

CLIENT SERVICES AGREEMENT DATED []

MADE BETWEEN

- (1) Test Experts UK Limited, incorporated and registered in Scotland with company number SC293432 and having its registered office at 117 Hanover Street, Edinburgh EH2 1DJ (the Supplier); and
- (2) [INSERT CLIENT DETAILS] (the Client).

AGREED TERMS

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement:

Available Services means any services the Supplier has indicated it is willing to undertake for the benefit of the Client.

Business Day means a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.

Change Order means has the meaning given in clause 7.1.

Client Materials means all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to the Supplier in connection with the Services.

Force Majeure Event means any circumstance not within a party's reasonable control.

Milestone means a date by which a part or all of the Services is to be completed, which may be set out in a Statement of Work.

Services means the services which are provided by the Supplier under a Statement of Work.

Statement of Work means a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance, the Supplier's Fees (or method of calculation) and related matters.

Supplier's Fees means the sums payable for the Services as set out in each Statement of Work.

VAT means value added tax chargeable in the UK.

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.4 This agreement shall be binding on, and inure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. **Commencement and duration**

- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 13 (Termination), until either party gives to the other party written notice to terminate. Such notice shall expire on the

completion of all Statements of Work entered into before the date on which it is served. If there are no uncompleted Statements of Work on the date of service of the notice, such notice shall terminate this agreement with immediate effect.

3. **Statements of Work**

- 3.1 The Client may procure any of the Available Services by agreeing a Statement of Work with the Supplier.
- 3.2 Each Statement of Work shall be agreed in the following manner:
- (a) the Client shall request the Supplier to carry out a particular task;
 - (b) the Client shall provide any additional information reasonably requested by the Supplier in order to properly consider the request;
 - (c) the Supplier shall:
 - (i) inform the Client that it declines to carry out the task; or
 - (ii) provide the Client with a draft Statement of Work in respect of that task;
 - (d) If the Supplier provides the Client with a draft Statement of Work pursuant to clause (ii), the Supplier and the Client shall discuss and agree that draft Statement of Work; and
 - (e) both parties shall sign the draft Statement of Work when it is agreed.
- 3.3 The Supplier shall provide the Services from the date specified in the relevant Statement of Work.
- 3.4 Once a Statement of Work has been agreed and signed in accordance with clause 3.2(e), no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 17(Variation).
- 3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. **Supplier's responsibilities**

- 4.1 The Supplier shall use reasonable endeavours to meet any performance dates specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.2 The Supplier shall appoint a manager in respect of the Services to be performed under each Statement of Work, such person as identified in the Statement of Work. The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

5. **Client's obligations**

- 5.1 The Client shall co-operate with the Supplier in all matters relating to the services.
- 5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

6. **Non-solicitation**

- 6.1 The Client shall not, without the prior written consent of the Supplier, at any time from the date of agreement of a Statement of Work to the expiry of 6 months after the completion of the task agreed in the Statement of Work (the Works), solicit or entice away from the Supplier or engage or seek to engage any employee, consultant or subcontractor of the Supplier or any other person who is or was involved in completing the Works.

7. **Change control**

- 7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
 - (b) the Supplier's Fees;
 - (c) the timetable for the Services; and
 - (d) any of the other terms of the relevant Statement of Work.
- 7.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Client.
- 7.3 If the Client wishes to make a change to the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Client.
- 7.4 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
 - (b) are unable to agree a Change Order, the Supplier shall continue to provide the Services in accordance with the Statement of Work.
- 7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to clause 7.3 on a time and materials basis at the rates specified in the relevant Statement of Work.

8. Fees and payment

- 8.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Supplier's Fees. The Supplier's Fees (or basis of calculation of the Supplier's Fees) shall be set out in each Statement of Work.
- 8.2 The Supplier shall invoice the Client for the Supplier's Fees at the intervals specified, or on the achievement of the Milestones indicated, in each Statement of Work. If no intervals or Milestones are so specified, the Supplier shall invoice the Client at the end of each month for Services performed during that month.
- 8.3 The Client shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 8.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier any sum due under this agreement on the due date:
- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Royal Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Supplier may suspend part or all of the Services until payment has been made in full.
- 8.5 All sums payable to the Supplier under this agreement:
- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual property rights

9.1 In relation to the Client Materials, the Client:

- (a) and its licensors shall retain ownership of all IPRs in the Client Materials; and
- (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Services to the Client.

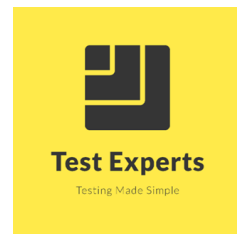
9.2 The Client:

- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any intellectual property rights, of any third party; and
- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Client Materials.

10. Data protection

10.1 Each party undertakes to comply with all applicable data protection legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the relevant legislation.

10.2 Without prejudice to the generality of clause 10.1, in relation to any data processed in connection with the performance of this agreement, each party will:



- (a) ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data to the other party for the duration and purposes of this agreement;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the appropriate consents have been obtained:
- (e) assist the other party in responding to any request from a data subject and in ensuring compliance with its obligations under data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of a personal data breach;
- (g) at the written request of the other party, delete or return personal data and copies thereof, unless required by law to retain the personal data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10; and

- (i) indemnify the other party against any loss or damage suffered by the other party in relation to any breach of its obligations under this clause 10.

11. **Confidentiality**

11.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by clause 11.2(a).

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. **Limitation of liability**

12.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

12.2 Nothing in this agreement limits any liability which cannot legally be limited.

12.3 Subject to clause

12.2, the Supplier's total liability to the Client shall not exceed the aggregate amount of the Supplier's Fees actually paid to the Supplier by the Client in the preceding 12 month period.

13. **Termination**

13.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving notice to the other party if the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified to do so.

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving notice to the Client if:

- (a) the Client fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 21 days after being notified to make such payment; or
- (b) there is a change of control of the Client.

14. **Consequences of termination**

14.1 On termination or expiry of this agreement:

- (a) all existing Statements at Work shall terminate automatically;
- (b) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- (c) the Supplier shall on request return any of the Client Materials not used up in the provision of the Services; and
 - (d) the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 9 (Intellectual property rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 18 (Waiver), clause 20 (Severance), and clause 24 (Governing law and jurisdiction).
- 14.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 15. **Force majeure**
 - 15.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
 - 15.2 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks (Grace Period), the party not affected by the Force Majeure Event may terminate this agreement with immediate effect following the expiry of the Grace Period by giving notice to the Affected Party.
- 16. **Assignment and other dealings**
 - 16.1 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

- 16.2 The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Supplier gives prior written notice of such dealing to the Client.
17. Variation Subject to clause 7 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.
18. **Waiver**
- 18.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 18.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
19. Rights and remedies The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
20. **Severance**
- 20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 20.2 If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a

replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. **Entire agreement**

21.1 This agreement, together with each Statement of Work, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

22. **No partnership or agency**

22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. **Notices**

23.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business.

23.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

23.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. **Governing law and jurisdiction**

24.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.

[the remainder of this page is deliberately left blank]

24.2 Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-

contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

IN WITNESS WHEREOF this agreement is executed as follows:

For and on behalf of Test Experts UK Limited:

Signature of witness:	Signature of director:
Full name of witness (print):	Full name of director (print):
Date of signing:	Address of witness:
Place of signing:	

For and on behalf of [CLIENT NAME]:

Signature of witness:	Signature of authorised representative:
Full name of witness (print):	Full name of authorised representative (print):
Date of signing:	Address of witness:
Place of signing:	