service via any bot, web crawler or non-human user; (vii) access or use (or permit a third party to access or use) the Service for any unlawful purpose or for purposes of monitoring the availability, performance or functionality of the Service or for any other benchmarking or competitive purposes; (viii) attempt to gain unauthorized access to the Service or any related systems, software or networks; (ix) access the Service in order to build a competitive product, or copy any features, functions or graphics of the Service; (x) use the Service to transmit viruses or malicious code; or (xi) make any use of, or take any other action with respect to, the Service or any component thereof in a manner that violates applicable law or any provision of the Agreement. Hex may suspend or terminate Customer's or any Authorized User's access to the Service, or any component thereof, if Hex reasonably determines that Customer or any Authorized User has violated any term or condition of the Agreement. Customer shall be liable to Hex for any violation of the terms and conditions of the Agreement by Customer or by any Authorized User.
- 1.3 **Service Support.** Hex shall provide Customer with Support in respect for the Service as part of the Fees at no additional charge for the Term.
- 1.4 **Technical Requirements.** Access to and use of the Service by Customer and any Authorized Users is dependent upon access to telecommunications and Internet service. Customer acknowledges that Customer, and not Hex, is responsible for acquiring and maintaining any telecommunications or Internet service or other hardware or software that Customer

or its Authorized Users may need to access and use the Service, and for all costs, fees, expenses, and taxes of any kind related to the foregoing.

- 1.5 **Platform Provider.** In order to provide the Service, Hex may outsource its platform infrastructure and obtain hosting service from platform service providers (each, a “**Platform Provider**”). Hex may change, discontinue, or replace Platform Providers, provided there is no material change to, discontinuation or termination of the Service or applicable data protection standards. Hex will use commercially reasonable efforts to announce any transition to a different Platform Provider at least one month in advance.
- 1.6 **Aggregated Statistics Use Rights.** Notwithstanding anything else to the contrary, Customer acknowledges and agrees that Hex may, in accordance with applicable data privacy laws, monitor Customer’s and its Authorized Users’ use of the Service and may track and compile data and information related to such use, as long as such data is aggregated and anonymized to the extent possible, including, without limitation, statistical and performance information related to the provision and operation of the Service (“**Aggregated Statistics**”). As between Hex and Customer, the Aggregated Statistics, and all Intellectual Property Rights therein or relating thereto are and shall remain the exclusive property of Hex. Hex may, without limitation, (a) make such Aggregated Statistics publicly available, (b) use the Aggregated Statistics to the extent and in the manner required by applicable law or regulation, and (c) use the Aggregated Statistics to maintain, optimize and improve the Service, to develop, improve, or offer other Service(s), or to otherwise operate Hex’s business, provided that such Aggregated Statistics does not identify Customer or its Authorized Users.

2. OWNERSHIP

- 2.1 **Ownership of Intellectual Property.** Hex retains all rights, title, and interest, including all Intellectual Property Rights, in and to the Hex Properties. Customer retains all rights, title, and interest in and to the Customer Data. For the avoidance of doubt, as between Hex and Customer, Customer will retain all right, title, and interest in all Customer Data and to all models and analyses created by Customer or Customer’s authorized personnel using the Service. Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Hex Properties.
- 2.2 **No Rights by Implication.** Except for the rights expressly granted in this Agreement, no license or right is granted to either party by the other party by implication or otherwise.
- 2.3 **Feedback.** To the extent Customer or any Authorized User provides Hex with any suggestions, feature requests, evaluation results, feedback, or other input in relation to any aspect of the Service or other Hex Properties (collectively, “**Feedback**”), Customer hereby assigns and agrees to assign to Hex all right, title and interest in and to such Feedback, including any Intellectual Property Rights therein, and acknowledges and agrees that Hex is free to use such Feedback in any manner, including by implementing such Feedback in the Service, without compensation or other obligation to Customer or any Authorized User, and without any attribution to Customer or any Authorized User.

