

**TERMS AND CONDITIONS  
FOR IT SERVICES**

**1. Application**

- 1.1 These Terms and Conditions shall apply to the provision of IT 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:

<b>“Agreement”</b>	means the Agreement entered into by the Customer and the Provider to which these Terms and Conditions apply;
<b>“Business Day”</b>	means, any day (other than Saturday and Sunday) on which ordinary [clearing] banks are open for [their full range of normal] business in the United Kingdom;
<b>“The Commencement Date”</b>	means the commencement date for these Terms and Conditions as set out in the Specification of Services Schedule to these Terms and Conditions;
<b>“The Customer”</b>	<<name of customer>>
<b>“The Provider”</b>	Xpertex Ltd
<b>“Services”</b>	means the services to be provided by the Provider to the Provider as set out in Schedule A;
<b>“Equipment”</b>	means the Equipment listed in the Equipment Schedule and shall include all updated or replacement parts and any additional equipment supplied by The Provider;
<b>“Fees”</b>	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;
<b>“Software”</b>	means any and all programs, applications, instructions or similar that may from time to time be installed on the Customers computer systems;
<b>“Working hours”</b>	means the normal working hours of Xpertex Ltd, which are 8.30 to 17.30.

- 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 his 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 than 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.

## 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;
  - 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 in relation to the IT Services, 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.

**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. Notices and Service**

- 15.1 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.
- 15.2 Any notice or information given by post in the manner provided by Clause 15.1 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.
- 15.3 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.

**16. Applicable Law and Jurisdiction**

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.

### Equipment Schedule

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

### Specification of Services Schedule

Commencement date: <<>>

Description	Amount in Pounds Sterling	Completion and Invoice date