

# .TERMS OF SERVICE:

## 1. WELCOME

This Agreement governs the provision of the ExpenseOnDemand expense and other related services including browser access, encryption, transmission, storage, system maintenance, software upgrades, data backup and support.

## 2. DEFINITIONS

- i. **"Charges"** means the licence fees or any other charges relating to the usage of the Software paid by the Customer to EOD or an accredited EOD Partner (either on a periodic or perpetual basis) for the Service in accordance with the Terms.
- ii. **"Customer"** means the company or legal entity that you represent;
- iii. **"Customer Data"** means any data, information or material provided or submitted by the Customer to the Service in the course of using the Service;
- iv. **"Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing"** shall have the meaning prescribed under the Data Protection Legislation to the limited extent of data processed by EOD under this Terms of Service (TOS). For the purposes of these presents, EOD shall be the Data Processor and the Customer shall be the Data Controller.
- v. **"Data Protection Legislation" or "DPL"** means (i) the Data Protection Act 2018; (ii) the UK General Data Protection Regulation (Regulation (EU) 2016/679) (the "General Data Protection Regulation" or "GDPR") as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as may be modified or amended from time to time) and any applicable national implementing applicable law as amended from time to time; and (iii) all applicable law about the Processing of Personal Data and privacy; including any applicable codes of practice that are issued by a Data Protection Regulator;
- vi. **"EOD"** means ExpenseOnDemand the trading name of Expense On Demand Ltd, and shall also refer to all holding companies of Expense On Demand Ltd and all subsidiary and affiliated companies of such holding companies where the context so admits;
- vii. **"Licensed Material"** means the manuals, product specifications and other documentation relating to the Software published by EOD from time to time in any printed or electronic form;
- viii. **"Old EOD Customers"**, means customers who have moved from the old EOD platform to the new (current) EOD platform.
- ix. **"Service"** means the EOD expense reporting mobile and website-based service (Cloud Service) and related services;
- x. **"Software"** means the EOD expense software application and such software as EOD shall provide access to from time to time;
- xi. **"Subcontract"** means any contract between the EOD and a third party pursuant to which, EOD agrees to source the provision of any of services and/or goods pursuant to this TOS, from such third party. **"Subcontractor"** means the contractors or service providers that enter into a Subcontract with the EOD.
- xii. **"Sub-processors"** means third parties authorised under these Terms to have logical access to and process Customer Data in order to provide parts of the Services.
- xiii. **"Terms"** means the terms and conditions laid out in this Agreement and from time to time upon which EOD offers the Service to the Customer;
- xiv. **"User(s)"** mean employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by the Customer (or by EOD at the Customer's request).

## 3. THE EOD SERVICES

Subject to these Terms, the Customer and/or its affiliates shall be entitled to have:

- i. Access to the Service;
- ii. Rights to download data to the Customer's own computer network and use components of the Service and Software solely for the purposes of enabling the Customer to use the Service;
- iii. Access to and use of reasonable data storage facilities on the Service website solely for the purposes of enabling the Customer to use the Service;
- iv. On-going support as laid out in section 8 of this Agreement;
- v. Such other services as EOD may offer from time to time as part of the Service.

## 4. GENERAL TERMS AND CONDITIONS

- i. These Terms apply to the Service delivered by EOD to the Customer. All other terms, including all terms implied by statute and any pre-contractual representations, including those appearing in previous correspondence between the Customer and EOD are excluded. The application of any general terms and conditions upon which the Customer trades and any terms inconsistent with these Terms are excluded and shall be of no effect

- ii. Subject to and in accordance with notes, instructions or documentation issued from time to time by EOD in connection with the Service, EOD will provide to the Customer the Service as specified in these Terms. The Customer shall be provided with reasonable notice to any variation or amendment to the Service and shall reserve the right to accept or reject such variations or amendments to the Service. Any rejection shall entitle the Customer to terminate the Agreement in accordance with Clause 10 (II). Any service required by the Customer that is not provided as part of the published Service from time to time must be subject to a separate written agreement prior to commencement of that service
- iii. EOD shall process the Personal Data in accordance with the terms and conditions of this Agreement and further confirms that any Personal Data previously communicated to it by the customer has been treated in terms of the Agreement.
- iv. Upon accepting these Terms, the Customer consents to allow EOD to use its name on EOD or affiliated websites and in its sales collateral during the period of this Agreement.

## 5. GRANT OF RIGHTS

- i. In consideration of and for such subscription periods and such individual expense accounts in respect of which the Customer shall have paid the Charges to EOD or an accredited EOD partner, EOD hereby grants to the Customer a non-transferable nonexclusive licence to access and use the Service and Software and the database created by the Service and to possess and use the Licensed Material and certain components of the Service and Software which are made available for downloading to the Customer's computer for the Customer's own internal use and to configure the Service and Software in accordance with Clause 6.
- ii. Named User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.
- iii. The Customer shall not:
  - a. license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Software or the Licensed Material in any way;
  - b. modify or make derivative works based upon the Service or the Software or the Licensed Material;
  - c. create "frame" or "mirror" any Software or Licensed Material on any other server or wireless or Internet-based device; or
  - d. reverse engineer or access the Service in order to
    - i. build a competitive product or service,
    - ii. build a product using similar ideas, features, functions or graphics of the Service, or
    - iii. copy any ideas, features, functions or graphics of the Service.
- iv. Any direct competitor of EOD may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes except with EOD's prior written consent.

