

# End User Licence Agreement

## 0. Welcome to Xactware

Thank you for choosing our products and services (the "**Services**"). The Services are provided by Xactware Solutions, Inc. of 1100 West Traverse Parkway, Lehi, UT 84043, United States.

If you need to contact us, you can do so on 801-764-5900, or at EstimateOn@xactware.com.

## 1. Binding Terms

- 1.1 You are able to access and use the Services because one of our customers (the "**Xactware Customer**") has entered into a contract with us for access to and use of the Services (the "**Services Agreement**") and they have requested that you be given access. You have no rights under that contract unless you are a party to it.
  - 1.2 By using our Services you confirm that you have read, understood, and agree to the terms set out on this page, and an enforceable contract (the "**EULA**") comes into force between you (the end user) and us. If you do not agree to the EULA, you must not use the Services.
  - 1.3 We may change the terms of the EULA from time to time by informing you (either through the Services, on our website, or otherwise), and the updated terms shall come into effect when you first use the Services after we have sent you information about the change.
  - 1.4 The EULA applies to the EstimateOn product and services, whether provided online or via a mobile device.
- (A) We have published information about how we collect and use personal information at <https://www.xactware.com/en-us/privacy-notice/> (the "**Privacy Policy**") and the Privacy Policy (as published from time to time) form part of this EULA.

## 2. Licence and Conditions of Use

- 2.1 Subject to the terms of this EULA, we grant you a non-exclusive, temporary licence to access and use the Services solely for estimating the cost of repairs or the cost of remodels on a single residential or commercial real property and any other purposes specified in the Services Agreement if any (together the "**Purpose**").
- 2.2 You may not assign, sub-license, or otherwise purport to transfer any of the rights granted under this EULA, and any such assignment, sub-licensing, or transfer shall be void.
- 2.3 In addition to any restrictions on access or use specified in the Services Agreement (which shall apply if you are an employee, contractor, or agent of the Xactware Customer), you may not:
  - (a) perform or attempt automated collection of information from the Services;
  - (b) decompile, reverse engineer, disassemble, or create derivative works of the Services;
  - (c) make the Services (or your access to them) available to any other person, for remuneration or otherwise; or
  - (d) use the Services otherwise than in accordance with this EULA and applicable law.

### **3. Registration and Security**

- 3.1 You represent and warrant that all information provided by you is accurate, current, and complete in all material respects, and undertake to:
- (a) keep all registration and other information up to date;
  - (b) choose strong and secure Authenticators, keep the Authenticators confidential and, other than with our prior written consent, not disclose the Authenticators to any other person for any purpose whatsoever.
- 3.2 You shall promptly notify us if you have grounds to suspect the loss, theft, or unauthorised disclosure of any Authenticators, and will be responsible for all use of the Authenticators until you have reported the loss, theft, or disclosure to us. Subject to the foregoing, you are responsible for all activities that occur using your Authenticators.
- 3.3 You agree not to attempt to bypass any security mechanism used in connection with the Services, or take any action which undermines the safety or security of the Services or any user.
- 3.4 You agree that we may monitor your use of the Services to validate your compliance with the terms of the EULA, and validate compliance by the Xactware Customer with the Services Agreement.

### **4. User Generated Content**

- 4.1 Some of the Services may enable you and others to upload, share, or publish materials ("**User Generated Content**"). In doing so, you grant us a perpetual, non-exclusive, royalty free, sub-licensable and transferable right to use, display, copy, modify, and create derivative works of such User Generated Content.
- 4.2 You represent and warrant, and shall ensure, that any material you upload, share, or publish:
- (a) is accurate, correct, and not misleading;
  - (b) does not infringe the intellectual property rights, rights of privacy (including data privacy), or other rights of any person;
  - (c) does not contain any sensitive personal data, or protected health information;
  - (d) does not breach any law, regulatory guidance, or relevant code of conduct;
  - (e) is not obscene, pornographic, or otherwise objectionable, does not depict violent or sexual acts, and does not perpetuate hatred against any person;
  - (f) is not abusive, threatening, or defamatory, and does not have the likely effect of causing offence or harm; and
  - (g) does not contain any instructions (including software) which if implemented might cause damage or injury to any person or property (including intangible property such as data).
- 4.3 We shall have no responsibility to review any User Generated Content submitted by you or any other person for compliance with this EULA or otherwise, or exercise any degree of editorial control, and you acknowledge that we are acting as a mere conduit. We may however remove, or suspend access to, any User Generated Content at any time in our absolute discretion.