3. FEES AND TRIALS

- 3.1 **Payment Terms.** Except as otherwise set forth in an Order Form, Fees will be due and payable thirty (30) days after Customer’s receipt of an undisputed invoice. Customer shall provide Hex with accurate billing and contact information and notify Hex of any changes to such information. All Fees are non-refundable and non-cancellable except as otherwise set forth herein.
- 3.2 **Renewal Term Fees.** Hex reserves the right to modify the Fees payable by Customer for any Order Form renewal upon at least sixty (60) days’ written notice to Customer prior to expiration of the applicable Order Form’s then-current Term.
- 3.3 **Subscriptions and True up.** Except as otherwise provided in the applicable Order Form: (i) licenses are purchased for the Term stated therein; (ii) additional license quantities may be added during a Term at the same pricing as the underlying subscription and shall be co-terminated and prorated for the remainder of the applicable Term. If Customer’s actual license usage exceeds the license usage quantity (determined monthly) set forth in the Order Form, Hex will notify Customer (email sufficing) of such overage and will invoice Customer the Fees for the excess license usage, prorated for the remainder of the then-current Term.
- 3.4 **Interest.** If any Fees payable under this Agreement are not paid when due then, without prejudice to Hex’s other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Hex, both before and after any judgment, at the rate of one and a half percent (1.5%) per month, or if lower the maximum rate allowed by applicable law. In the event Customer in good faith disputes any Fees due under any invoice issued by Hex, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute. Hex will also be entitled to recover from Customer the costs and expenses incurred in connection with collecting any undisputed

Fees (including without limitation costs of investigation, collection agency, court, and attorneys' fees).

- 3.5 **Resellers and Payment Processors.** Customer may elect to purchase certain Service(s) through a reseller authorized by Hex to resell the Service ("**Reseller**") or elect to pay for the Service through a third party that processes Customer's payments (each a "**Payment Processor**"). Customer's obligation for payment to, and relationship with, such Reseller or Payment Processor is between Customer and such Reseller or Payment Processor and is governed by the Customer's agreement with such Reseller or Payment Processor. If Customer elects to use a Reseller or Payment Processor in connection with the Service, Customer acknowledges and agrees that information about Customer, this Agreement and any Order Forms may be disclosed to such Reseller or Payment Processor.
- 3.6 **Taxes.** All payments, Fees, and any other charges payable by Customer to Hex under this Agreement are exclusive of all local, state, federal and foreign taxes, levies, and duties of any nature, including sales, goods and services, value added, property, excise, withholding and use taxes (collectively, "**Taxes**"). Customer shall bear, and is responsible for paying, all Taxes imposed on Customer or Hex arising out of this Agreement, excluding any tax based on Hex's net income.
- 3.7 **Free Trials.** Customer's subscription to the Service may be preceded by a trial (a "**Trial**"). If Customer receives a Trial, Customer may only use those portions of the Service included in the Trial and only for the duration of that Trial, in each case as communicated by Hex to Customer in writing, and only for the purpose of evaluating the desirability of purchasing a subscription to the Service. Upon the expiration of any Trial, Customer's access to the Service will cease, except to the extent Customer has purchased and/or registered for a subscription license under an Order Form in accordance with the terms hereof.