## 6. CONFIGURATION

- i. Following such training as may be specified by EOD's employees, agents or sub-contractors, the Customer may configure the Service and Software in accordance with such procedures as are specified from time to time by EOD. Any configuration of the Service and Software will become part of the Service and Software and will continue to be subject to the Terms.
- ii. The Customer is responsible for all activity occurring within their User accounts and shall abide by all applicable UK laws in connection with their use of the Service, including those related to data protection and the transmission of technical or personal data.
- iii. The Customer shall not impersonate another EOD User or provide false identity information to gain access to or use the Service.

## 7. THIRD PARTY INTERACTIONS

- i. During use of the Service, the Customer may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between the Customer or their Users and the applicable third-party. EOD and its licensors or sub-contractors or Sub-Processor shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion. EOD does not endorse any sites on the Internet that are linked through the Service. EOD may provide these links only as a matter of convenience, and in no event shall EOD or its licensors be responsible for any content, products, or other materials on or available from such sites. EOD provides the Service to you pursuant to the Terms of this Agreement. The Customer recognizes, however, that certain third-party providers of ancillary software, hardware or services may require its agreement to additional or different license or other terms prior to use of or access to such software, hardware or services.
- ii. Sub-Processors shall only Process Customer Data in order to perform one or more of EOD's specified obligations under the TOS. Prior to giving any Sub-Processor access to Customer Data, EOD shall ensure that such Sub-Processor has entered into a written agreement in such a manner that processing will meet the requirements of Data Protection Legislation and ensure the protection of the rights of the data subject. EOD shall remain liable for the performance of the sub-processor/s obligations. The current list of Sub-Processors being used and approved by the Customer for the Services are Azure, Amazon Cloud (AWS), Google Cloud, NTT Cloud and Rackspace. EOD shall obtain the prior written consent of the Customer when a new Sub-Processors is added to the above list.

- iii. EOD shall make available to the Customer, on request, all information necessary to demonstrate compliance with the obligations laid down in this TOS and allow for and contribute, as necessary, to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.

## 8. SERVICE LEVELS

- i. EOD will use reasonable care, skill and diligence in providing the Service and shall provide the Service in compliance and accordance with all applicable laws and regulations.
- ii. EOD will provide at least 98.5% "Service Uptime" during normal business hours. This Service Uptime refers to an access point on the EOD hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone; the Customer is responsible for its own ability to access the Internet. In addition, the Service Uptime will not include scheduled maintenance or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 20 of these TOS.
- iii. EOD will make daily data backups and provide storage for three weeks of such backups of the Software and any Customer Data stored by the operation of the Service.
- iv. Maintenance of the Service or other maintenance activities that may require interruption of the Service shall be, as far as possible, performed outside of "Normal Business Hours" which are 0900 hrs to 1800 hrs local UK time – Monday to Friday, except public holidays in United Kingdom.
- v. EOD will give the Customer at least 15 days advance notice by e-mail of any scheduled maintenance, whether or not such maintenance is to take place. Any maintenance activity that occurs during Normal Business Hours, for which no advance notice has been given, shall be considered downtime. EOD will maintain and update the Software. During maintenance events, EOD may at its discretion upgrade versions, install bug fixes, and apply patches to the hosted systems. EOD will use all reasonable efforts to avoid unscheduled downtime for Software maintenance.
- vi. The EOD help desk will respond to all support requests from CSRs within the periods specified below, according to priority.

Priority	Description	Target 1 <sup>st</sup> Time response	Target Resolution Time
P0	The system is inoperable or incapable of fulfilling its function. For example: User cannot login; User cannot submit or approve claims; payment export cannot be made.  P0 incident must be reported by e-mail to <a href="mailto:support@expenseondemand.com">support@expenseondemand.com</a> .	Within 2 business hours	Within 8 business hours. There will be a continuous effort after initial response to resolve the problem with Customer cooperation.
P1	A high impact issue that causes critical functions to be inoperable so as to severely degrade operation of the system.  P0 incident must be reported by e-mail to <a href="mailto:support@expenseondemand.com">support@expenseondemand.com</a> .	Within 4 business hours	Within 2 business days.  Business days = Monday to Friday.
P2	A medium impact issue that causes some non-critical function to be operable.	Within 2 business days	Within 5 business days.  Business days = Monday to Friday.
P3	A low impact issue that does not prevent Users from submitting or approving claims.	Within 3 business days	Next available scheduled maintenance window