## **5. Other Users and Third Party Services**

- 5.1 No contractual relationship may be formed between you and any other user of the Services as a result of your interaction via the Services. Any such relationships must be entered into using an alternative means of communication.
- 5.2 We have no responsibility for your arrangements with other users, and shall have no liability with respect to any dispute between you and another user. You agree to address such disputes directly to the other user.
- 5.3 You acknowledge that the transmission of messages through any SMS feature made available as part of the Services is dependent upon the facilities, networks, and connectivity provided by third party service providers, and you consent to their use.

## **6. Suspension and Termination**

- 6.1 We may suspend or terminate all or part of your access (and your rights to access and use) the Services without notice if:
- (a) we have reason to suspect that: (i) you have violated the EULA; or (ii) the Xactware Customer has breached the Services Agreement;
  - (b) the Services Agreement expires or is terminated;
  - (c) we consider it reasonably necessary to avoid loss or damage; or
  - (d) we are requested to do so by the relevant Xactware Customer, or any regulatory authority.
- 6.2 We may, without cause, terminate all or part of your access to the Services upon not less than thirty (30) days prior notice.

## **7. Indemnities**

- 7.1 If you suffer a claim by a third party alleging that your use of the Services infringes any intellectual property rights of any person ("IPR Claim"), you:
- (a) agree to notify us as soon as reasonably practicable and in any event within fourteen (14) days of becoming aware of the allegation;
  - (b) shall not make any admission of liability, agreement, or compromise in relation to the matter without our prior written consent;
  - (c) give us complete authority to conduct all proceedings relating to the matter (and agree to cooperate with us in relation to all such proceedings).
- 7.2 Provided you have complied with Section 7.1, and provided the IPR Claim relates to your use in accordance with the EULA, we shall conduct the defence or settlement of the IPR Claim and shall indemnify you against any settlement which we agree, or any amount awarded by a court of competent jurisdiction, to the extent arising from the IPR Claim.
- 7.3 In connection with any claim brought by a third party (including IPR Claims and proceedings by regulatory authorities), to the extent any loss, damage, or expense (including reasonably incurred legal fees) suffered or incurred by us in connection with the claim results from your violation of the EULA, you shall indemnify us against such loss, damage, or expense.

7.4 You indemnify us, and shall hold us harmless, against any loss, damage, or expense (including reasonably incurred legal fees) suffered or incurred arising in connection with your breach of Section 4.2, or any allegation by a third party that your User Generated Content infringes the intellectual property rights, rights of privacy (including data privacy), or other rights of any person.

## **8. Disclaimers, and Exclusions and Limitations on Liability**

8.1 All warranties and conditions applicable to the Services are set out in this EULA (or the Services Agreement). To the extent permitted by law, we exclude all implied warranties and conditions which may otherwise apply to the Services.

8.2 We do not guarantee that the Services will be uninterrupted or error-free, and you acknowledge that the Services (and any information you obtain from the Services) are provided on an 'as is' basis, and may not meet your particular requirements. Your access to the Services may be disrupted to allow for maintenance or adjustments, but we do not guarantee that errors will be corrected.

8.3 The Services often represent an integration point for information obtained from a vast array of sources which are not verified by us, and we do not guarantee accuracy or completeness. You agree independently to verify any information you obtain. We may link to third party sites, and you may be able to obtain information on third party services using our Services. We do not endorse the products or services of any third parties, and you agree to perform your own due diligence in respect of any third party service provider. You acknowledge that any reliance on information is at your own risk.

8.4 We shall not be liable for any loss, damage, or expense, and you shall indemnify us against any loss, damage, or expense (including reasonably incurred legal fees) suffered or incurred by us in a connection with a third party claim, that arises out of your misuse of the Services.

8.5 We shall not be liable for any:

- (a) indirect or consequential loss;
- (b) loss of profits or revenue;
- (c) loss of goodwill, reputation, or opportunity;
- (d) loss of or corruption of data;
- (e) pure economic loss, or losses otherwise arising out of a tortious duty of care (e.g., in negligence);
- (f) acts or omissions of third parties, or any delay or failure to comply with our obligations which arises from a cause which is beyond our reasonable control,

in each case arising in connection with the Services, whether in contract, tort (including by reason of negligence or breach of statutory duty) or otherwise.