4. WARRANTY AND LIABILITY

- 4.1 **Limited Warranty.** Hex warrants to Customer that the Service will conform in all material respects to the Documentation in effect during the Term. Notwithstanding any provision of this Agreement to the contrary, Hex shall not have any obligation under this section to the extent a nonconformity of the Service is the result of (a) the Service having been modified, repaired, or reworked by any party other than Hex or a third party on behalf of Hex, (b) any use of the Service in conjunction with Customer System(s) not recommended in the Documentation, or (c) any use of or access to the Service not in conformance with the Documentation. The limited warranty set forth in this section does not apply, and is fully excluded, in cases of Trial use of the Service.
- 4.2 **Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 4.3 **Remedy.** If the Service does not conform to the warranty as provided in Section 4.1 during the applicable warranty period set forth in Section 4.1, Hex will, as its sole and exclusive obligation and as Customer's sole and exclusive remedy for breach of this warranty, at Hex's election (i) use commercially reasonable efforts to correct such nonconformity provided the non-conformance can be recreated by Hex or (ii) replace the nonconforming Service or (iii) if Hex is unable to accomplish either of the foregoing in a commercially reasonable amount of time, Hex may terminate the Order Form for the affected Service and Customer shall be entitled to a pro-rata refund of the Fees paid corresponding to the period of discontinuation of the affected Service upon receipt of a letter from Customer certifying discontinuation of the Service. Customer shall notify Hex in writing, specifically describing the non-conformity of the Service within the warranty period and Hex shall verify the existence of such non-conformity before Hex proceeds as set forth in this Section 4.3.
- 4.4 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE HEX PROPERTIES ARE PROVIDED BY HEX "AS IS" AND ON AN "AS-AVAILABLE" BASIS, AND NEITHER HEX NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY STATUTE, USAGE, TRADE CUSTOM, OR OTHERWISE WITH RESPECT TO THE HEX PROPERTIES, AND HEX DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING THERETO INCLUDING, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. HEX DOES NOT GUARANTEE THAT ANY OF THE HEX PROPERTIES WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED OR MEET CUSTOMER'S REQUIREMENTS. AS BETWEEN CUSTOMER AND HEX, CUSTOMER ASSUMES ALL RISK IN CONNECTION WITH ITS USE OF, INTERPRETATION OF, AND RELIANCE ON THE HEX PROPERTIES AND ALL CONTENT, RESULTS, AND OUTPUTS GENERATED THEREBY, AND ALL DATA AND INFORMATION MADE AVAILABLE, ACCESSIBLE, OR EXPORTABLE VIA THE SERVICE. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT PERFORMANCE OF THE SERVICE AND THE DEVELOPMENT, DELIVERY AND AVAILABILITY OF ANY OUTPUTS THEREOF IS DEPENDENT UPON AND SUBJECT TO THE AVAILABILITY OF CUSTOMER DATA. HEX SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY CUSTOMER DATA, OR FOR ANY LOSS, DAMAGE, OR OTHER ISSUE CAUSED BY THE UNAVAILABILITY, INCOMPLETENESS, OR INACCURACY OF THE SAME, WHETHER CAUSED BY CUSTOMER OR ANY THIRD

PARTY.

4.5 **LIABILITY.**

(i) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES, ANY LOSS OF REVENUES OR PROFITS, LOSS OF DATA OR ANY COST OF COVER ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(ii) EXCEPT FOR ANY UNDISPUTED FEES DUE FROM CUSTOMER, CUSTOMER'S BREACH OF ANY SERVICE USAGE RIGHTS AND RESTRICTIONS, CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 5 (INDEMNITY), OR IN THE EVENT OF DAMAGE CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE OR OF DEATH, BODILY INJURY OR DAMAGE TO HEALTH, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER FOR THE PERFORMANCE THAT IS THE SUBJECT OF SUCH CLAIM WITHIN TWELVE (12) MONTHS PRECEDING THE INITIAL INCIDENT GIVING RISE TO THE LIABILITY. THE PARTIES AGREE THAT THIS SECTION REFLECTS A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES IN LIGHT OF THE TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREUNDER ("**GENERAL LIABILITY CAP**").

(iii) IN THE CASE OF DATA BREACH CLAIMS, HEX'S TOTAL LIABILITY TO CUSTOMER AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER FOR THE PERFORMANCE THAT IS THE SUBJECT OF SUCH CLAIM WITHIN TWELVE (12) MONTHS PRECEDING THE INITIAL INCIDENT GIVING RISE TO THE LIABILITY ("**DATA BREACH CLAIMS CAP**"). IN NO EVENT SHALL HEX BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA BREACH CLAIMS CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF CUSTOMER (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE DATA BREACH CLAIMS CAP.