- vii. Escalation. If no progress has been made on a Priority 0 or Priority 1 incident within the target resolution time, the incident will be escalated in writing to the Manager of EOD Technical Services. If the incident is not then resolved after a further incremental period equivalent to the target resolution time, the incident will then be escalated to the EOD Technology Director.
- viii. Exclusions. EOD will be under no obligation to provide support and shall not be liable for failure to perform the obligations in this Agreement and/or achieve the Service Uptime to the extent attributable to:
  - a. use of the Software other than in accordance with the Licensed Material and these Terms;
  - b. configuration of the Software not carried out in accordance with procedures specified from time to time by EOD;
  - c. configuration of the Software other than by EOD or an accredited EOD Partner or employees agents or subcontractors of the Customer who have been given appropriate training and approval by EOD;
  - d. use of the Software other than with the browsers / operating systems and appropriate hardware and network infrastructure approved by EOD;
  - e. failure by the Customer to implement recommendations or instructions for use of the Software advised by EOD or an accredited EOD Partner;
  - f. defects or errors in the Software resulting from any unauthorised modifications or attempted modifications or unauthorised use of the Software or Service;
  - g. continued use contrary to any reasonable written instructions provided by EOD;

- h. any fault in the Customer's equipment or operating environment used in conjunction with the Service;
- i. input errors or omissions by the Customer including inaccurate, incomplete or corrupt Customer Data;
- j. defects or errors caused by the use of the Service on a platform other than that specified by EOD.

## 9. TERM, CHARGES AND PAYMENT

- i. The Customer will be entitled to a 30-day Free Trial to test & check fitness of the Service to their business. At the end of the Free Trial, if the customer is satisfied, they can automatically subscribe to the service. If the Customer does not subscribe to the Service, then after 15 days of the end of the service, their subscription and the data in it, will be deleted.
- ii. If a Customer wishes to try one of the paid functions, then they will be required to place their Credit/Debit Cards or complete the BACS mandate (UK Customers only). This will then enable to test these PAID functions. EOD uses Stripe ([www.stripe.com](http://www.stripe.com)) for collecting it payments across the world. Payments are taken after the trial has ended, and thereafter in each subsequent months.
- iii. EOD has two User types – "Power" and "Casual". Power Users purchase licences that allows them unlimited usage. Casual Users purchase licences whereby a charge is levied each time a claim is saved. For the purposes of Clause 10 (ii), Power users also mean Casual users.
- iv. Customers can add functions or users anytime during the month. The billing will be based on the price of all functions (discounted or otherwise and the term) multiplied by the number of users.
- v. Unless otherwise agreed the Service is provided by EOD and subscribed for by the Customer on an annual basis commencing on the date that chargeable Service commences (each such year being a "Subscription Year"). However, customers who have less than 200 users can opt for a one month rolling contract, which starts on the 1<sup>st</sup> of the subsequent month after the end of the Free Trial. Where the Customer has opted for a longer contract to benefit from a lower price, which is determined based on the number of users and the length of the contract, then the term of the contract will not be monthly, but equal to the longer opted period. However, the billing will be on a monthly basis. For the Old EOD Customers who have moved from the old EOD platform to this new platform, the 12 month annual contract shall continue to apply.
- vi. The Billing charges will be based on the minimum number of users opted for by the customer for the said term, and dependent on the Power & Casual User combination the customer has selected. EOD will charge the customer for the minimum number of users, as opted for by the customer or the actual number of users in the application, whichever is higher. At a minimum each user loaded on the system will pay an access charge as outlined for each country.
- vii. The "Initial Term" of contract shall be 12 months. For customers with less 200 users the one month or such other longer period as opted by the customer shall apply. If the customer changes the period of the contract during middle of the original contracted period, then EOD reserves the right to charge the non-discounted price (the original price of each function) for the new period and the Service shall continue thereafter in accordance with clause 9 (l) unless and until terminated in accordance with clause 10. For the Old EOD Customers who have moved from the old EOD platform the "Initial Term" will be 12 months.
- viii. Invoices shall be raised monthly corresponding to usage of the Service by the Customer.
- ix. All payment obligations are non-cancellable, and all amounts paid are non-refundable.
- x. The Customer may add and activate additional Users from within EOD. Added Users will be subject to the following:
  - a. Added Users will be coterminous with the pre-existing license term;
  - b. Users added in the middle of a billing month will be charged in full for that billing month. XI.
- xi. All pricing terms are confidential, and the Customer agrees not to disclose them to any third party.
- xii. EOD's obligations to provide Service under these Terms and the Customer's obligations to pay for such Service shall automatically be renewed after each Subscription period from and including the first day of the subsequent Subscription period (a "Renewal Date") for the duration of that subsequent Subscription period unless terminated in accordance with clause 10.
- xiii. The Customer agrees to provide EOD with current billing and contact information including name of legal entity, postal address, e-mail address, name and telephone number of an authorised billing contact and their EOD system administrator.
- xiv. EOD reserves the right to suspend the Service and to impose a reconnection fee in the event the Customer's account is 90 days or more delinquent. The Customer agrees and acknowledges that EOD has no obligation to retain Customer Data after this 90 day period and that such Customer Data may be irretrievably deleted.
- xv. The Customer agrees to pay a late payment charge at the rate of 1.5% per month on all invoice amounts not subject to a notified bona fide dispute from the date payment of such undisputed amounts was due until paid in full. To be excluded from the late payment charge any bona fide disputed invoice amount shall be notified to EOD within 60 days of receipt of the relevant invoice by the Customer.
- xvi. EOD reserves the right to modify its fees and charges after the Initial Period upon at least 60 days prior notice to the Customer, which notice may be provided by e-mail or flashed within the customer subscription. The Customer reserves the right to accept or reject such modifications and shall be entitled to terminate in accordance with clause 10 (II). Should the Customer agree to modifications in EOD's fees and charges, such price increases shall be effective from the first day of the next Subscription Period. Any increase which is equal to the Consumer Price Index as calculated by the central bank of your country or 5%, whichever is higher, will not require any intimation and will be added automatically.
- xvii. All Charges payable under these Terms shall be exclusive of Value Added Tax or other Government imposed taxes (if any) that shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