8.6 Except for the indemnity at Section 7.2, our total aggregate liability arising in connection with the Services, whether in contract, tort (including by reason of negligence or breach of statutory duty) or otherwise shall be limited in all circumstances to one thousand pounds sterling (£1,000.00).

8.7 You may not (and waive your right to) bring any action or proceeding in connection with the Services (including in tort) more than twelve (12) months after earlier of the date: (i) on which the cause of action first arose; and (ii) you last used the Services.

8.8 Notwithstanding any contrary provision, we do not limit or exclude our liability in respect of any death or personal injury caused directly by our gross negligence, any fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded under applicable law.

## 9. Confidentiality

9.1 "**Confidential Information**" means all information disclosed to the relevant party by or on behalf of the other party: (i) in connection with the Services; or (ii) which is marked as or otherwise has been indicated to be confidential, or which derives value to a party from being confidential, or which would be regarded as confidential by a reasonable person. To avoid doubt, any material you upload, share, or publish to public areas of the Services shall not be Confidential Information.

9.2 Subject to Section 9.3, each party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.

9.3 A party may disclose Confidential Information if and to the extent:

- (a) required by law or order of the courts, by existing contractual obligations, or by any securities exchange or regulatory or governmental body to which such party is subject, wherever situated (whether or not the requirement for information has the force of law); or
- (b) disclosed on a necessary basis to the professional advisers and auditors of such party; or
- (c) the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or
- (d) with the prior written approval of the other party, such approval not to be unreasonably withheld, delayed, or made subject to conditions.

9.4 We may share your information (including Confidential Information) with third party subcontractors in connection with the provision of the Services, and with other persons where we consider it reasonably necessary for the Purpose.

9.5 This Section 9 shall not limit our ability to use anonymous data (including usage information and market data) or information acquired from you through the use of the Services' feedback system, which shall be and remain our property.

9.6 The restrictions contained in this Section 9 shall continue to apply after the termination or expiry of this Agreement (however arising) without limit in time.

## 10. Proprietary Rights

10.1 All right, title, and interest in and to the Services, the technology and materials used to provide them, and any information you obtain through them, shall remain with the rights holders. You may not copy, modify, distribute, create derivative works of, or otherwise use the same except as expressly provided.

10.2 You may not use or register any designation, name, or trade mark appearing through the Services, or any designation, name, or trade mark beginning with 'Xact' (together the "**Xactware Marks**"), and shall not use or attempt to register any designation, name, or mark which is the same as or similar to any of the Xactware Marks.

## 11. Governing Law and Jurisdiction

11.1 The EULA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and shall be construed in

accordance with the laws of the State of New York, excluding that body of law applicable to conflicts of law.

- 11.2 The parties submit to the non-exclusive jurisdiction of the Federal, State, and/or County Court in the State of New York for all purposes relating to and in connection with this Agreement and any such dispute or claim.

## **12. Miscellaneous Provisions**

- 12.1 You consent to receiving all information from us electronically (e.g., via e-mail or through the Services).
- 12.2 A failure to exercise or delay in exercising a right or remedy provided in the EULA shall not constitute a waiver of that right or remedy, and no waiver by a party shall constitute a waiver of any subsequent breach of the same or any other provision. Each right or remedy of a party under the EULA is without prejudice to any other right or remedy of that party under the EULA or at law.
- 12.3 If any provision of the EULA is declared by any competent court or body to be illegal, invalid or unenforceable under the law of any jurisdiction, or if any enactment is passed that renders any provision of the EULA illegal, invalid or unenforceable under the law of any jurisdiction this shall not affect or impair the legality, validity or enforceability of the remaining provisions of the EULA, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction.
- 12.4 You may not use the Services if you are located in a location to which the export or re-export of services are prohibited, or are a person to whom the provision of services is prohibited, under the laws of the United States.

## **13. Interpretation**

- 13.1 In this EULA: (i) the singular includes the plural and vice versa, and references to the 'Services' includes a reference to any part of them; (ii) references to a person include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality); and (iii) 'including', 'in particular', and similar expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions.