

TERMS AND CONDITIONS

1. Application

- 1.1 These Terms and Conditions shall apply to the provision of services by the Provider to the Customer.
- 1.2 In the event of conflict between these terms and conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by the Provider in writing.

2. Definitions and Interpretations

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	means the Agreement entered into by the Customer and the Provider to which these Terms and Conditions apply;
“Business Day”	means, any day (other than Saturday and Sunday) on which ordinary clearing banks are open for their full range of normal business in England and Wales;
“Customer”	<<name of customer>> registered in TBC under company registration number TBC
“Customer Personal Data”	means any Personal Data in respect of which, for the purpose of this Agreement, the Customer is the Controller;
“Controller”	Shall have the meaning given to it in the DP Laws;
“Commencement Date”	means the commencement date for the Services as set out in the Specification of Services Schedule attached as Appendix B to these Terms and Conditions and/or the commencement date for the Equipment deliveries as set out in the Equipment Schedule attached as Appendix A to these Terms and Conditions (as applicable);
“DP Laws”	(i) the Data Protection Act 2018 and (ii) the UK GDPR;
“Equipment”	means the Equipment listed in the Equipment Schedule attached as Appendix A to these Terms and Conditions and shall include all updated or replacement parts and

	any additional equipment supplied by The Provider;
“Fees”	means any and all sums payable by the Customer to the Provider arising out of the performance of the Provider’s obligations under these Terms and Conditions;
“Processor”	shall have the meaning given to it in the DP Laws;
“Personal Data”	shall have the meaning set out in the DP Laws;
“Process”	shall have the meaning given to it in the DP Laws and “Processing” and “Processed” shall be construed accordingly;
“Services”	means the services to be provided by the Provider to the Provider as set out in the Specification of Services Schedule attached as Appendix B to these Terms and Conditions;
“Software”	means any and all programs, applications, instructions or similar that may from time to time be installed on the Customer’s computer systems;
“Provider”	Xpertex Ltd registered in England and Wales under company registration number 05901645;
“UK GDPR”	European Union’s General Data Protection Regulation (EU)2016/679 to the extent applicable in the UK pursuant to the European Union (Withdrawal) Act 2018;
“Working Hours”	means the normal working hours of Xpertex Ltd, which are 09.00 to 17.30 on Normal Business Days.

- 2.2 Any reference in these Terms and Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

3. Provider's obligations

- 3.1 With effect from the Commencement Date the Provider shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Specification of Services Schedule, or otherwise agreed under these Terms and Conditions.
- 3.2 The Provider will use reasonable care and skill to perform the Services identified in the Specification of Services Schedule or otherwise agreed under these Terms and Conditions.
- 3.3 The Provider will, subject to Clause 4, use reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative on the Customer's Equipment and undertakes to re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be necessary to secure the satisfactory operation of the Equipment and Software.
- 3.4 Upon receipt of the Customer's request for support or rectification of a defect, the Provider shall (subject to its then current commitments) normally begin work on such support or defect not later than 7 days thereafter and shall carry out all Services as specified in the Specification of Services Schedule during Working Hours until all required work is completed to the reasonable satisfaction of the Customer.
- 3.4 The Provider will not guarantee the performance of any Software which the Provider has undertaken to re-install under Clause 3.3.
- 3.5 The Provider shall use all reasonable endeavours to complete its obligations under the Specification of Services Schedule. The parties agree that time will not be of the essence in the performance of these obligations.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 allow the Provider access to the Equipment and all relevant Software for investigation purposes;
 - 4.1.2 provide adequate working space and facilities for the Provider staff; and
 - 4.1.3 co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 4.2 The Customer shall allow the Provider the use of any Equipment, computer systems, peripherals, or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all

communications media not supplied by the Provider.