## 10. TERMINATION

- i. EOD's obligation to provide the Service and the Customer's obligations to pay for such Service may be terminated by either party giving to the other not less than 90 days written notice to terminate the Agreement at the end of the Initial Term or at the end of any subsequent Subscription period.
- ii. Where notice to terminate is given before the end of the term, then the billing will be the average of the last 90 days usage, prior to the notice.
- iii. Without prejudice to any right or remedy one party may have against the other prior to the date of termination, these EOD Terms shall terminate:
  - a. forthwith upon written notice served by EOD upon the Customer in the event the Customer fails to make any payment on the due date and such payment shall not have been made within 30 days of a written request for the same (such request alerting the Customer to EOD's rights under this section).
  - b. forthwith upon written notice served by one party upon the other party ("Default Party") in the event the Default Party breaches any provision of these Terms (other than one falling within clause 10 (II) (a)) and such breach or failure is not remedied within 30 days of written notice having been served on the Default Party requiring such remedial action
  - c. forthwith upon written notice served by one party upon the other party in the event that such other party is the subject of a proceeding in bankruptcy, is placed in receivership or enters into an arrangement for the benefit of its creditors (or any such process or arrangement analogous under any law.
- iv. Immediately by the Customer giving notice in writing to EOD upon the occurrence of the events described in clauses 4(II) and 9 (XIII),

## 11. EFFECT OF TERMINATION

- i. In the event of the termination of this Agreement for any reason whatsoever, the Customer shall as far as is reasonably practicable
  - a. within 15 days of termination delete from any computer or otherwise destroy any component of the Software downloaded by the Customer and all electronic copies of the Licensed Material,
  - b. if requested by EOD provide a certificate signed by a duly authorised officer of the Customer stating that the Customer has complied with its obligations under the above clause and
  - c. forthwith pay any monies due to EOD or to become due at a later date within 10 days of a written request indicating such sums are due. If any sums are disputed, this shall be dealt with in accordance with clause 9 (IX).
- ii. Save only as expressly provided otherwise in this Agreement, no part of the Charges shall be repayable on termination of this Agreement for any reason.
- iii. In the event of termination of this Agreement for any reason whatsoever, EOD shall (if applicable) facilitate an orderly handover of the provision of the EOD Services to the Customer and/or a new service provider.

## 12. CUSTOMER DATA

- i. EOD does not own any Customer Data submitted in the course of using the Service
- ii. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and right to use all Customer Data.
- iii. EOD may access, process and use Customer Data as reasonably necessary to:
  - a. operate or maintain the Service (including virus scanning)
  - b. to evaluate or improve the performance and implementation of the Service or Software
  - c. to perform statistical analysis and other data mining activities and to present such data in whatever format EOD requires to measure, amongst other things, interest in and use of the Service or Software. During this process, EOD shall not identify Customer Data with the Customer nor specifically identify any individual, company or entity to the extent that the Customer Data contains any Personal Data (as used in Clause 16 below), it shall not be used for this purpose. Data that has been made anonymous is no longer Personal Data.
  - d. to develop and design new products and services provided that all Customer Data disclosed or made available pursuant to this section to any third party not subject to obligations of confidentiality to the Customer or EOD shall not identify Customer Data with the Customer nor specifically identify any individual, company or entity to the extent that the Customer Data contains any Personal Data (as used in Clause 16 below), it shall not be used for this purpose. Data that has been made anonymous is no longer Personal Data.
- iv. In the event this Agreement is terminated (other than by reason of Customer's breach), EOD will make available to the Customer access to the Customer Data for a period of up to 30 days from date of termination. EOD reserves the right to withhold, remove and/or discard Customer Data without notice following any breach, including, without limitation, non-payment. Upon termination for cause, the Customer's right to access or use Customer Data immediately ceases, and EOD shall have no obligation to maintain or forward any Customer Data
- v. Notwithstanding anything contained herein and within such period that EOD is obligated to save any data under the provision of this TOS, EOD will, at the written direction of the customer, delete or destroy, such Personal Data and copies thereof and certify, in writing, its compliance in relation to such requirements. The Customer, anyway, has the right and the option to delete data as and when required.

- vi. EOD will ensure that any person authorised to access Personal Data shall be subject to written (or statutory) obligations to maintain the confidentiality of Personal Data, comply with the obligations in this Agreement and are trained on the requirements of Data Protection Legislation and their obligations in respect of Personal Data under this Agreement.

