

PUBLISHER TERMS OF SERVICE

Last modified on: 01/07/2024

1. INTRODUCTION

These Publisher Terms of Service (“**Publisher Terms**”) set forth the legally binding terms and conditions that covers your access to and use of Indixital’s services (“**Services**”) through the website(s) <https://indixital.com/>, its sub-domains, mobile sites, mobile applications (the “**Platform**” as defined below) offered by **Indixital Media Private Limited** (“**Indixital**”, “**us**”, “**our**”, and “**we**”). The “**Publisher**”, “**you**”, “**your** ” shall refer to any natural person or any legal entity and its authorized users that subscribes or uses the services offered through the Platform. Certain features of the Platform may be subject to additional guidelines, terms, or rules, which will be posted on the Platform in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

By creating the Publisher Account with Indixital and accessing the Platform, you are accepting these Terms (on behalf of yourself or the entity that you represent), and you represent and warrant that you have the right, authority, and capacity to enter into these Terms (on behalf of yourself or the entity that you represent). If you do not agree with all of the provisions of these Terms, do not access and/or use the Platform.

Modifications to this Publisher Terms: From time to time, Indixital may modify this Publisher Terms. Your use of the Services following any such modification constitutes your Publisher Terms to follow and be bound by the Terms so modified. Indixital will use reasonable efforts to notify Publisher of the changes through communications via Publisher’s Account, email or other means.

The “**Effective Date**” of these Terms is the date which is the earlier of (a) Publisher’s initial access to any Platform through any online provisioning, registration or order process or (b) effective date of any Publisher or Publisher Publisher Terms signed with the Publisher or (c) the effective date of any invoice or order form, as applicable, referencing this Publisher Terms. This Publisher Terms will govern Publisher’s initial purchase on the Effective Date as well as any future purchases made by Publisher that reference this Publisher Terms.

In consideration of the terms and conditions set forth below, the Parties agree as follows:

2. CREATION OF ACCOUNT ON THE PLATFORM

- a. **Platform** refers to the digital marketing platform operated by Indixital, which facilitates the connection between Publisher and Publisher to promote products and services through content creation and promotion also the creation and monetization of content through affiliate links and direct partnerships with Publisher.
- b. **Publisher** refers to the entity or individual that contracts with Indixital to use the Platform and use the Platform to promote products and services offered by Publisher listed on the Platform through their Publisher Sites. Publisher Sites refer to Publishe’s digital properties including but not limited to, Publisher’s website(s), its subdomains, sub-portals, mobile applications, profiles and pages on social media channels, emails, SMS, through which they are developing, managing and hosting online content.
- c. For more details, you can check on the offerings available for Publisher by Indixital [here](#). The description for the Services provided through the Platform is not exhaustive and can change or be modified by Indixital at their sole discretion.

- d. **Account Creation.** In order to use the Platform, you may need to register for an account (“**Account**”) and provide certain information about yourself as prompted by the account registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. Indixital may suspend or terminate your Account in accordance with the Termination Section.
- e. **Account Responsibilities.** You agree to keep your Account information current, accurate and complete so that Indixital may send notices, statements and other information to Publisher via email or through its Account, which notifications will be subject to this Publisher Terms and the [Privacy Policy](#). You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Indixital of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Indixital shall not be held liable for any loss or damage arising from your failure to comply with the above requirements.