5. **INDEMNITY**

5.1 **Indemnity of Customer.**

- 5.1.1 Subject to the limitations below, Hex shall defend, or at Hex's option, settle, any claim, demand, suit, or proceeding made or brought against Customer, its directors, employees, and agents by a third party alleging that the use of the Service received by Customer pursuant to an Order Form infringes such third party's Intellectual Property Rights enforceable in a jurisdiction that is signatory to the Berne Convention ("**Claim Against Customer**"), and shall indemnify Customer from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of a Claim Against Customer, provided that Customer (i) promptly gives Hex written notice of the Claim Against Customer, (ii) gives Hex sole control of the defense and settlement of the Claim Against Customer, and (iii) gives Hex all reasonable assistance. Customer may, at its expense, participate in any such action, suit, or claim with counsel of choice.
- 5.1.2 The above obligations do not apply to the extent (i) if Customer settles or make any admissions with respect to the applicable claim without Hex's prior written consent; or (ii) a Claim Against Customer arises from: (a) Customer Data, (b) Customer's material breach of this Agreement which gave rise to the Claim Against Customer, (c) use of the Service in combination with any software, hardware, network, technology or system not provided by Hex, (d) compliance with any Customer requirements or specifications outside the Documentation, or (e) any matter covered by Customer's indemnification obligations.
- 5.1.3 If any Claim Against Customer which Hex is obligated to defend has occurred, or in Hex's determination, is likely to occur, Hex may in its discretion and at no cost to Customer (i) modify the Service so that it no longer infringes, without breaching the warranty set forth in [Section 4.1](#), (ii) obtain a license for Customer's continued use of the Service in accordance with this Agreement, or if such remedies are not reasonably available, (iii) terminate this Agreement upon thirty (30) days' written notice and refund Customer the prepaid but unused Service subscription fee that corresponds to the period of license discontinuation upon certified destruction and discontinued access and use of the Service.

5.2 **Indemnity of Hex.** Customer shall defend, or at Customer's option, settle, any claim, demand, suit, or proceeding made or brought against Hex, its directors, employees, and agents by a third party arising out of (i) Customer's or any of its Authorized Users' violation of this Agreement or applicable law; (ii) any claim that the Customer Data infringes, misappropriates, or otherwise violates the Intellectual Property Rights or rights of privacy of any third party; (iii) any submission of Sensitive Content to Hex by Customer or any of its Authorized Users; (iv) any access to or use of the Service by Customer or any of its Authorized Users in a manner that exceeds the scope of the License granted hereunder or that otherwise violates this Agreement; or (v) any Customer System (each a "**Claim Against Hex**"), and shall indemnify Hex from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by or awarded against Hex as a result of, or for amounts paid by Hex under a court-approved settlement of a Claim Against Hex, provided that Hex (a) promptly gives Customer written notice of the Claim Against Hex, (b) gives Customer control of the defense and settlement of the Claim Against Hex, and (c) gives Customer all reasonable assistance. Hex may, at its expense, participate in any such action, suit, or claim with counsel of its choice.

5.3 **Exclusive Remedy.** This section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for relevant claims as described in this section.

6. CONFIDENTIAL INFORMATION AND CUSTOMER DATA

6.1 **Confidential Information.** Any information furnished to one party ("**Recipient**") by the other party ("**Discloser**") that (i) is marked at the time of disclosure as being "Confidential" or words of similar import or (ii) is identified orally as being confidential or proprietary, or (iii) is of such a nature or the circumstances of the disclosure are such that a reasonable person would understand that the information should be treated as confidential ("**Confidential Information**"). The Hex Properties are deemed Hex's Confidential Information regardless of whether so marked. All Customer Personal Data as defined in [Section 6.3](#) shall be deemed to be Customer's Confidential Information. Confidential Information will not include information that Recipient can demonstrate by contemporaneous records (a) was rightfully known by Recipient prior to the date it was disclosed by Discloser, (b) is lawfully disclosed to Recipient without obligation of confidentiality by a third party, (c) becomes generally known to the public through no act or omission on the part of Recipient, or (d) is independently developed by Recipient without reference to or reliance upon any Confidential Information of Discloser.

