

## XPANSE AI - TERMS OF USE

Last revision date: 14/11/2018

### PART 1 INTRODUCING XPANSE

- 1.1 We are Xpanse Analytics Limited, an Irish company registered with the number 558332, and having our registered office at Digital Exchange, Crane Street, Dublin 16 in Ireland ("**we**" "**our**" and "**us**").
- 1.2 The Xpanse Analytics Platform (Xpanse Platform, Xpanse AI) and website allow business customers who register an Xpanse business account to:
  - \* upload data file(s) to the Xpanse AI Platform from the User's specified file location;
  - \* process the data based on the parameters specified by the User via Xpanse user interface (UI);
  - \* store the data within the infrastructure of a cloud service provider as per specified region;
  - \* access and view Outputs online; and
  - \* download selected Outputs to the User's specified file location.(the "**Service**").
- 1.3 We have tried to make these Terms of Use as clear as possible. If you have any questions about these Terms of Use or our Service, please contact us at [legal@xpanseanalytics.com](mailto:legal@xpanseanalytics.com).

### PART 2 YOUR ACCEPTANCE OF THESE TERMS OF USE

- 2.1 Your agreement with us incorporates these terms of use, our Privacy Policy (<http://www.xpanseanalytics.com/assets/PrivacyPolicy.html>), and any other policies we make available to you as part of the Service ("**Terms of Use**"). The provisions of these Terms of Use will prevail over any directly conflicting provisions of any other policy or document of you or us. These Terms of Use govern your access and use of the Service (whether or not you are a registered user).
- 2.2 You should read the Terms of Use carefully and in their entirety. By accessing and using the Service you acknowledge that you have read, understood and agree to be bound by these Terms of Use. These Terms of Use contain terms which limit our liability to you and which affect your legal rights. If you do not agree to these Terms of Use, then you should not click "Agree" and should not access or use the Service.
- 2.3 The Service is only intended for use by business customers or other legal persons in a non-consumer capacity who have the legal capacity to enter into legally binding contracts under the law applicable in their country of residence. We do not intend our Service be used for individual personal use. Before using the Service you confirm to us that you are using the Service in a business capacity only and all data that you upload to our Service has been generated, collected, sourced or acquired solely for business purposes.

- 2.4 You agree these Terms of Use are formed electronically without the need for a wet signature by either you or us. You hereby agree that a printed version of these Terms of Use and of any notice sent to you or published on our website or through the Services shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records generated and maintained in printed form by us.

### **PART 3 AMENDMENTS**

- 3.1 We may amend these Terms of Use from time to time to update them or make other changes we consider necessary. You are responsible for reviewing and becoming familiar with any change we make. If you do not agree to a change you will have to immediately stop using the Service and close your account with us. Your continued use of the Service following our change will indicate your acceptance of the Service as modified.
- 3.2 We may change the terms or the features or functionality of the Service at any time. Changes, for example, may include changing, suspending or ending any part or feature of the Service. We may also impose limits on certain features of the Service or restrict your access to parts or all of the Service. If a change is material, we will use reasonable endeavours to provide written notice to you but this may not be possible if the change is necessary to comply with any applicable law, mandatory safety or statutory requirements. Such changes to the terms, features or functionality may also impact on fees and or payment terms.

### **PART 4 YOUR RESPONSIBILITIES**

- 4.1 We do not claim any ownership rights in the User Data. After uploading your User Data to the Service, you continue to retain all ownership and/or license rights in such User Data, and you continue to have the right to use your User Data in any way you choose.
- 4.2 In relation to the User Data that you upload you represent, warrant and undertake that:
- \* you own the User Data uploaded by you to the Service or otherwise have the right to upload the User Data to the Service;
  - \* you shall comply with all obligations that apply to you pursuant to Data Protection Legislation and these Terms of Use;
  - \* you have established a procedure for the exercise of the rights of the individuals whose personal data is included in the User Data;
  - \* the User Data has been lawfully and validly collected, and is relevant and proportionate to the respective uses by you;
  - \* that all consents for the processing of the User Data as required have been obtained;

- \* after assessment of the requirements of Data Protection Legislation, the data protection security and confidentiality measures implemented by you when using the Service are suitable for protection of personal data against any accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure or access, in particular when the processing involves data transmission over a network, and against any other forms of unlawful or unauthorised processing; and
- \* you will take all reasonable steps to ensure compliance with the provisions of these Terms of Use by you and your personnel and by any person accessing or using the User Data on your behalf.