3. ACCESS TO THE PLATFORM BY PUBLISHER

- a. Subject to these Terms, Indixital grants you a non-transferable, non-exclusive, non-assignable, revocable, limited right to use and access the Platform solely for your internal business purposes, in accordance with the Account type you are currently subscribing to.
- b. Indixital authorizes Publisher to place uniquely generated links and promotional content onto Publisher Sites in exchange for receiving commissions on eligible transactions that result from such placements in accordance with these Terms.
- c. Indixital will make the Platform available to Publisher pursuant to this Publisher Terms, any applicable service order forms or any other legal documentation signed between the parties, including the DPA, the [Privacy Policy](#) and laws and government regulations applicable to Indixital’s business, during the Term.
- d. Indixital reserves the right, at any time, to modify, suspend, or discontinue the Platform (in whole or in part) with or without notice to you. You agree that Indixital will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Platform or any part thereof.
- e. No Support or Maintenance. You acknowledge and agree that Indixital will have no obligation to provide you with any support or maintenance in connection with the Services except to the extent agreed to in writing.
- f. **General Restrictions:** Publisher agrees and undertakes that it will not directly (via its permitted Accounts) and/or indirectly via third parties (i) modify, adapt, translate, copy, archive, store, reproduce, rearrange, download, upload, display, perform, publish, distribute, redistribute or otherwise create derivative works of the Platform; (ii) circumvent, disable or otherwise interfere with security-related features of the Platform or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Platform; (iii) give, sell, rent, lease, timeshare, outsource, sublicense, disclose, publish, assign, market, resell, transfer or distribute any portion of the Platform to any third party, including, but not limited to Publisher’s affiliates, or use the Platform in any service bureau arrangement; (iv) reverse engineer, decompile or disassemble the Platform or any components thereof or otherwise attempt to discover the underlying ideas, algorithms, structure or organization of the Platform; (v) disclose or publish the results of any benchmark tests run on the Platform; (vi) use any robot, spider, scraper, or other automated means to access the Platform for any purpose; (vii) take any action that imposes or may impose an unreasonable or disproportionately large load on the Platform infrastructure; (viii) interfere or attempt to interfere with the integrity or proper working of the Platform, or any related activities; (ix)

modify, translate, patch, alter, change or create any derivative works of the Platform, or any part thereof; (x) disclose permitted Platform account details, user names or passwords to any third party; (xi) remove, deface, obscure, or alter Indixital's or any third party's copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Platform, or use or display logos with the Platform differing from Indixital without Indixital's prior written approval; (xii) hack, deface or otherwise misuse the Platform or attempt to gain unauthorized access to other parts of the Platform or the underlying technology for the Platform (xiii) build a competing product or develop a Platform using similar ideas, features, functions, interface or graphics; (xiv) attempt to gain unauthorized access to the Indixital's systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of the Platform; (xv) develop, invoke, or utilize any code to disrupt, diminish the quality of, interfere with the performance of, or impair the functionality of the Platform.

4. COMMISSIONS

- a. Publisher shall be eligible to earn commission for qualified sales, leads, or actions generated through Publisher's promotional efforts through the Platform.
- b. The commission structure and payment terms shall be provided by Indixital and may vary depending on the Publisher and the type of promotion. Such details shall be captured in writing through a service order form, or insertion order or any other documentation of similar nomenclature.
- c. Payments for the Services under this Publisher Terms shall be based on Indixital's accounting as provided through the Platform.
- d. The Fees for the Services shall be calculated solely on the basis of the delivery metrics as shown through the Platform which shall be the final metrics to be considered for calculating any payments to be made to the Publisher.
- e. Publisher acknowledges that payments from Advertiser to Indixital may be subject to delays, and therefore, Indixital shall pay Publisher once the corresponding funds are received from the Advertiser.
- f. Once the payment has been received from the Advertiser, Indixital will pay the Publisher within thirty (30) days of receipt of such payment.
- g. Indixital shall pay Publisher the commission earned on a monthly basis, subject to a minimum payment threshold and payment processing fees as determined by Indixital.
- h. Payments shall be made via electronic funds transfer or other payment method specified by Indixital.
- i. Publisher agrees that payments shall be made once the corresponding funds are received from the Advertiser, and Indixital shall not be held liable for delays in payment caused by delays in receiving funds from Advertiser.
- j. Each Party will be responsible, as required under the Applicable Law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments received by it under or in connection with this Agreement.

5. OBLIGATIONS OF THE PUBLISHER

- a. Publisher agrees to comply with all Applicable Laws, regulations, and industry standards related to the promotion and marketing of products and services through the Platform.