6.2 **Use Restriction and Disclosure.** The Recipient shall (i) not use Confidential Information of the Discloser for any purposes other than for performing its obligations or exercising its rights under this Agreement and (ii) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care (but no less than a reasonable degree of care) the Recipient uses to protect its own Confidential Information. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser (a) to the Recipient's directors, officers, or legal or business advisors to the extent reasonably necessary to carry out its obligations or exercise its rights under this Agreement, provided that such directors, officers, employees, or agents are legally bound to maintain such information as confidential as required by this section, or (b) if required to be disclosed by the Recipient pursuant to a judicial or governmental statute, rule, or order, provided that the Recipient gives sufficient written notice (to the extent permissible) prior to any disclosure to seek a protective order or injunction or other opportunity to limit disclosure, and the Recipient shall disclose only such Confidential Information as is required to be disclosed.

6.3 **Data Protection.** Each party warrants that it shall use, collect, store and/or process personal data as defined under and in accordance with any applicable data privacy laws ("**Personal Data**").

6.3.1 **Data Collection.** If Customer includes any Personal Data in the Customer Data submitted to the Service, (i) Hex will hold and store Customer Data on Customer's behalf, and Customer is the data controller of such data; (ii) Hex will process personal data in compliance with this Section and Customer's instructions. Hex will use commercially reasonable efforts designed to prevent the unauthorized disclosure or destruction of Customer Data stored with Hex in accordance with our [Security Policy](#).

6.3.2 If Customer will transmit any Customer Data that includes Personal Data regarding a resident of the European Union, Customer may contact Hex at dpa@hex.tech to request a data processing addendum ("**DPA**"). Upon mutual execution of the DPA, the DPA is incorporated by reference into this Agreement and is subject to its terms.

6.3.3 **HIPAA Data.** If Customer is located in the United States, Customer agrees not to upload to the Service any "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 ("**HIPAA**") data unless Customer has entered into Business Associate Addendum ("**BAA**") with Hex first. Unless a BAA is in place, Hex will have no liability under this Agreement for HIPAA data, notwithstanding anything to the contrary in this Agreement or in HIPAA or any similar federal or state laws, rules, or regulations. Upon mutual execution of the BAA, the BAA is

incorporated by reference into this Agreement and is subject to its terms.

- 6.4 **Access to Customer Data.** Customer understands and acknowledges that the ability of Customer and its Authorized Users to operate and utilize the Service is dependent upon Customer providing or making available for access by the Service all required Customer Data via Customer System(s). As between Customer and Hex, Customer is solely and exclusively responsible for obtaining and providing all consents, authorizations, permissions, notices, and access to Customer System(s), as may be necessary or helpful to facilitate the Service's access to the Customer Data. Customer acknowledges and agrees that Hex shall not be liable to Customer or to any third party for any failure, delay, or deficiency in the performance of the Service arising from (i) any system failure or technical deficiency on the part of Customer or its service providers that prevents or limits access by the Service to Customer Data or other necessary Customer content, materials, data, or information, or (ii) any error or deficiency in the Customer Data. As between Customer and Hex, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and for ensuring that Customer Data does not: (a) infringe, misappropriate or violate the Intellectual Property Rights, rights of privacy or publicity, or other proprietary rights of any third party, (b) violate any applicable law, or (c) contain any malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code. Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of any Customer System(s) the Service is used with. Hex disclaims all warranties of any kind with respect to any Customer System(s).
- 6.5 **Sensitive Content.** Notwithstanding anything herein to the contrary, Customer acknowledges that the Service is not designed to collect, and is not designed with security and access management for processing or storing, any information that imposes specific data security obligations on Hex for the processing or storage of such data, including, without limitation, any "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, cardholder, payment card, or related information protected by the Payment Card Industry Data Security Standard, (each of the foregoing, "**Sensitive Content**"). Customer shall not, and shall not permit any of its Authorized Users to, provide or make available any Sensitive Content to Hex, or endeavor to submit or make available any Sensitive Content for processing or evaluation through the Service. Customer is solely responsible for all Customer Data and represents and warrants to Hex that no Customer Data or other data or content made available by Customer constitutes or contains Sensitive Content. Hex makes no representations or warranties with respect to, and disclaims any responsibility or liability for, the Customer Data, and Customer will indemnify Hex for any failure by Customer or its Authorized Users to comply with the requirements of this Section 6.6.
- 6.6 **Storage of Customer Data.** Customer agrees and acknowledges that Hex is not a provider of data back-up, archiving, or data retention services. As between Customer and Hex, Customer is solely and exclusively responsible for the backing up, archiving, and retaining of all Customer Data and any other of Customer's information, data, or materials. Hex does not make any representations, warranties, or guarantees that any Customer Data or other of Customer's information, data or materials will not be lost, altered, destroyed, damaged, or corrupted. HEX HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY CUSTOMER DATA THROUGH OR IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICE.