4.3 We do not provide any equipment, third party software or internet access which may be necessary for you to use or access the Service. It is your responsibility to ensure that the Service is compatible with all hardware and software you use.

4.4 Email, data upload and other methods of transmitting information over the internet may be subject to interference or scrutiny by third parties and should be independently verified. We cannot ensure security and privacy of such communications and all risk in transmitting such communications through the Service lies with you. For security and / or maintenance purposes we may analyse communications or transmissions you make on or through the Service. This will be set out in further detail in our Privacy Policy.

## **PART 5 ACCOUNTS AND USER SUBSCRIPTIONS**

5.1 You need to create and register a business account with us before you can use or access our Service ("**User Account**"). By registering on behalf of a business, you declare that you have the authority to bind that business to these Terms of Use.

5.2 You must ensure that all information that you provide to us when registering a User Account is accurate, complete, and current at all times. You must ensure the email address you provide to us when registering is a valid business email address. Failure to do so constitutes a breach of these Terms of Use and may result in immediate termination of your User Account or your access to the Service.

5.3 You must choose a strong and secure password, keep the password secure and confidential and not to transfer any part of your User Account to a third party. You agree not to disclose your password to any third party. You are responsible for all activities or actions that occur under your password.

5.4 You agree to notify us immediately on becoming aware of any breach of security or unauthorised use of your User Account and/or password. You are responsible for anything that happens through your User Account until the time you report any misuse to us.

5.5 You permit us to access and analyse your User Account where necessary in order to provide efficient assistance and support in the case of a customer service issue, a security concern or other business requirement.

## **PART 6      PAYMENT**

- 6.1 Once you have registered a User Account you must pay for the Service as per the Payment and Subscription Terms ([www.xpanseanalytics.com/payment-and-subscription-terms.html](http://www.xpanseanalytics.com/payment-and-subscription-terms.html)). You shall pay us the subscription fees in accordance with the Payment and Subscription Terms.
- 6.2 If we have not received payment as per the payment terms ([www.xpanseanalytics.com/payment-and-subscription-terms.html](http://www.xpanseanalytics.com/payment-and-subscription-terms.html)), and without prejudice to any other rights and remedies of ours:
- 6.3 We may, without liability to you, disable your password, User Account and access to all or part of the Service and we shall be under no obligation to provide any or all of the Service while the invoice(s) concerned remain unpaid or outstanding; and
- 6.4 We shall be entitled to change the subscription fees by providing you with written notice of such change.

## **PART 7      INTELLECTUAL PROPERTY**

- 7.1 We retain all right, title and interest in the Service and the information, communications, feedback, suggestions, comments, recommendations, information about performance of the Service, software, its "look and feel", computer code, scripting, photographs, text, video, graphics, music, sounds, images, trade marks, trade names, logos and other materials and services found in, integrated with, or displayed on the Service (collectively, the "**Content**").
- 7.2 In consideration of your compliance with these Terms of Use for the duration of your account with us (unless terminated earlier), we hereby grant you a non-transferable, limited, revocable license to reproduce and display the Content (excluding any software code other than SQL scoring code) solely in connection with your use of the Service ("**License**"). The License is not sub-licensable, is not transferrable and is subject always to these Terms of Use. We can terminate the License at any time for any reason without notice to you.
- 7.3 You acknowledge that all intellectual property rights in the Service and the Content are owned by us or our third-party licensors to the fullest extent permitted under copyright and all other applicable laws. The Content is protected by copyright, trade mark, database right, sui generis rights and other intellectual property laws (as the case may be), under national laws and international treaties. You must not make alterations, extractions, modifications, or additions to the Content on the Service, or sell, disseminate or licence it, or misuse the Content in any way. If you want to re-publish, extract, reproduce, disseminate or otherwise use the Content in a manner not provided for under clause 7.4, you must contact us for permission in writing in advance.
- 7.4 You may print off copies and download the Content generated through use of our Service for business use only. You must not modify the paper or digital copies of any materials you have printed or downloaded in any way and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text. Our status as the

authors of all Content generated through our Service must always be clearly acknowledged in writing. If you print off, copy or download any part of the Content generated through our Service in breach of these Terms of Use, your right to use our Service will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

