

# Exact Editions Web Services Publisher Agreement

Exact Editions is a Limited Company Registered in the United Kingdom (5467699) with its place of business at Lins House, 38 Rosebery Avenue, London EC1R 4RN

## 1. The Services

Exact Editions provides various services which make magazines, books, catalogues, reports and other documents accessible, searchable and usable on the web and through applications (apps) distributed through the Apple iTunes and other mobile app systems. The digital distribution and web access services covered by this Agreement include both free services that Exact Editions (referred to together herein as “we” or “us”) make available to publishers for no fee (the “Free Services”), and services that we make available for a fee (the “Paid Services”). The Free Services and the Paid Services are referred to collectively in this Agreement as the “Services.” Each Free Service and Paid Service is referred to individually as a “Service.”

### 1.1. Free Services

The Free Services include the testing and demonstration services which we provide for no charge to publishers who may be evaluating the Exact Editions platform accessible from [exacteditions.com](http://exacteditions.com) (the “Exact Editions Website”). The Free Services also include various complimentary activities that we provide to publishers who have engaged us for Paid Services (e.g. voucher subscriptions, statistical reporting on web usage, information on sales and subscriptions reported to the publisher through a Publisher Account, promotional tools etc)

### 1.2. Paid Services

The Paid Services include all services that we make available at your request and on your behalf via the Exact Editions Website including app customisation and delivery and any related support services for the general public. Our Paid Services include, but are not limited to:

- Digital Magazines
- Universal Subscriptions

If you use any of the Exact Editions Paid Services we will email you a Rate Card for the Service(s) which outlines the charges which we will make for the provision of the Paid Service(s).

## 2. Modifications to this Agreement

You agree that we may modify this Agreement or any policy or other terms referenced in this Agreement (collectively, “Additional Policies”) at any time by posting a revised version of the Agreement or such Additional Policy on the Exact Editions Website:

By continuing to use or receive the Services after the effective date of any revisions to this Agreement or any Additional Policies, you agree to be bound by the revised Agreement or

any revised Additional Policies. It is your responsibility to check the Exact Editions Website regularly for changes to this Agreement or the Additional Policies, as applicable. We last modified this Agreement on the date given at the top of this Agreement.

## **3. Term, Termination and Suspension**

### **3.1. Term**

The term of this Agreement (“Term”) will commence, and you may begin using the Services, once you agree to the terms and conditions of this Agreement by clicking the “Accept” button below and submit a PDF file of a publication to the Exact Editions Website. The Agreement will remain in effect until terminated by you or us in accordance with this Section 3.

### **3.2. Termination by You for Convenience**

You may terminate this Agreement for any reason or no reason at all, at your convenience, by (i) providing us written notice of termination in accordance with Section 13 and (ii) closing your account for any Service for which we provide an account closing mechanism. Our account closing mechanisms observe the principle that customers who have paid for a subscription should have their subscriptions fulfilled for the term of their subscription.

### **3.3. Termination or Suspension by Us Other Than for Cause**

**Free Services:** We may suspend your right and license to use any or all Free Services for any reason or for no reason, at our discretion at any time, immediately upon notice to you in accordance with the notice provisions in Section 13.

**Paid Services:** We may suspend your right and license to use any or all Paid Services or terminate this Agreement in its entirety (and, accordingly, cease providing all Services to you), for any reason or for no reason, at our discretion at any time by providing you ninety (90) days’ advance notice in accordance with the notice provisions below.

### **3.4. Termination or Suspension by Us for Cause**

We may suspend your right and license to use any individual Service or any set of Services, or terminate this Agreement in its entirety (and, accordingly, your right to use all Services), for cause effective as follows:

**Immediately** upon our notice to you in accordance with the notice provisions in Section 13 if (1) you seek to hack or break any security mechanism on any of the Services or we otherwise determine that your use of the Services poses a security or service risk to us; (2) we determine, in our sole discretion, there is evidence of fraud with respect to your account; (3) we receive notice or we otherwise determine, in our sole discretion, that you may be using our Services for any illegal purpose or in a way that violates the law or violates, infringes, or misappropriates the rights of any third party; or (4) upon your liquidation, commencement of dissolution proceedings, disposal of your assets, failure to continue your business, assignment for the benefit of creditors, or if you become the subject of a voluntary or involuntary bankruptcy or similar proceeding.

**Thirty (30) days** following our notice to you in accordance with the notice provisions in Section 13 below if you are in default of any payments with respect to any of the Services and you fail to cure such default within such 30 day period.

## 4. Copyright and Infringements

Nothing in this Agreement shall vest in Exact Editions any ownership of the intellectual property in files or content uploaded by the Publisher, which at all times shall remain the property of the Publisher (or its clients, authors or contributors) but subject to the licence granted to Exact Editions hereunder.

If Exact Editions becomes aware of any infringement of the Publisher's intellectual property rights granted hereunder it shall immediately inform the Publisher and take appropriate action in consultation with the Publisher. Upon complaint of a third party, or if Exact Editions believes content may infringe or violate the rights of third parties, it may modify or delete the content.

## 5. Terms of Service

All Exact Editions services are governed by our ['Terms of Service'](#).

These terms have been carefully considered by us and should be reviewed and studied by you in the course of evaluating our services. When you submit a PDF file of a publication to the Exact Editions Website you will be deemed to have accepted and be bound by these user-facing provisions of our services.