### 13. WARRANTIES

- i. EOD warrants and represents that it has the right to licence the Software as provided in this Agreement
- ii. EOD warrants and represents to the Customer that the Customer's use of the Software in accordance with the terms of this Agreement shall not infringe the intellectual property rights of any third party. EOD hereby indemnifies the Customer against any and all actions, suits, claims, liabilities, demands, losses, charges, damages, costs and expenses that the Customer may suffer or incur as a result of any third party claiming that the Software or Licensed Material infringe that third party's intellectual property rights.
- iii. Notwithstanding any other provision of this TOS, EOD does not warrant that use of the Software will meet the Customer's data processing requirements nor that the operation of the Software will be uninterrupted or error-free.
- iv. EOD accepts no liability concerning the use or non-use of any data reports or information provided or available to the Customer within the Service. Such data reports or information may need further expert or specialist advice or configuration or interpretation to be obtained by the Customer before they can be fully or partly understood or assessed, or use made of or reliance placed on them
- v. All data reports or information provided or available to the Customer as part of or in connection with the Service is for the Customer's own exclusive internal use. EOD does not accept any obligation or liability to any third party or generally and the parties do not intend that these Terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to them

### 14. LIMITATION OF LIABILITY:

- i. THE OBLIGATIONS ACCEPTED BY EOD IN CLAUSE 8, Section I, II, III, IV V AND VI ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE DATA REPORTS AND DOCUMENTATION AND SERVICE PROVIDED BY EOD INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY. NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. SUBJECT TO THE SERVICE UPTIME COMMITMENT EOD DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE OR SERVICE WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, ERROR-FREE, OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES EOD WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET. EOD TRIES TO MAKE SURE YOUR USE OF THIS WEBSITE IS UNINTERRUPTED AND INFORMATION TRANSMITTED OVER IT IS FREE OF ERRORS. BUT EXTERNAL FACTORS MEAN THIS CAN'T BE GUARANTEED.
- ii. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EOD IS NOT RESPONSIBLE AND SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE OR LOSS RESULTING IN ANY WAY FROM SUCH USE. THE CLIENT ACKNOWLEDGES AND CONFIRMS THAT IT HAS HAD AN OPPORTUNITY TO CARRY OUT A THOROUGH DUE DILIGENCE EXERCISE IN RELATION TO THE SERVICES AND THIS CONTRACT INCLUDING ASKING QUESTIONS IT CONSIDERS RELEVANT, RECEIVING INFORMATION AND CONSIDERING INFORMATION AND MAKING ITS OWN ENQUIRIES TO SATISFY ITSELF AS TO THE ACCURACY AND COMPLETENESS OF ANY INFORMATION RECEIVED AND HAS RAISED ALL RELEVANT DUE DILIGENCE QUESTIONS WITH EOD BEFORE ENTERING INTO THIS CONTRACT AND HAS ENTERED INTO THIS CONTRACT IN RELIANCE ON ITS OWN DUE DILIGENCE.
- iii. IN ANY EVENT **EACH PARTY'S CUMULATIVE LIABILITY** UNDER THESE TERMS OR ANY TRANSACTION CONTEMPLATED HEREUNDER OR FOR ANY DATA REPORT OR INFORMATION OR SERVICE PROVIDED TO THE CUSTOMER OR ANY DEFECT OR FAILURE THEREIN OR ARISING FROM ANY COURT OF COMPETENT JURISDICTION HOLDING ANY OF THE ABOVE WARRANTIES OR DISCLAIMERS OR LIMITATIONS OF LIABILITY INVALID, INCLUDING ANY CAUSE OF ACTION IN CONTRACT, TORT OR STRICT LIABILITY, SHALL BE LIMITED TO ONE TIMES THE AMOUNT OF FEES PAID BY CUSTOMER TO EOD UNDER THESE TERMS DURING THE 12 MONTHS PRIOR TO SUCH EVENT.
- iv. EACH PARTY'S **LIMITATION OF LIABILITY IS CUMULATIVE WITH BOTH PARTIES' EXPENDITURES** TO ADDRESS LIABILITY BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. EACH PARTY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITIES, CLAIMS OR DEMANDS IN EXCESS OF THE LIMITATION. THE PARTIES ACKNOWLEDGE THAT OTHER PARTS OF THESE TERMS RELY UPON THE INCLUSION OF THIS SECTION AND THE RESULTING ALLOCATION OF RISKS.
- v. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE TERMS OF THIS AGREEMENT DO NOT OPERATE BY WAY OF PENALTY AND CONSTITUTE A GENUINE ATTEMPT TO PRE-ESTIMATE LOSS TO CUSTOMER.
- vi. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION) HOWEVER CAUSED (INCLUDING NEGLIGENCE) ARISING OUT OF THE RELATIONSHIP BETWEEN EOD AND CUSTOMER EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- vii. NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER PARTY, ITS SERVICE ENTITIES AND PERSONNEL FOR DEATH OR PERSONAL INJURY CAUSED BY THEIR NEGLIGENCE OR THE NEGLIGENCE OF THEIR EMPLOYEES AGENTS OR CONTRACTORS
- viii. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT EOD HAS NO LIABILITY TO ANY PERSON FOR THE CONTENT OF ANY THIRD-PARTY PUBLICATIONS AND SOURCES UPON WHICH ANY SERVICE IS BASED.
- ix. EOD ACCEPTS NO LIABILITY FOR ANY CLAIM NOTIFIED TO IT MORE THAN ONE MONTH AFTER THE DATE OF RECEIPT BY THE CUSTOMER FROM EOD OF THE DATA REPORT OR INFORMATION IN RESPECT OF WHICH THE CLAIM ARISES.
- x. AS SOME JURISDICTIONS DO NOT ALLOW SOME OF THE EXCLUSIONS SET OUT IN THIS SECTION, SOME OF THESE EXCLUSIONS MAY NOT APPLY.