- 7.5 We make no representations or warranties with respect to the Content, and we do not guarantee that the Content is complete, accurate, current or reliable. Under no circumstances will we be liable in any way for any Content, including without limitation any errors or omissions in the Content, for Content that is incomplete, inaccurate, unreliable or out-dated or for any loss or damage of any kind incurred as a result of the use of any information posted, emailed or otherwise transmitted through the Service.
- 7.6 You acknowledge and agree that any breach of this clause 7 will cause us irreparable harm for which damages are not an adequate remedy and that we may seek interim, preliminary or protective relief from any competent court to restrain your anticipated or actual breach of this clause 7.
- 7.7 Our intellectual property made available on the Service is provided for information purposes only, is subject to change and will be updated from time to time without notice to you.
- 7.8 We make no warranties regarding possible infringement of any national or foreign patent, trade mark, trade name, copyright or other intellectual property rights and you shall have no claim against us or our affiliates or licensors in connection therewith.
- 7.9 This clause 7 is without prejudice to any rights you may have under any applicable mandatory laws.

## **PART 8 SOFTWARE IN THE SERVICE**

- 8.1 The Service incorporates software, which may be updated automatically on your device or web browser in the event that a new version or feature becomes available. The operating system on your device may enable you to adjust your automatic update settings.
- 8.2 We (and our licensors) provide you with a personal, non-assignable, worldwide, non-sub-licensable, non-exclusive licence to use the software provided to you as part of the Service. This licence is to enable you to use and access the Service in accordance with these Terms of use. You shall not copy, modify, distribute, sell or lease any part of the Service or any software component embodied in the Service, or reverse engineer or attempt to extract the source code of the software, unless you have written permission to do so.
- 8.3 Some software used in our Service may be subject to an open-source licence agreement. The Open Source Software is licensed under the terms of the license that accompanies that Open Source Software. You and we acknowledge that nothing in these Terms of Service limits your rights under or grants you rights that supersede the terms of any Open Source Software license.

## **PART 9 OUR RELATIONSHIP WITH YOU**

9.1 Our relationship with you is as a facilitator to assist you in your use of the Service. To the fullest extent permitted by law, the Service is provided 'as is' and on an 'as available' basis and we make no undertaking, representation or warranty:

- \* in connection with the completeness or accuracy, security, reliability or timeliness of the Service or any of the Outputs or Content;
- \* that the Outputs or Content that may be generated from the use of the Service will meet your business requirements;
- \* that the Outputs or Content that may be generated from the use of the Service will be accurate or reliable;
- \* that the Service will be compatible with any particular application, program or software or be available at any particular time or location;
- \* that the Service or its server is free from defects, errors, viruses, bugs or other harmful elements; or
- \* that any errors, bugs, suggestions, recommendations, enhancements or requests in the Service will be corrected or implemented.

9.2 None of the information in or displayed on the Service constitutes financial or investment or business development advice. We do not provide legal, financial or other services. If you require legal, financial, or expert advice or other assistance you should obtain that advice from a qualified professional.

9.3 Outputs and Content generated from the use of our Service are not intended to amount to advice on which reliance should be placed. We therefore disclaim all liability and responsibility arising from any reliance placed on, using, or interpreting such materials by any registered User or by anyone who may be informed of any of its contents.

9.4 Any reference to or description within the Service to services or publications shall not be deemed our endorsement of such services or publications.

## **PART 10 YOUR USE OF SERVICE**

10.1 You agree to comply with all applicable laws, including, without limitation, privacy and data protection laws, intellectual property laws and other rights of any third party, tax laws, and other regulatory requirements in connection with your use and access of the Service. This may include applicable laws requiring you to obtain appropriate licenses, consents and permits before using the Service.

10.2 You may not use the Service in any manner that could damage, disable, overburden or impair the Service or any other party's computer systems or hack or gain unauthorised access to the Service and its Content, Outputs or data.

10.3 General limitations for the data ingested by the Service:

- \* Maximum size of the data stored in the Service: 1 Tb
- \* Maximum combined number of all columns in source data used in analysis: 1000
- \* Maximum number of rows in the Target table: 1'000'000

The above limitations may be subject to change depending on the Price Plan chosen by You.

- 10.4 You must not use the Service to upload or transmit to or from the Service any potentially unlawful, threatening, libellous, defamatory, tortious, obscene, offensive, hateful, scandalous, inflammatory, pornographic or profane material, or any other material that could give rise to any civil or criminal liability under law, including, without limitation, any material that you are not entitled to post or transmit, or where such posting or transmission is otherwise in breach of any third party intellectual property rights.
- 10.5 You may not use any automated system or software to extract data from this Website for display on any other website or to use it otherwise.