- 4.3 The Customer will not allow any changes or modifications to the Software to be made by any party other than those authorised by the Provider. If such changes or modifications are carried out without authorisation or appropriate notification, the Provider reserves the right to review these Terms and Conditions and adjust it accordingly.
- 4.4 The Customer will make freely available to the Provider all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment, and any other relevant hardware for the efficient maintenance of the Equipment and the Software.
- 4.5 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Provider as required.
- 4.6 The Customer shall take all reasonable precautions to ensure the safety and health of the Provider's personnel while such personnel are at the Customer's premises.

5. Price

- 5.1 The Customer agrees to pay the Fees in accordance with Clause 6 and the Specification of Services Schedule.
- 5.2 The Provider shall be entitled to recover from the Customer its reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services. Travel expenses will apply if distance travelled to the place of business is more than 100 miles. If accommodation is required then this will be charged at not more than £100.00 per room per night.
- 5.3 The Customer shall pay the Provider for any additional services provided by the Provider that are not specified in the Specification of Services Schedule in accordance with the Provider's daily rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the Specification of Services Schedule.
- 5.4 All sums payable by either party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that party shall be additionally liable.

6. Payment

- 6.1 All payments required to be made pursuant to these Terms and Conditions by The Customer shall be made within 30 days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 6.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of any sum due under these Terms and Conditions, then the Provider shall have the right to charge the Customer interest on any sum outstanding at the rate of 2.5% above the base rate of Lloyds Banking Group PLC from the due date

for payment until the date on which the payment is received.

7. Variation and amendments

- 7.1 If the Customer wishes to vary any details of the Specification of Services Schedule it must notify the Provider in writing as soon as is reasonably possible. The Provider shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.
- 7.2 If, due to circumstances beyond the Provider's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

8. Termination

- 8.1 The Provider may Terminate the Agreement forthwith if:
 - 8.1.1 the Customer is in breach of any of its obligations hereunder; or
 - 8.1.2 the Customer has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets; or
 - 8.1.3 the Customer has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986; or
 - 8.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 8.1.5 any circumstances whatsoever beyond the reasonable control of the Provider necessitate and justify the Termination of the Services.
- 8.2 In the event of Termination under clause 8.1 the Provider shall retain any sums already paid to by the Customer without prejudice to any other rights may have whether at law or otherwise.

9. Liability

- 9.1 The Customer shall indemnify the Provider against all damages, costs, claims and expenses suffered by the Provider arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents or employees.
- 9.2 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 9.3 The Provider shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Provider's obligations if the delay or failure was

due to any cause beyond the Provider's reasonable control.

- 9.4 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 9.5 to 9.9 INCLUSIVE.
- 9.5 ALL WARRANTIES, CONDITIONS, OBLIGATIONS AND TERMS WHICH WOULD OTHERWISE BE IMPLIED INTO THIS AGREEMENT BY STATUTE, CUSTOM OR LAW (INCLUDING IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY, FITNESS FOR PURPOSE AND SATISFACTORY QUALITY), ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 9.6 NEITHER PARTY EXCLUDES OR LIMITS LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR:
- 9.6.1 DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE;
- 9.6.2 FRAUD OR FRAUDULENT MISREPRESENTATION;
- 9.6.3 A BREACH OF CONFIDENTIALITY CLAUSE 10; AND
- 9.6.4 ANY LIABILITY THAT MAY NOT OTHERWISE BE EXCLUDED OR LIMITED BY LAW
- 9.7 SUBJECT TO CLAUSE 9.6 ABOVE, THE PROVIDER'S AGGREGATE LIABILITY TO THE CUSTOMER FOR ANY REASON ARISING FROM THE AGREEMENT, INCLUDING AND NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STATUTORY DUTY, INCLUDING FOR CLAIMS BROUGHT UNDER AN INDEMNITY, SHALL UNDER NO CIRCUMSTANCES EXCEED IN THE AGGREGATE IN ANY TWELVE (12) MONTH PERIOD, ONE HUNDRED PERCENT (100%) OF THE TOTAL CHARGES PAID BY THE CUSTOMER UNDER THIS AGREEMENT IN THAT TWELVE (12) MONTH PERIOD.
- 9.8 NOTWITHSTANDING OTHER PROVISIONS IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY:
- LOSS OF PROFITS;
 - LOSS OF BUSINESS OPPORTUNITY;
 - LOSS OF REVENUE;
 - LOSS OF ANTICIPATED SAVINGS;
 - WASTED EXPENDITURE;
 - DEPLETION OF GOODWILL;
 - LOSS OF USE;
 - LOSS AND/OR CORRUPTION OF DATA OR INFORMATION (UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT); AND/OR
 - ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COST, DAMAGE, CHARGE OR EXPENSE.