## 6. Warranties

The Publisher hereby represents, warrants and covenants that:-

(i) it has and will have during the Term full right and power to enter into and give effect to this Agreement and authorise Exact Editions to use the content (including all PDF files uploaded and/or any font copyrights and/or any interactive Bonus Media files) as permitted hereunder; (ii) no third party has any rights which would render the Service unlawful; (iii) the content does not infringe any patent, trade mark, copyright, or other rights of third parties; and (iv) the content does not contain anything which is obscene, defamatory, libelous or is in violation of any right of privacy or obligations relating to data protection. The Publisher shall indemnify, defend and hold harmless Exact Editions from any and all claims, losses, damages, liabilities and costs arising out of any breach or alleged breach of any of its representations, warranties and covenants in this Section.

Exact Editions hereby represents, warrants and covenants that: (i) it has and will have during the Term full right and power to enter into and give effect to this Agreement and to operate the Service; (ii) no third party has any rights which would render the Service unlawful; and (iii) the operation of the Service does not infringe any patent, trade mark, copyright, or other rights of third parties. Exact Editions shall indemnify, defend and hold harmless the Publisher from any and all claims, losses, damages, liabilities and costs arising out of any breach or alleged breach of any of its warranties, representations and covenants in this Section.

## 7. Fees

In consideration of your use of any of the Paid Services, you agree to pay applicable fees for Paid Services in the amounts set out on the respective Rate Card. We may increase or

add new fees for any existing Service or Service feature, or implement a fee for any previously Free Service or Free Service feature, by giving you 30 days' advance notice. All fees payable by you are exclusive of applicable taxes and duties, including, without limitation, VAT and applicable sales tax. You will provide such information to us as reasonably required to determine whether we are obligated to collect VAT from you, including your VAT identification number.

## **8. Royalties**

For any Paid Service where Exact Editions sells Services or collects revenues on behalf of the Publisher, Exact Editions shall pay the Royalties to Publisher quarterly with payments and statements due within 30 days of the end of each quarter day. All payments are calculated on the basis of the actual net receipts received by Exact Editions excluding (a) VAT, sales tax or other similar taxes, (b) credit card, bank or payment service processing charges costs incurred in the online transaction or through the app store e-commerce service and (c) chargebacks and returns.

## **9. Privacy and Customer Data**

For some of the Paid Services Exact Editions provides publishers with extensive and specific data on the aggregate usage of the publications accessed. For some of the Paid Services, Exact Editions provides publishers with real-time data on the subscriptions, transactions and the individual subscriber details collected by Exact Editions. Any information collected and transmitted by Exact Editions about individual subscribers is subject to the Exact Editions [Privacy Policy](#), and the Publisher agrees to be bound by this policy.

## **10. Pricing**

For any Paid Service where Exact Editions sells Services directly on behalf of the Publisher, the Publisher shall set the Price using one of the currencies supported by the Exact Editions e-commerce system and within reason may change the price (it is probably not reasonable to change prices more than once a month, or more than three times a year). Where sales are made via a third party service and Exact Editions collects revenues on behalf of the Publisher (e.g. an app store), Exact Editions will advise the Publisher on the options available within that system.

## **11. Publisher Accounts**

When you have clicked on the "Accept" button below and submitted a PDF file of a publication to the Exact Editions Website we will, subject to approval of the PDF file as suitable for our service, issue you with a Publisher Account. This account will be tied to the email address that you entered following completion of the "Accept" form, and this Primary Contact will be able to request that additional Secondary Contacts have access to the Publisher Account. All users of your Publisher Account will be able to upload new files to the system, and to access information that may be confidential to your business about the sales, usage, subscriptions to your publications.

You are fully responsible for all activities that occur under your account, regardless of whether such activities are undertaken by you or a third party. Therefore, you should contact us immediately if you believe a third party may be using your account or your

password has been compromised or stolen. You are responsible for maintaining up-to-date and accurate information (including contact information) for your Exact Editions account.

## **12. Enhanced Content and Metadata**

Exact Editions will enhance the content supplied by the publisher using an automated process through which page references, navigational tools and various forms of meta-data and linkage are added to the content supplied by the publisher (URLs, email addresses, phone numbers, zip codes/post codes, ISBNs, and other data types are rendered explicit through markup). The process is automated and improved on a regular basis but it is not infallible. The Exact Editions content management process also extracts text data from the content submitted and uses this as a resource for search engines, and to provide accessible services to the visually impaired. Publishers who evaluate the Exact Editions service should take advantage of the free trial services that we provide to satisfy themselves that the enhancements offered by the process are indeed beneficial to the reader/consumer. In any event, Exact Editions does not and will not make any proprietary claims to the content enhancements delivered or produced for the publishers' copyrights. Further, publishers who use our Paid Services may request and will be provided with a copy of files resulting from the Exact Editions content management service with all enhancements and meta-data in place.

## **13. General**

### **Confidentiality**

Each party undertakes to keep and treat as confidential and not disclose to any third party, any confidential information relating to the business or trade secrets of the other, other than pursuant to an order of a court of competent jurisdiction

### **Limitation of Liability; Disclaimer of warranty**

Exact Editions is not liable for any indirect, special, consequential, incidental damages, including but not limited to lost data or lost profits, even if we have been advised of the possibility of such damages. Our liability for damages under this Agreement shall in no event exceed the amount paid by you, if any, for the Services as to which the claim arose during the 12 months prior to bringing the claim. The parties agree to the allocation of liability which is set forth herein. EXCEPT AS WE OTHERWISE EXPRESSLY WARRANT, THE SERVICES ARE PROVIDED "AS IS", AND WE GIVE NO IMPLIED WARRANTIES, INCLUDING OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

### **Notice**

All notices required to be given hereunder shall be sent by e-mail to the e-mail address of the Principal Contact for the Publisher and for Exact Editions should be sent to publisher.contracts@exacteditions.com.

**Governing Law**

This Agreement shall be governed by English law (without reference to its choice of law provisions) and the parties agree that the English Courts will have exclusive jurisdiction to deal with any dispute arising.