## **PART 11      LIABILITY**

- 11.1 Your use and access to the Service is at your own risk and you assume full responsibility and risk of loss resulting from the use of, uploading to, viewing, accessing, relying on or downloading of the Outputs of the Service and/or any Content, and for conclusions drawn from any such actions. We shall have no liability for any damage caused by errors or omissions in any Outputs, Content, information, instructions or scripts provided to you by us in connection with the Service.
- 11.2 You are responsible for all fees, fines, penalties and other liability incurred by us directly, indirectly and/or caused by a third party claim by your use of the Service and/or arising from your breach of these Terms of Use. You agree to indemnify us for any and all such liability.
- 11.3 You agree that we are not liable to you or any third party for any loss, damage, claim or compensation arising out of or in connection with:
- \* your use, or your inability to use or access the Service;
  - \* any delays, delivery failures, or any other loss or damage resulting from the transfer or uploading of data over communications links or network connections or facilities, including the internet;
  - \* our failure or delay to execute any payment or transaction in accordance with your instructions; or
  - \* any periods of non-availability of the Service due to maintenance, viruses and / or any technical problems.

- \* any damage caused by errors or omissions in any data, information, instructions or scripts provided to us by you in connection with the Service.

11.4 To the fullest extent permitted by law, we and third parties connected to us expressly exclude:

- \* all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity;
- \* any liability for any loss, damage, claim or compensation incurred in connection with our Service or in connection with the use, inability to use, or results of the use of our Service, any websites linked to it and any Content or Outputs posted on it; or
- \* any liability for loss of income or revenue; loss of business; loss of profits or contracts; loss of anticipated savings; loss of data; loss of goodwill; service unavailability; wasted management or office time; and any indirect or consequential loss.

11.5 To the fullest extent permitted by law, the aggregate liability of us and our directors, officers, employees, and agents and third parties we work with, arising under or in connection with these Terms of Use or your use of the Service, the Outputs or the Content, and whether caused by tort (including negligence) breach of contract or any other legal theory, will not exceed the greater of 50 Euro or the total subscription fees (if any) you have paid to us in the past 6 months.

11.6 We are not responsible for the actions, content, information, or data of third parties, and you release us, our directors, officers, employees, and agents from any claims and damages, known and unknown, arising out of or in any way connected with any claim you have against any such third parties.

11.7 No provision of these Terms of Use limits or excludes our liability that cannot be excluded or limited under applicable law.

## **PART 12 INDEMNIFICATION**

12.1 You agree to indemnify, defend and hold harmless us and our subsidiaries, affiliates, directors, officers, agents, information parties, suppliers, licensors and licensees, co-branders or other partners, and employees (collectively the "Indemnified Parties), from and against any and all, liabilities, expenses and costs, including reasonable legal fees incurred by the Indemnified Parties in connection with any claim or demand, made by any third party due to, connected with or arising out of your access or use of the Service, your connection to the Service, your User Data, your violation of the Terms of Use, or your violation of any rights of another. You hereby undertake and agree to promptly assist and co-operate as fully as reasonably required by any of the Indemnified Parties in the defence of any such claim or demand.

## **PART 13 LINKS TO THIRD PARTY WEBSITES**



- 13.1 The Service may contain links to third party websites, but this does not mean that we endorse or authorise those websites. Your use of third party websites is subject to the terms and conditions of use contained within each of those websites. We may terminate a link to a third party website at any time.
- 13.2 The fact that we provide a link to a third party website does not mean that we endorse, authorise or sponsor that website, nor does it mean that we are affiliated with the third party website's owners or sponsors.

#### **PART 14 SUSPENSION/TERMINATION OF USE**

- 14.1 We may at any time, without notice or reason, without prejudice to our other rights, suspend or terminate your account or your access to the Service (in whole or in part). We reserve the right to decline any part of your payment at any time. We are not liable to you or any third party for any suspension or termination of access to the Service.
- 14.2 If you would like to stop using the Service, you may terminate your User account at any time and for any reason through the profile settings page on the Website.
- 14.3 If your User account or the Service are terminated, your right to access and use the Service, Outputs and Content immediately ends and any licenses granted under these Terms of Use terminate.
- 14.4 On termination or expiry of your Xpanse account or the Terms of Use for any reason, clauses 7, 9, 10, 11, 12, 16 and 17 and any other related clauses will continue to apply.

#### **PART 15 PRIVACY POLICY**

- 15.1 Protecting your privacy is important to us. We will process information about your business in accordance with our Privacy Policy. For full details of the type of information we collect via the Service, our use of such information and the persons and companies to whom we disclose this information, is set out in our Privacy Policy, which is hereby incorporated into and forms part of these Terms of Use.

#### **PART 16 FORCE MAJEURE**

- 16.1 We are not liable for any failure or delay to perform our obligations under these Terms of Use where the failure is due to anything beyond our reasonable control, including without limitation, acts of God, inclement weather, flood, network outages, lightning, fire, trade disputes, strikes, lockouts, acts or omissions of Governments or other authorities, war, military operations, computer malfunction, terrorist activities, social or labour unrest, mechanical or construction failures or difficulties, diseases, local laws, climactic conditions, criminal acts, abnormal conditions, or developments or acts or omissions of third parties.

#### **PART 17 GENERAL**

- 17.1 Notices to you may be made via email or regular mail. Notices from you to us may also be made by email or regular mail. We may also communicate with you via phone. Any communications or materials that you email, mail, telephone or otherwise transmit through the Service, including information, data, questions, comments or suggestions are non-proprietary and non-confidential. We may use any idea, concept, feedback, recommendation, request, enhancement, issue, query, suggestion, know-how or technique contained in your communication for any purposes including but not limited to developing and marketing products.
- 17.2 If any part of these Terms of Use are found to be illegal, invalid or unenforceable by any court or administrative body of competent jurisdiction, that provision will be severed with the remainder of these Terms of Use remaining in full force and effect.
- 17.3 These Terms of Use (and other documents referred to in them) represent the entire understanding between you and us concerning the viewing, accessing and use of the Service, Outputs and Content. All prior promises, representations, understandings, arrangements, agreements concerning the viewing, accessing and use of the Service, Outputs and Content are revoked.
- 17.4 If we fail to enforce any provision of these Terms of Use or fail to respond to a breach by you, it will not be considered a waiver. Any waiver of these Terms of Use must be made in writing and signed by us.
- 17.5 You and we agree that no agency, partnership, joint venture, or employment is created as a result of these Terms of Use and you do not have any authority of any kind to bind us in any respect.
- 17.6 You may not assign or transfer these Terms of Use or any rights or obligations herein without our prior written consent. We have the right to assign these Terms of Use, and any of our rights or obligations herein without notice to you. These Terms of Use are binding upon each party and its respective successors, heirs, trustees, administrators, executors and permitted assigns.
- 17.7 Though User Data may be uploaded and processed worldwide, Ireland is the place of performance in respect of the Service. The Terms of Use are governed by and construed in accordance with the laws of Ireland, and you agree that the courts of Ireland have exclusive jurisdiction to hear and determine any actions or proceedings that may arise out of or in connection with these Terms of Use. Nothing contained in this Clause 17.7 shall limit the right of us to bring enforcement proceedings in another State or to seek interim, protective or provisional relief in the courts of another State.
- 17.8 In the event we wish to sell our business (or any part of it) we reserve the right to sell or transfer our business (or any part of it) including any intellectual property, programming code, and User database at our sole discretion.

## **PART 18      DEFINITIONS**

18.1 In these Terms of Use, unless otherwise stated:

**"Data Protection Legislation"** means the Data Protection Acts 1988 and 2003, European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, Data Protection Directive 95/46/EC, e-Privacy Directive 2002/58/EC and, on and from 25 May 2018, the European General Data Protection Regulation (EU) 2016/679, and any secondary legislation which relates to personal data and privacy and any guidance issued by the Irish Data Protection Commissioner.

**"Open Source Software"** means software that meets the requirements of the Open Source Initiative's Open Source definition (currently found at <http://opensource.org>), including any "copyleft" open-source software.

**"Outputs"** means all or any of the following Service outputs:

- \* the analytical modelling table (AMT) created by the Service, digestible by machine learning algorithms (which can also be downloaded by the User);
- \* charts and other visualisations created by the Service based on User Data
- \* scoring code - the downloadable SQL code which can be used as a basis for creating the scoring process on systems external to Xpanse;
- \* scores produced by the model scoring process

**"Region"** means the physical location where the data is uploaded to the Service and processed by the Service. The User specifies the Region from the list of available Regions provided when registering for the Service.

**"Xpanse" Analytics Platform** (also called Xpanse AI or Xpanse Platform) means the platform which resides on computing resources owned by Amazon Web Services, Inc. or another entity we notify to you from time to time.

**"User"** means a non-consumer registered to use the Service, or otherwise authorised to use the Service on behalf of the registered business customer.

**"User Data"** means the data uploaded by the User to the Xpanse Analytics Platform with the purpose of being analysed and transformed into charts, visualisations and predictive models.