7. TERM AND TERMINATION

- 7.1 **Term.** This Agreement will remain in effect during the Term of any unexpired Order Form, unless terminated earlier in writing pursuant to the terms of this section. For the avoidance of doubt, upon the renewal of an Order Form, the term of this Agreement shall be extended accordingly. Order Forms may not be terminated for Customer's convenience during the Term.
- 7.2 **Auto-Renewal.** The Term of each Order Form shall automatically renew for successive periods equal to one (1) year or the preceding term, whichever is shorter, at the prior quantity of licenses (including any overages or add-ons), unless either party cancels such renewal by notifying the other party in writing at least sixty (60) days prior to the expiration of the then-current applicable Term, unless otherwise agreed in the Order Form.
- 7.3 **Termination for Breach.** Either party may terminate this Agreement and any Order Form immediately upon written notice to the other party, if the other party is in material breach of this Agreement and fails to correct the breach thirty (30) days following written notice from the other party specifying the breach. Notwithstanding anything to the contrary, Hex may, alternatively suspend the Service, if Customer violates any Service Usage Rights and Restrictions or if any undisputed sum payable under this Agreement is past due for longer than thirty (30) days.
- 7.4 **Termination for Insolvency.** Either party may terminate this Agreement and any Order Form immediately upon written notice to the other party if the other party has a receiver appointed, or an assignee for the benefit of creditors or in the

event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

7.5 **Effect of Termination.** Expiration or termination of this Agreement will not relieve any party of its obligations to pay any undisputed amounts accrued or otherwise owed under this Agreement and any Order Form. Upon termination or expiration of this Agreement and any Order Form, all licenses or rights granted to Customer hereunder shall terminate and Customer shall not use the Service, and Hex shall have no further obligation to provide the Service or Support. Customer shall promptly delete all Hex Confidential Information. In addition, no later than thirty (30) calendar days after termination or expiration, Hex shall delete Customer's Service account and all contents therein. Any provision that is intended to continue after termination shall not be affected by the termination of this Agreement.

7.6 **Survival.** The provisions of the following Sections of this Agreement will survive any expiration or earlier termination of the Agreement: Section(s) 1.2 (Service Restrictions), and 1.6 (Aggregated Statistics Use Rights), 2 (Ownership), 3.1-3.6 (Fees), 4.4 (Warranty Disclaimer), 4.5 (Limitation of Liability), 5 (Indemnity), 6 (Confidential Information and Customer Data), 7.5 (Effect of Termination), 7.6 (Survival), 8 (with exception of 8.2 and 8.7) (Miscellaneous), and 9 (Scope and Definitions).

8. MISCELLANEOUS

8.1 **Notices.** All notices and communications between the Parties under, or in connection with, this Agreement ("**Notices**") shall be in writing, by hand delivery, by nationally recognized courier service or by prepaid certified mail. Notwithstanding the foregoing, Hex may send Notices to Customer through the management module of the Service. Customer shall send all Notices to Hex at **Hex Technologies, Inc. 2261 Market Street, #4233 San Francisco CA 94114 USA**, Attn: CEO; with cc: to legal@hex.tech.

8.2 **Publicity.** For sole marketing and promotional purposes, Customer agrees that Hex may identify Customer as a Hex customer in Hex's promotional, marketing, or other materials and refer to Customer by name, trade name and trademark as applicable. Customer hereby grants Hex a license to use Customer's name and applicable trademarks in accordance with this section. Customer may opt out anytime by emailing support@hex.tech.

8.3 **Injunctive Relief.** Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and Intellectual Property Rights may cause substantial harm to the other party that could not be remedied by payment of damages alone. Accordingly, the other party will be entitled, in addition to any other rights or remedies, to seek injunctive relief in any jurisdiction where damage may occur.

8.4 **Exports.** Customer shall comply with all applicable export control laws, rules, and regulations with respect to its use of the Service, including the Export Administration Regulations promulgated by the U.S. Department of Commerce. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Service without Hex's prior written consent.

8.5 **No Waiver.** Neither party's failure or delay in exercising any of its rights will constitute a waiver of such rights unless expressly waived in writing.

8.6 **Relationship.** The relationship between the parties is that of independent contractors, and nothing contained in this Agreement will be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking.

8.7 **Force Majeure.** Hex will not be liable for any delay or failure in the performance of its obligations under this Agreement if the delay or failure is due to any cause outside of Hex's reasonable control ("**Force Majeure**"). If Force Majeure continues for more than sixty (60) days preventing Hex from performing, Customer may terminate this Agreement upon written notice to Hex.

8.8 **Assignment.** Neither this Agreement nor any rights granted hereunder may be assigned or otherwise transferred (whether by operation of law or otherwise), in whole or in part, by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. However, no such consent will be required in the event of an assignment to either party's Affiliate, or a merger or a sale of substantially all of a party's assets; provided that the assigning party provides notice as soon as reasonably practicable. The right of assignment granted herein shall apply only to the business of Customer as it existed prior to such assignment or sale. Any attempted assignment will be void and of no effect unless permitted by the foregoing. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.

- 8.9 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 8.10 **Entire Agreement.** This Agreement constitutes the entire agreement between Hex and Customer regarding the subject matter hereof and supersedes all (i) prior oral and written communications and (ii) terms of any "shrink-wrap", "click-wrap" or "web-wrap" agreements, terms of service or terms of use or different or additional terms and/or conditions presented online or incorporated into the Service. It may be executed in one or more counterparts, all of which together will be considered one and the same and may be executed and delivered by facsimile or electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, modifications to this Agreement may be incorporated by way of specific reference in an Order Form. The terms on any purchase order, confirmation, or similar document submitted by Customer to Hex will have no effect and are hereby rejected. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be (1) the Order Form, (2) this Hex Service Agreement, and (3) the Documentation.
- 8.11 **Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or related to this Agreement, its subject matter or formation (in each case, including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Delaware, USA other than such laws and case law that would result in the application of the laws of a jurisdiction other than the State of Delaware. The United Nations Convention on Contracts for the International Sale of Goods shall have no applicability. The parties further agree that except as stated below in the Arbitration provision, the exclusive venue and jurisdiction for any dispute arising or relating to this Agreement shall be the State or Federal courts of competent jurisdiction located in the State of Delaware. Customer agrees to waive any and all objections to the exercise of jurisdiction over Customer by such courts and to venue in such courts. ANY CAUSE OF ACTION OR CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OR CLAIM ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
- 8.12 **Dispute Resolution and Arbitration.** ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF THERE IS A DISPUTE ABOUT WHETHER THIS ARBITRATION AGREEMENT CAN BE ENFORCED OR APPLIES TO OUR DISPUTE, CUSTOMER AND HEX AGREE THAT THE ARBITRATOR WILL DECIDE THAT ISSUE.
- 8.12.1 **Pre-Arbitration Dispute Resolution and Notification.** Prior to initiating an arbitration, Customer and Hex each agree to notify the other party of the dispute and attempt to negotiate an informal resolution to it first. Hex will contact Customer at the email address Customer has provided to Hex; Customer can contact Hex by email at legal@hex.tech. If after a good faith effort to negotiate, one party feels the dispute has not and cannot be resolved informally, the party intending to pursue arbitration agrees to notify the other party via email prior to initiating the arbitration.
- 8.12.2 **Exceptions to Arbitration Agreement.** Customer and Hex each agree that the following claims are exceptions to Arbitration and will be brought in a judicial proceeding in a court of competent jurisdiction: (i) Any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights; or (ii) Any claim seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack).
- 8.12.3 **Arbitration Rules.**
- (a) If Customer is domiciled in the U.S. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
 - (b) If Customer is domiciled internationally outside the U.S. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.
 - (c) **Modification to AAA Rules - Arbitration Hearing/Location.** Customer agrees that any required arbitration hearing will be conducted in the English language by one (1) mutually agreed upon arbitrator, (a) in San Francisco County, USA or appearances may be made via phone or video conference; and (b) for any claim or counterclaim under \$25,000, by solely the submission of documents to the arbitrator.

8.13 **Waiver of Jury Trial and Class Action Waiver.** CUSTOMER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. CUSTOMER AND HEX EACH AGREE THAT ANY SUIT, PROCEEDING, OR OTHER ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION.

8.14 **Ultimate Federal Government Provisions.** Hex will provide the Service, including related Documentation and technology for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Hex to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

9. SCOPE AND DEFINITIONS

9.1 **Scope.** This Hex Service Agreement shall apply to the licensing of the Hex Service, as ordered by Customer in the applicable Order Form. Hex provides a data platform for data science and analytics.

9.2 **Definitions.** Capitalized terms not otherwise defined shall have the meaning set forth in this section.

9.2.1 **"Affiliate"** means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by an entity with an ownership of more than 50% of the voting shares.

9.2.2 **"Agreement"** means, collectively, this Hex Service Agreement and the Order Form executed by the parties.

9.2.3 **"Authorized User"** means a Customer employee or contractor who is authorized by Customer to use the Service on behalf of Customer.

9.2.4 **"Customer"** means the company defined in the Order Form, which orders the Service and/or to whom, pursuant to an Order Form, and whose Authorized Users accesses and uses the Service.

9.2.5 **"Customer Data"** means any data, code, information, or other content that is made available, by or on behalf of Customer or any Authorized User, for upload to or access, analysis, or processing by the Service.

9.2.6 **"Customer System"** means any application owned, operated, licensed, or managed by Customer or its Affiliate with which the applicable Hex Service is connected with.

9.2.7 **"Documentation"** means Hex's published user documentation that describe the design, functions, operation, or use of the Service ordinarily made available to all its customers.

9.2.8 **"Fee"** means any fees which Customer is required to pay in accordance with this Agreement and the Order Form.

9.2.9 **"Hex Service" or "Service"** means any Service and associated APIs made available by Hex to Customer as SaaS under the Order Form.

9.2.10 **"Hex Properties"** means the Service and Documentation, including all copies, portions, extracts, selections, arrangements, compilations, adaptations, modifications, and improvements thereof, and all derivative works of any of the foregoing.

9.2.11 **"Intellectual Property Rights"** means any worldwide common law and statutory rights, whether arising under the applicable law or any other state, country, jurisdiction, government, or public legal authority, associated with (i) patents, utility models, and invention disclosures and applications therefor, (ii) trade secrets, know-how and proprietary information, (iii) copyrights, works of authorship, copyrights registrations and applications thereof; (iv) trademarks, service marks, designs and other designations of source, (v) industrial designs, (vi) all rights in databases and data collections, (vii) all moral and economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, or perfect any of the foregoing, and (ix) any similar or equivalent rights to any of the foregoing (as applicable).

9.2.12 **"Order Form"** means the Order Form for Hex Service, or any other document as agreed by the parties, specifying the options chosen by Customer for the Service as well as Fees and additional conditions.

9.2.13 **“Support”** means support service in connection with the Service under the respective support plan indicated in the Order Form.

9.2.14 **“Term”** means the duration of the license subscription for the Service and the Support as set forth in the applicable Order Form.

[end of section]