

EXQ SURVEY USE TERMS AND CONDITIONS/LICENSE AGREEMENT

Updated: October 15th, 2019

Parties

These use terms and conditions shall govern the relationship between:

- ExO Works Europe S.L.U trading as OpenExO ("**Licensor**" and/or "data controller") and
- User of the ExQ Survey ("**Licensee**" and/or "data processor")

Agreement

The Licensor has developed the EXQ Survey and will provide the Licensee with the support and software for its use.

The Licensee is a user who previously successfully completed the guided program Certification from OpenExO via our platform.

1. Supply of Software

The Licensor shall make the ExQ Survey hereby "the Software" available for its use by the Licensee and shall provide to the Licensee such assistance and support in relation to the use of the Software as the Licensee may reasonably request.

2. License

The Licensor hereby grants the Licensee a user license during the time the Licensee is a user of the OpenExO platform. The user license is worldwide and non-exclusive and allows for the Software to be used and integrated in their website.

The Licensee may not sub-license and must not purport to sub-license any rights granted under this agreement.

The license granted by the Licensor to the Licensee in this Clause is subject to the limitation of use exclusively by the user who accepted these terms. The Software may only be used by the Licensee to be fulfilled by its clients.

Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any license granted under this clause shall be subject to the following prohibitions:

- (a) The Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

- (b) The Licensee must not alter, edit or adapt the Software; and
- (c) The Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile the Software.

The Licensee shall be liable for the security of the data collected through the Software and shall use reasonable endeavors (including all reasonable security measures) to ensure that access to such data is restricted to persons authorized to use them under this Agreement.

3. No assignment of Intellectual Property Rights

Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensors to the Licensee.

4. Fees

The Licensors make the Software available for free but reserves the right to modify it and to start charging fees at any time. The Licensors commit to give the Licensee not less than 30 days of written notice communicating the changes. Licensee will be able to accept or to stop using the Software in case of discrepancy.

5. Warranties

The Licensors guarantee the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

The Licensors guarantee the Licensee that:

- (a) The Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (b) The Software shall incorporate security features reflecting the requirements of good industry practice.

The Licensors guarantee the Licensee that the Software (when used by the Licensee in accordance with this Agreement), will not breach any law nor infringement of the Intellectual Property Rights of any person.

The Licensee guarantees the Licensors that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

6. Limitation of Liability

The Licensors do not, and neither do our affiliated parties, make any specific promises about the services. For example, the Licensors do not make any commitments about

the results of using the Software or its availability to meet your needs. The software is provided as it is.

TO THE EXTENT PERMITTED BY LAW:

- (a) THE LICENSOR EXCLUDES ALL WARRANTIES, INCLUDING (BUT NOT LIMITED TO) WARRANTIES LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- (b) THE LICENSOR (AND OUR AFFILIATED PARTIES) WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES.
- (c) THE TOTAL LIABILITY FOR THE LICENSOR AND ITS AFFILIATED PARTIES FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE LESSER OF: \$100 OR THE AMOUNT THAT YOU PAID US TO USE THE SERVICES DURING THE MOST RECENT 12 MONTHS OR THE MINIMUM AMOUNT PERMITTED BY APPLICABLE LAW. IN LIEU OF DAMAGES, WE MAY CHOOSE TO SUPPLY YOU WITH THE SERVICES AGAIN, AND YOU AGREE TO ACCEPT THIS AS SATISFACTION OF ANY CLAIM YOU MAY HAVE RELATED TO THOSE SERVICES.

IN ALL CASES, THE LICENSOR AND ITS AFFILIATES, SUPPLIERS, DISTRIBUTORS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

7. Confidential Information

Confidential Information:

“Confidential Information” means any information not generally known or available outside the Licensor or entrusted to the Licensor in confidence by third parties or by the Survey respondent (“Respondent”). Without limitation, Confidential Information includes: Licensor and respondent inventions, technical data, trade secrets, research, product or service ideas or plans, inventions, techniques, methods, lists of or information relating to employees, consultants, customers, and partners of the Licensor and respondent, pricing, market data, marketing plans, licenses, contract information, business plans, financial data, budgets or other business information disclosed to Licensee by the Respondent or the Licensor (directly or indirectly, whether in writing, electronically, orally, or by observation). Confidential Information does not include information that: was already within the public domain at the time the information is acquired by the Licensee; that subsequently becomes public through no act or omission of the Licensee; or was acquired by the Licensee from a third party without breach of any confidentiality obligation to the Licensor or Respondent, whether or not prepared in whole or in part by Licensee and whether or not disclosed to or entrusted to the Licensee’s custody.

Protection of Information:

The Licensee recognizes and acknowledges that the Licensor possesses certain Confidential Information about him and its clients, customers or Respondents that constitutes a valuable, special, and unique asset. The Licensee agrees not to disclose or use, except for the benefit of the Licensor or Respondent to the extent necessary to perform the Services, any such information except as authorized by the Respondent or the Licensor. The obligations cover third party Confidential Information shared with the Licensor. The Licensee shall not use any Licensor or Respondent Confidential Information to negatively influence any current or prospective Licensor clients or customers for purchasing Licensor Services, or to influence any person to engage the services of a person or entity in competition with the business of the Licensor.

Additional Rights: These Terms supplement, and do not supersede, any additional rights the Licensor may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information.

8. Data Transfer

This privacy policy applies to the Software use and will be complemented by the general OpenExO's [Privacy Policy](#).

Under this Agreement the Licensee acts as the third party, processor of the collected data through the ExQ Survey.

The Licensor is the data controller of the collected data and will transfer the data to comply with the end of this Agreement.

The Processor agrees to comply with GDPR (EU General Data Protection Regulation 2016/679) requirements when handling and storing the data. The Processor shall not transfer or authorize the transfer of the collected data to countries that do not comply with GDPR minimum requirements. Processor shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on the EU approved standard contractual clauses for the transfer of personal data.

The Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Collected Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

The Processor shall, in relation to the Company Personal Data, implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

The Processor shall not appoint (or disclose any Collected Data through the Software) any Subprocessor unless required or authorized by the Data Controller.

The Processor shall notify without undue delay upon becoming aware of a Data Breach affecting the Collected Data, providing the Data Controller with sufficient information to allow the Data Controller to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

The Processor shall co-operate with the Data Controller and take reasonable commercial steps while guided by the Data Controller to assist in the investigation, mitigation and remediation of each such Data Breach.

9. Governing Law

The validity, interpretation, construction and performance of these terms shall be governed by the laws of the Kingdom of Spain, without giving effect to the principles of conflict laws.