10. Confidentiality

- 10.1 During the term of the Agreement, and after termination or expiration of the Agreement for any reason, for a period of 12 months starting on <<date>>, the following obligations shall apply to the party disclosing confidential information ('the Disclosing Party') to the other party ('the Receiving Party').
- 10.2 Subject to clause 10.3, the Receiving Party:
 - 10.2.1 may not use any confidential information for any purpose other than the performance of its obligations under these Terms and Conditions;
 - 10.2.2 may not disclose any confidential information to any person except with the prior written consent of all parties to this agreement; and
 - 10.2.3 shall make every effort to prevent the use or disclosure of the confidential information.
- 10.3 The obligations of confidence referred to in the provisions of this clause shall not apply to any confidential information that:
 - 10.3.1 is otherwise in the public domain
 - 10.3.2 is or becomes publicly available on a non-confidential basis through no fault of the either party; or
 - 10.3.3 is required to be disclosed by any applicable law or regulation; or
 - 10.3.4 is received in good faith by the either party from a third party who, on reasonable enquiry by the parties claims to have no obligations of confidence to either party to these Terms and Conditions in respect of it and who imposes no obligations of confidence upon the Party.
- 10.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which he may be entitled.
- 10.5 The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

11. Sub-Contracting and Assignment

- 11.1 The Provider may sub-contract to third parties all or any part of the work to be performed hereunder.
- 11.2 The Customer shall not assign to a third party any or all of its rights or obligations under these Terms and Conditions without the prior written consent of the Provider.

12. Force Majeure

- 12.1 Neither the Provider nor the Customer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations under this Agreement, if the

delay or failure was due to any cause beyond that party's reasonable control. Without prejudice to the generally of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-

- 12.2 act of God, explosion, flood, tempest, fire or accident;
- 12.3 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 12.4 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 12.5 import or export regulations or embargoes;
- 12.6 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either the Provider or the Customer or of a third party);
- 12.7 difficulties in obtaining raw materials, labour, fuel, part or machinery;
- 12.8 power failure or breakdown in machinery; or
- 12.9 pandemic.

13. Waiver

- 13.1 No waiver by the Provider of any breach of these terms and conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.
- 13.2 No failure or delay on the part of any party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

14. Severance

If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

15. Data Protection

- 15.1 In relation to Customer Personal Data Processed by Xpertex on behalf of the Customer pursuant to the Agreement (if any), Xpertex shall at all times be the Data Processor and the Customer shall at all times be the Controller.
- 15.2 In its capacity as a Data Processor (if applicable) under the Agreement, Xpertex will:
 - (i) only Process Customer Personal Data; (a) to the extent reasonably necessary in order to provide the relevant Service(s) and exercise its rights and fulfil its obligations under, and in accordance with, the Agreement and

- (b) in accordance with any lawful written instructions regarding Processing of Customer Personal Data received by it from the Customer (if any) and (c) as required by applicable Laws;
- (ii) apply appropriate organisational and technical measures to protect Customer Personal Data against any unauthorised access, theft, use or disclosure;
- (iii) ensure that all of its personnel having access to the Customer Personal Data Processed by Xpertex are subject to a duty to keep the Customer Personal Data confidential;
- (iv) only engage a sub-processor with respect to the Customer Personal Data with the prior written consent of the Customer and pursuant to a written Agreement containing materially similar terms as set out in this Clause 15.2;
- (v) promptly notify the Customer about any legally-binding request for disclosure of Customer Personal Data by a DP Authority or other relevant authority unless otherwise prohibited;
- (vi) notify the Customer of any accidental or unauthorised access to, or transfer of, Customer Personal Data without undue delay after becoming aware of the breach;
- (vii) promptly notify the Customer of any request received directly from a data subject;
- (viii) at the Customer's written request, either return or delete (as specified by the Customer) all Customer Personal Data and any copies of it (unless required otherwise by applicable Laws) and Xpertex shall, upon written request by the Customer, confirm in writing that this sub-clause (viii) of Clause 15.2 has been complied with in full;
- (ix) maintain complete and accurate records of its Processing activities under the Agreement in accordance with the DP Laws and make such records available for inspection by the Customer as soon as reasonably practicable following written request by the Customer;
- (x) as soon as reasonably practicable after written request by the Customer, provide the Customer with such information as it may reasonably require for the purposes of verifying that the Provider and Customer are complying with their obligations under Article 28 of the UK GDPR in respect of their activities under the Agreement; and
- (xi) permit the Customer to carry out an audit in accordance with Clause 15.3 below for the purpose of verifying that the Parties are complying with their obligations under Article 28 of the UK GDPR in respect of their activities under the Agreement.

15.3 Subject to the remaining provisions of this Clause 15.3, the Customer may, at a mutually agreed time, conduct an audit to verify Xpertex's compliance with its Processing obligations under the Agreement. The Parties shall use all reasonable endeavours to schedule the audit within one (1) calendar month of request.

15.3.1 Subject to the remaining provisions of this Clause 15.3, Xpertex shall provide the Customer with all reasonable assistance to carry out the audit, including access to relevant premises, systems, records and personnel. Access

to records and systems shall be strictly limited to those areas solely containing data relating to the Processing of Customer Personal Data under the Agreement. No access to (i) data pertaining to other customers and/or (ii) any other information that is covered by a confidentiality obligation to a third party and/or (iii) any financial or commercially-sensitive information pertaining to the Customer will be provided.

15.3.2 Any audit shall be carried out during Working Hours and no more frequently than once in any twelve (12) month period unless stipulated otherwise by the DP Laws.

15.3.3 The Customer shall (and shall procure that all auditing personnel shall) comply with the reasonable (i) site security and health and safety policies and procedures applicable to Xpertex' premises and (ii) instructions of any supervising Xpertex personnel, whilst carrying out the audit.

15.3.4 The Customer shall (and shall procure that all auditing personnel shall) ensure that the audit is carried out in such as manner so as not to unreasonably disrupt the normal business operations of Xpertex and is carried out in an expeditious and professional manner by suitably qualified personnel.

15.3.5 Xpertex reserves the right, at all times, to refuse entry to its premises and/or systems, and/ or records or to remove from its premises to, and/or remove system and/or records access rights for, any person who in the reasonable opinion of Xpertex is not fit to have such access or is causing the Customer to be in breach of this Clause 15.3.

15.3.6 Each Party shall bear its own costs associated with audit.

15.4 Xpertex will (at the Customer's cost) and following the Customer's written request:

- (i) assist the Customer in responding to any request from a data subject;
- (ii) assist the Customer with ensuring the Customer's compliance with the Customer's obligations under the DP Laws with respect to security, breach notifications and data protection impact assessments; and
- (iii) assist the Customer in its consultations with a supervisory authority and obtaining any required approvals from a supervisory authority.

15.5 Any Customer Personal Data Processed by Xpertex under the Agreement shall only be Processed by Xpertex for as long as Xpertex (i) provides the relevant Service to the Customer and thereafter for as long as Xpertex is required to continue to Process the Customer Personal Data pursuant to the terms of the Agreement or, if longer, for as long as is reasonably required for the exercise of Xpertex' rights and/or fulfilment of its obligations under the Agreement and (iii) is required to continue Processing the Customer Personal Data pursuant to applicable Laws.

15.6 Xpertex shall not transfer any Customer Personal Data outside of the UK and EEA without:

- (i) a finding of adequacy by the European Commission in respect of that country;
- (ii) having appropriate safeguards in place (such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted

by a supervisory authority or Agreement contractual clauses authorised by a supervisory authority); or
(iii) the prior written consent of the Customer.

15.7 The Customer warrants, represents and undertakes that it has and shall continue to maintain for the duration of Xpertex' Processing, a lawful basis for the Processing of Customer Personal Data by Xpertex under the Agreement.

15.8 Where Xpertex considers itself to be a Processor of Customer Personal Data through the provision of a particular Service, service-specific Processing details (including the subject-matter and nature of the processing) shall be documented in a separate Data Processing Addendum signed by the parties.

15.9 Terms used in Clauses 15.1 to 15.8 which are not defined herein but which are defined in the DP Laws shall be given the meaning ascribed to them in the DP Laws.

16. Notices and Service

16.1 Any notice or other information required or authorised by these Terms and Conditions to be given by either party to the other shall be given by post, facsimile, transmission, electronic mail and comparable means of communication.

16.2 Any notice or information given by post in the manner provided by Clause 16.1 which is not returned to the sender as undelivered shall be deemed to have been given on the seventh day after the envelope containing was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

16.3 Any notice or information sent by facsimile, transmission, electronic mail and comparable means of communication or comparable means of communication shall be deemed to have been duly given on the date of transmission.

17. Applicable Law and Jurisdiction

17.1 These terms and conditions shall be governed and construed in accordance with the law of England and Wales and the parties shall submit to the exclusive jurisdiction of the English and Welsh courts.

17.2 The Contract is personal to the Customer and the Provider. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and unless specifically provided for in this Agreement, no entity other than the Customer and the Provider shall have any rights or obligations under this Agreement and no entity other than the Customer and the Provider shall have the right to enforce this Agreement or have it enforced against them.

18. DISCLAIMER

This document has been prepared by the Provider solely for the Customer and it should not be provided to any other party without the prior written consent of the Provider, which the Provider may at its discretion withhold or grant. Whether or not the Provider has given its prior written consent, the Provider accepts no liability or responsibility to any third party who may gain access to this document.

The information contained within this document is, and shall remain, the property of the Provider. This document is supplied in strict confidence and must not be produced in whole or in part, used in tendering or for manufacturing purposes or given or communicated to any third party without the prior consent of the Provider.

Any commercial information in this document is proprietary.

19. DISCLOSURE OF INFORMATION

This document is supplied in strict confidence and the information contained in this includes information, the disclosure of which would be likely to cause significant harm to the commercial interests of the Provider. Therefore, information contained in this document must not be disclosed (in whole or in part) in response to a request for information under the Freedom of Information Act 2000 without prior written consent from the Provider.

AGREED by both parties on [insert date]

Signed by <u>[insert full name of director/authorised signatory]</u>	
for and on behalf of the Provider;	 <u>[Director/Authorised signatory]</u>
Xpertex Limited	

and

Signed by	
for and on behalf of the Customer;	 <u>[Director/Authorised signatory]</u>
<u><CUSTOMER></u>	

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Appendix A: Equipment Schedule

Commencement Date: << >>

Equipment Specification	Description
<< >>	<< >>
<< >>	<< >>
<< >>	<< >>
<< >>	<< >>
<< >>	<< >>
<< >>	<< >>
<< >>	<< >>



Appendix B: Specification of Services Schedule

Commencement Date: << >>

Description	Amount in Pounds Sterling	Completion and Invoice date