## 15. CONFIDENTIALITY

- i. Definition of Confidential Information
  - a. "Confidential Information" means non-public information that a party to these Terms ("Disclosing Party") designates as being confidential to the other party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party and includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased software or hardware products or services, the marketing or promotion of any product or service, business policies or practices, and information received from others that the Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in these Terms, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party.
  - b. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party
- ii. Confidential Information shall not include any information, however designated, that
  - a. is or subsequently becomes publicly available without the Receiving Party's breach of any obligation owed to the Disclosing Party
  - b. became known to the Receiving Party from a source other than the Disclosing Party other than by the breach of an obligation of confidentiality owed to the Disclosing Party
  - c. is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information
  - d. is necessarily disclosed by the Receiving Party pursuant to a statutory or regulatory obligation, but then only to the extent of such required disclosure.
- iii. Obligations regarding Confidential Information.
  - a. The Receiving Party shall:
    - i. refrain from disclosing any Confidential Information of the Disclosing Party to third parties, except as expressly provided in this section.
    - ii. take reasonable security precautions, at least as great as the precautions it takes to protect its own Confidential Information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party
    - iii. refrain from disclosing, reproducing, summarising and/or distributing Confidential Information of the Disclosing Party except in pursuance of the Receiving Party's business relationship with the Disclosing Party, and only as otherwise provided hereunder.
  - b. The Receiving Party may disclose Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order, provided that the Receiving Party either
    - i. gives the Disclosing Party reasonable notice prior to such disclosure to allow the Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or
    - ii. obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.
  - c. The Receiving Party may disclose Confidential Information only to the Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third parties sufficient to enable the Receiving Party to enforce all the provisions of this clause.
  - d. The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorised use or disclosure of Confidential Information or any other breach of this clause by the Receiving Party and its employees and consultants, and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorised use or disclosure. The Receiving Party shall, upon termination of these Terms and at the Disclosing Party's request, return or certify destruction of or deletion from all computers of all originals, copies, reproductions and summaries of Confidential Information and other tangible materials and devices provided to the Receiving Party as Confidential Information
- iv. Remedies.
  - a. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information and that the Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- v. Miscellaneous.
  - a. All Confidential Information is and shall remain the property of the Disclosing Party. By disclosing Confidential Information to the Receiving Party, the Disclosing Party does not grant any express or implied right to the Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. The Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.
  - b. The parties agree to comply with all applicable UK laws that apply to any Confidential Information or any product (or any part thereof), process or service that is the direct product of the Confidential Information.
  - c. These terms of confidentiality shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information.

## 16. DATA PROTECTION

- i. The Customer acknowledges that in connection with the performance of its obligations under these Terms, EOD and any outsource web site hosting entity that EOD may use in connection with the Service may carry out processing on Personal Data relating to employees of the Customer. (The category of Personal Data is email addresses of employees of the Customer) EOD shall carry out such operations in compliance with any applicable Data Protection Legislation in force from time to time, and shall, without limitation to the foregoing:
  - a. warrant that it will provide the Services with the degree of skill and care reasonably expected from a reasonably skilled and experienced global supplier of Services substantially similar in nature and complexity of the Service and take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data
  - b. only disclose Personal Data or information extracted from such data to third parties in accordance with sub-clause (c) below or with the prior written approval of the Customer, subject to the non-disclosure exemptions set out within the DPL
  - c. If EOD receives any complaint, notice or communication which relates directly or indirectly to the processing of Customer Data or to either party's compliance with applicable Data Protection Legislation and the data protection principles set out therein (including from a data subject or any person or regulatory body with responsibility for monitoring and/or enforcing compliance with the Data Protection Legislation), it shall, unless repugnant to applicable laws/regulations/directions of any regulatory/judicial authority:
    - i. promptly notify the Customer and provide full details of any complaint, notice or communication;
    - ii. only respond to any such complaint, notice or communication received, together with a copy to the Customer if authorised by the Customer;
    - iii. provide the Customer with necessary co-operation and assistance, as may be legally required, in relation to any such complaint, notice or communication.
- ii. The Customer acknowledges that it is solely responsible for the creation of all Personal Data upon which EOD and any outsource web site hosting entity that EOD may use in connection with the Service carries out Processing under these Terms. The Customer shall make obtain and maintain all necessary notifications authorisations and consents the Customer is required to have for the Processing of Personal Data to be carried out by EOD and any such outsource web site hosting entity under these Terms. EOD acknowledges that Personal Data in the possession of EOD and any such outsource web site hosting entity shall at all times remain the property of the Customer
- iii. The Customer hereby instructs EOD and its sub-processors, as the case maybe, to carry out such Processing on Personal Data, only to the extent and in such a manner as is reasonably required by EOD to perform its obligations under these Terms. The Customer may vary the instruction given by this section with respect to the Processing of Personal Data at any time by written notice to EOD provided that EOD shall have no liability of any kind to the Customer for any loss or damage suffered by or claim made by any person against the Customer arising directly or indirectly from EOD complying with such notice.
- iv. EOD shall not transfer any Personal Data outside of the European Union, unless prior written consent of customer has been obtained, in addition to meeting the following conditions:
  - a. Adoption of appropriate safeguards in relation to the transfer;
  - b. Compliance to chapter 3 of UK GDPR;
- v. EOD will notify the customer upon becoming aware of any actual, threatened or potential breach of security or loss of the Personal Data and, if a breach of security or loss occurs, immediately take all reasonable steps necessary to:
  - a. remedy such breach or loss or protect the Personal Data against any breach or threat; and
  - b. prevent an equivalent breach or loss in the future.
- vi. EOD does not exclude or limit its liability for damages or fines resulting from a breach of its data protection and security obligations that result in an unauthorised use or disclosure of personal data, or any breach of applicable Data Protection Legislation.
- vii. Neither party will exclude or limit its liability for damages resulting from either party's breach of its data protection and security obligations that result in an unauthorised use or disclosure of personal data, or any breach of applicable Data Protection Legislation.

## 17. INTELLECTUAL PROPERTY

- i. The Customer agrees and acknowledges that this Agreement confers on it no rights in the Expense On Demand Service and Software or the Licensed Materials other than as are expressly granted by this Agreement.
- ii. The Customer shall not:
  - a. copy or translate the whole or any part of the Software or the Licensed Material
  - b. modify, merge or combine the whole or any part of the Software or the Licensed Material with any other software or documentation
- iii. The Customer shall:
  - a. keep confidential the Software and the Licensed Material and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Software and the Licensed Material permitted by this Agreement
  - b. maintain or reproduce all copyright and trade mark notices on each copy of the Software and the Licensed Material



- c. without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights in the Software and the Licensed Material in its possession from any access use copying or disclosure not authorised by this Agreement
- iv. The Customer agrees to use the Software and any downloaded components of the Software only as provided in this Agreement and that it will not use the Software to develop similar systems or services to those provided by Expense On Demand or for any other purpose except that its trained employees, agents or sub-contractors may make such configurations to the Software as are permitted under clause 3
- v. EOD alone (and its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Service, the Software and the Licensed Material and any suggestions, ideas, paid for enhancements, feedback, recommendations or other information provided by the Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Software, the Licenced Material or the Intellectual Property Rights owned by Expense On Demand. Expense On Demand, the Expense On Demand logo, and the product names associated with the Service are trademarks of Expense On Demand or third parties, and no right or license is granted to use them.
- vi. To assist with the development of the Software and the Service, the Customer may from time to time provide suggestions, comments or other feedback ("Suggestions") to Expense On Demand with respect to the Software and Service. The Customer acknowledges and agrees that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not, absent a separate written agreement, create any confidentiality obligation on the part of Expense On Demand. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, Expense On Demand shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit Suggestions as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.
- vii. EOD shall indemnify the Customer in respect of any claims that the Service, the Software or the Licensed Materials breach third party intellectual property rights.
- viii. The provisions of this clause shall survive any termination or expiry of this Agreement.

## 18. DATABASE INTELLECTUAL PROPERTY:

- i. The Customer acknowledges and agrees that, with the exception of Customer Data, all intellectual property rights of any kind in EOD's databases, the information that they contain, data, reports or information derived from them shall be the exclusive property of EOD. EOD grants to the Customer a non-exclusive, non-transferable licence to use for its own internal purposes data, reports and information provided or available to the Customer as part of or in connection with the Service for such subscription periods and such individual expense accounts in respect of which the Customer shall have paid to EOD all applicable Charges
- ii. If EOD provides or makes available to the Customer as part of or in connection with the Service data reports or information the use of which is subject to conditions or restrictions, third party or otherwise, the Customer agrees to comply with such conditions or restrictions
- iii. The Customer shall indemnify EOD from any loss or liability incurred by EOD from any failure of the Customer to comply with this clause.

## 19. LOCAL LAWS & EXPORT CONTROL

The Service provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. The Customer acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

EOD and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the content contrary to United States or European Union (including European Union Member States) law is prohibited. None of the content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

## 20. FORCE MAJEURE

- i. "Force Majeure" shall mean any event or condition not existing at the date of these Terms, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties

of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. For the avoidance of doubt, lack of funds on the part of a party to make on the due date any payment required under these Terms shall not constitute an event of Force Majeure II.

- ii. Notice. Upon giving written notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under these Terms, except for the obligation to pay any amounts due and owing hereunder, and then only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. The other party may likewise suspend the performance of all or part of its obligations or terminate the Agreement if the party affected by an event of Force majeure is so affected for 15 days or more.

## 21. WEBSITE SECURITY

- i. The Customer represents and warrants that
  - a. it has the legal right and ability to enter into and comply with these Terms and any licence conditions attaching from time to time to the use of Software
  - b. it will use the Service and Software for lawful purposes only and in accordance with all applicable UK laws, regulations and these Terms
  - c. it will not use any automatic or manual device or process nor take any steps to interfere with or in any manner compromise any security measures or the proper working of the Service or any other individual's or entity's computer using the Service or otherwise sharing the Service
  - d. it will not collect any information or communication about the Service or Users of the Service by monitoring, intercepting or intercepting any process of the Service or Software e. it will not use any type of bot, spider virus, clock, timer, counter, worm, software lock, drop dead device, packet-sniffer, trojan-horse routing, trap door, time bomb or any other codes or software instructions that are designed to be used to provide a means of surreptitious or unauthorised access or that are designed to distort, delete, damage or disassemble the Software, the Service or the EOD website
  - e. it will not use the Software or Service to develop, generate, transmit or store information that infringes any third party's intellectual property or other proprietary right or is defamatory, harmful, abusive, obscene or hateful or performs any unsolicited commercial communication not permitted by applicable law or is harassment or a violation of privacy or threatens others or impersonates any other person or steals or assumes any person's identity (whether a real identity or online nickname or alias)
  - f. if requested by EOD on reasonable grounds it will provide true, accurate, current and complete information on its use of the Service
  - g. the Software and Service will be accessed only by devices on which such use is authorised by the owner of the device
- ii. EOD reserves the right to involve, and cooperate with, law enforcement authorities in prosecuting users who have participated in actions that may involve breaches of this section.
- iii. If EOD has reasonable grounds to suspect that the Customer's representations, warranties or promises are inaccurate or breached, EOD may with reasonable written notice suspend (without prejudice to any right to terminate) or terminate the Customer's rights under these Terms and any licence attaching from time to time to the use of Service and Software.
- iv. The Customer agrees to indemnify and hold harmless EOD and its officers, employees, agents and network service providers against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable legal fees and other dispute resolution expenses) incurred by EOD arising out of or relating to any actual or threatened or alleged breach by the Customer of this section.

## 22. MISCELLANEOUS

- i. Unauthorized testing. Without prejudice to any right of audit or access granted to the Customer, the Customer shall not be entitled, at any time and in any event without giving notice to EOD, to carry out tests (including penetration tests) on the Service or Software system environment.
- ii. Authorized testing. Upon request from the Customer, EOD may provide authorisation to perform security related tests. Any such tests shall be on a replica of the live system and any reasonable costs incurred by EOD in making available a suitable test environment shall be paid by the Customer. Any such tests shall be designed and implemented so as to be non-invasive, minimise the impact on the delivery of the services and for the avoidance of doubt shall not be designed to provoke a denial of service. Full details of any proposed tests must be provided to EOD at the time of seeking permission to undertake any such tests. In the event of any security vulnerability or weakness being suspected this shall not be exploited in any way by the Customer or any of its representatives other than for the Customer to bring to the attention of EOD that there may be an area of weakness or vulnerability. If such tests impact adversely on its ability to deliver the Service, Expense On Demand shall be granted relief against any resultant under-performance for the period of the tests. The Customer will notify EOD of the results of such tests after completion of each such test.
- iii. Assignment. This Agreement may not be assigned by the Customer without the prior written approval of EOD. EOD may assign this Agreement without the consent of the Customer to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.
- iv. Change of Control. Any actual or proposed change in control of the Customer that results or would result in a direct competitor of EOD directly or indirectly owning or controlling 50% or more of the Customer shall entitle EOD to terminate this Agreement for cause immediately upon written notice.

- v. Unenforceability. If any term of these Terms is held to be invalid, illegal or unenforceable, such term shall be considered severable from these terms and the remaining terms shall continue in full force and effect. The parties shall negotiate in good faith to replace a severed term with a term that is closest to the intent of the parties at the time the severed term was entered into.
- vi. Notices. Unless otherwise specified in these Terms, any notice request instruction or other document to be given hereunder shall be delivered by hand or sent by first class or registered or certified post or by facsimile or email to the address of a party notified to the other party for such purposes (or if there is no such address the last known address of a party) and any such notice request instruction or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile or email) upon the completion of transmission (provided that if sent by email such notice is also effected by one other method prescribed hereunder).
- vii. Governing Law and Jurisdiction. The parties consent to the exclusive jurisdiction by the Courts of England in connection with any dispute arising between them. These Terms shall be governed by and construed in accordance with the laws of England.
- viii. Waiver. No failure by either party to take any action or assert any right hereunder shall be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- ix. Enforcement costs. If either party employs legal representatives to enforce any rights arising out of or relating to these Terms, the prevailing party shall be entitled to recover reasonable legal fees and costs

## 23. ELECTRONIC AGREEMENT

- i. The Customer acknowledges and agrees that:
  - a. by accessing, using or receiving the Service or Software and by making electronic transmissions to EOD in connection with this Agreement and any other licence conditions attaching from time to time to the use of the Service or Software are legally binding upon it whether or not an authorised employee agent or contractor of the Customer clicked on any button or such similar links as may be designated by EOD to accept this Agreement or download any Software
  - b. pursuant to any applicable statutes, regulations, rules, ordinances or other laws, IT ACCEPTS THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, CONTRACTUAL TERMS, RECORDS OF TRANSACTIONS AND OTHER DATA INITIATED OR COMPLETED THROUGH THE SERVICES and
  - c. it hereby waives any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records.