- b. Publisher shall be solely responsible for ensuring that their Publisher Sites are and continue to be in compliance with all applicable laws, regulations, orders, and guidelines relating to advertising and marketing activities.
- c. Publisher shall conduct its promotional activities with honesty, integrity, and professionalism.
- d. Publisher shall not engage in any deceptive, misleading, or unethical practices in promoting the products and services of the Publisher listed on the Platform.
- e. Publisher shall promote products and services offered by Publisher listed on the Platform in accordance with the terms and conditions provided by Indixital and the respective Publisher.
- f. All promotional and advertising content to be displayed by the Publisher on their Publisher Sites (“**Content**”) shall be approved in writing and in advance by Indixital before being published on Publisher Sites. Publisher shall not publish any Content which has not been approved by Indixital.
- g. Publisher shall publish Content only on such Publisher Sites and in the manner as identified in writing between Publisher and Indixital.
- h. Publisher shall not engage in any unauthorized or prohibited promotional activities, including but not limited to spamming, misleading or deceptive advertisements, or unauthorized use of trademarks. Publisher shall not promote any Content that is unlawful, defamatory, infringing, obscene, or otherwise objectionable. Publisher will ensure that the Content does not contain any material or content that is, or that may reasonably be considered: illegal, unlawful, or infringing under any Applicable Law (including, without limitation, content that infringes a third-party copyright), pornographic, profane, promotional of illicit drugs and drug paraphernalia, gambling related (unless legal in the location offered), fake or deceptive, libellous, invasive to privacy, violent, threatening, discriminatory (racially, ethnically, or otherwise), in breach of confidence or any other right of any third party, or lacking in necessary authorizations, approvals, consents, or licenses.
- i. Publisher agrees to comply with all applicable laws, regulations, and industry standards in connection with Publisher, including but not limited to laws governing advertising, marketing, and privacy.

6. INTELLECTUAL PROPERTY

- a. Except as expressly provided herein, the Publisher shall exercise creative control on its Publisher Sites and shall own and retain all the Intellectual Property Rights and other rights in relation to such Sites and Indixital shall own and retain all the Intellectual Property Rights and other rights in relation to the Platform. Except as expressly provided, nothing herein will deem to imply or mean to transfer the Intellectual Property of either Party to the other Party and neither Party will raise any adverse claims in and to the same. Neither Party will acquire any right, title or interest in any Intellectual Property belonging to the other Party.
- b. Excluding any Publisher Data (*defined below*), you acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Platform and its services and its content are owned by Indixital. Neither these Terms (nor your access to the Platform) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 3. Indixital reserves all rights not granted in these Terms. There are no implied licenses granted under these Terms.
- c. Publisher and its licensors retain all right, title and interest in and to the Publisher Data and all of Publisher’s Confidential Information provided under this Publisher Terms, and Indixital

obtains no rights in the foregoing except for the express rights granted in this Publisher Terms and the [Privacy Policy](#).

- d. Usage Data includes but is not limited to query logs, and any data (other than Publisher Data) relating to the operation, support, and/or about Publisher's use of the Platform ("Usage Data"). Notwithstanding anything to the contrary in this Publisher Terms, Indixital may collect and use Usage Data to develop, improve, support, and operate its products and services. Indixital may share Usage Data that includes Publisher's Confidential Information with third parties to the extent necessary to provide the services and in accordance with Section 7 (Confidentiality) of this Publisher Terms. Indixital may also utilize Publisher Data for its internal business purposes only to the extent such Publisher Data has been aggregated and anonymized such that Publisher and Publisher's users cannot be identified.
- e. Updates. Indixital may update the Platform from time to time and Publisher may receive notifications of Updates. Any Updates to the Platform are subject to this Publisher Terms. Publisher agrees that its purchase of the Services and Software is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Indixital with respect to future functionality or features.
- f. Publisher hereby grants to Indixital, during the Term of this Publisher Terms, a non-exclusive license to display and/or use it's or its affiliates trade name, trademark, service name and similar proprietary marks (collectively, "**Marks**"), in connection with certain promotional materials that Indixital may disseminate to the public within the context of this Publisher Terms. The promotional materials may include, but are not limited to, brochures, video tape, website, press releases, social media collaterals, advertising in newspaper and/or other periodicals or magazines, and any other materials relating to marketing and promotional efforts, specific to the subject matter of this Publisher Terms.

7. CONFIDENTIALITY

Each party will protect the other's Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own Confidential Information of similar nature or importance, and in any event, using no less than reasonable care. Except as otherwise expressly permitted pursuant to this Publisher Terms, the receiving party may use the disclosing party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Publisher Terms, and will disclose such Confidential Information solely to those of its respective employees, representatives and agents who have a need to know such Confidential Information for such purposes and who are bound by obligations to maintain the confidentiality of, and not misuse, such Confidential Information. The provisions of this section will supersede any non-disclosure Publisher Terms by and between the parties entered into prior to this Publisher Terms that would purport to address the confidentiality of any information shared by the parties, including Publisher Data, and such Publisher Terms will have no further force or effect with respect to the foregoing. If the receiving party is required by law or court order to disclose Confidential Information of the disclosing party, then the receiving party will, to the extent legally permitted, provide the disclosing party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The receiving party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such

disclosure by the receiving party, the disclosing party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8. TERM AND TERMINATION

- a. This Publisher Terms will come into force on the Effective Date and shall continue till terminated in accordance with the notice period as provided in the applicable service order forms or insertion orders of any other document of similar nomenclature signed between the Publisher and Indixital referencing these Terms. (“**Term**”).
- b. **Suspension.** Indixital may suspend Publisher’s access to the Platform and/or Publisher’s Account, on the following grounds: (i) non-renewal of the Platform services by Publisher; (ii) Publisher’s or its users’ breach of user restrictions or (iii) or breach of any applicable policies related to the use of the Platform and its services by the Publisher or (iv) in the event suspension is deemed necessary by Indixital to prevent or address a security incident, or other harm to Publisher, Indixital, or Indixital's other Publisher. Indixital will notify Publisher of any such suspension and will use diligent efforts to attempt to limit, where commercially feasible, the suspension to affected Publisher in case of any incident occurring as described in Point (iv) and will immediately restore the availability of the same as soon as the issues leading to the suspension are resolved. Such suspension will in no way affect Publisher’s other obligations under this Publisher Terms.
- c. **Termination for Cause.** Either party may terminate this Publisher Terms by written notice to the other party in the event that (i) such other party materially breaches this Publisher Terms and does not cure such breach within thirty (30) days of such notice, or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

9. DISCLAIMERS

THE SERVICES AND THE PLATFORM ARE PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, AND INDIXITAL EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SITE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE. SERVICES DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO ANY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. SERVICES IS NOT RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD-PARTY SERVICES ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY SERVICES OR SUPPORTED PLATFORMS.

10. LIMITATION OF LIABILITY

- a. SUBJECT TO APPLICABLE LAW AND NOTWITHSTANDING ANYTHING ELSE IN THIS PUBLISHER TERMS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING

WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY

- b. EXCEPT FOR AN ACTION BROUGHT FOR DATA CLAIMS OR IP CLAIMS, LIABILITY OF INDIXITAL AND THAT OF ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, UNDER THIS PUBLISHER TERMS WILL NOT EXCEED THE FEES RECEIVED OR PAYABLE UNDER THIS Publisher TERMS IN THE THREE MONTHS PRECEDING THE CLAIM (“**THE GENERAL LIABILITY CAP**”)
- c. IN THE CASE OF IP CLAIMS AND DATA PRIVACY CLAIMS, INDIXITAL AND ITS AFFILIATES’ TOTAL LIABILITY TO THE Publisher AND ITS AFFILIATES FOR ALL SUCH CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) WILL NOT EXCEED TWO TIMES (2X) THE GENERAL LIABILITY CAP (“**SUPERCAP**”).
- d. IN NO EVENT WILL EITHER PARTY (OR ITS RESPECTIVE AFFILIATES) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE SUPERCAP. SIMILARLY, THE FOREGOING CAPS WILL NOT BE CUMULATIVE; IF A PARTY (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE APPLICABLE CAP.
- e. THE PARTIES AGREE THAT THIS SECTION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS Publisher TERMS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE APPLICABLE MONETARY CAPS SET FORTH IN THIS SECTION WILL APPLY ACROSS THIS Publisher TERMS AND ANY AND ALL SEPARATE Publisher TERMS(S) ON AN AGGREGATED BASIS, WITHOUT REGARD TO WHETHER ANY INDIVIDUAL Publisher AFFILIATES HAVE EXECUTED A SEPARATE INVOICE WITH INDIXITAL.

11. INDEMNIFICATION

- a. **Indemnification by Indixital.** Indixital will defend Publisher and its Affiliates, from any third party claim alleging that Publisher’s use of the Indixital Platform as contemplated hereunder infringes such third party’s patent, copyright and/or trademark intellectual property rights (an “**IP Claim**”), and will indemnify and hold harmless Publisher and its Affiliates from and against any damages and costs awarded against Publisher or its Affiliates, or agreed in settlement by Indixital (including reasonable attorneys’ fees) resulting from such IP Claim. Indixital will have no liability or obligation with respect to any IP Claim if such claim is caused in whole or in part by (i) unauthorized use of the Indixital Platform by Publisher, its Affiliates or Users; (ii) modification of the Platform by anyone other than Indixital or its representatives; or (iii) the combination, operation or use of the Platform with other data, hardware or software not provided by Indixital. If Publisher’s use of the Platform results (or in Indixital’ opinion is likely to result) in an IP Claim Indixital may at its own option and expense (a) procure for Publisher the right to continue using the foregoing items as set forth hereunder; (b) replace or modify them to make them non-infringing; or (c) if options (a) or (b) are not commercially reasonable as determined by Indixital, then either Publisher or Indixital may terminate Publisher’s subscription to the Platform, whereupon Indixital will refund Publisher, on a pro-rated basis, any Fees Publisher has previously paid Indixital for the

corresponding unused portion of the services through the Platform. This section states Indixital's entire liability and Publisher's exclusive remedy with respect to an IP Claim.

- b. **Indemnification by Publisher.** Publisher agrees to indemnify, defend, and hold harmless Indixital, its affiliates, officers, directors, employees, agents, and licensors from and against any and all claims, liabilities, damages, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or related to Publisher's breach of its roles and responsibilities under these Publisher Terms, Publisher's violation of any law or third-party rights in relation to any Content or materials provided or promoted by Publisher or Publisher's violation of laws applicable to Publisher's business.
- c. **Indemnification Procedures.** In the event of a potential indemnity obligation under this Section 10, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section will not relieve the indemnifying party of its obligations under this Section, however, the indemnifying party will not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnifying party may not settle any claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials) or require any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Any indemnification obligation under this Section will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.

12. MISCELLANEOUS

- a. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, Indixital may assign this Publishers Terms in its entirety without the Publisher's consent to its Affiliate or Subsidiary or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempted assignment in violation of this section will be null and void.
- b. **Entire Agreement.** This Publishers Terms, together with any applicable service order forms (or any document with similar nomenclature), [Privacy Policy](#) and any supplemental Terms constitutes the entire Publishers Terms and supersedes any and all prior Publishers Terms or communications between Publisher and Indixital regarding the subject matter hereof. Notwithstanding anything contained herein, if there is any conflict, discrepancy, or inconsistency between the terms of this Publishers Terms and any other separate order form and/or legal document separately executed between the Parties on the use of the Platform, the term of these Publisher Terms shall take first precedence over such order form and/or separate legal documentation for the interpretation of such terms.
- c. If any provision in this Publishers Terms is held by a court of competent jurisdiction to be unenforceable, such provision will be modified by the court and interpreted so as to best accomplish the original provision, and the remaining provisions of this Publishers Terms will remain in effect.

- d. **Relationship of the Parties.** The parties are independent contractors. This Publishers Terms does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the parties.
- e. **Survival.** The sections on Use Restrictions, Intellectual Property, Fees and Payment, Term, Termination and Suspension, Confidentiality, Warranty Disclaimer, Limitation of Liability, Indemnification, Entire Publishers Terms, Survival, Notices, Governing Law, Dispute Resolution and Definitions will survive any termination of termination of the Publishers Terms. Termination of this Publishers Terms will not limit either party's liability for obligations accrued as of or prior to such termination or for any breach of this Publishers Terms.
- f. **Notices.** All notices to be provided by one party to the other under this Publishers Terms may be delivered in writing by (i) nationally recognized overnight delivery service or to the mailing address provided on the order form or details provided by Publisher for invoicing purposes; or (ii) electronic mail to the e-mail address provided for Publisher's Account. The address for a notice to Indixital is: **Indixital Media Private Limited**, A-35, Sector-02, Noida, Uttar Pradesh - 201301, India with a copy to contact@indixital.com by electronic mail. All notices will be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, five (5) business days after being deposited in the mail or with a courier as permitted above.
- g. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Publishers Terms if the delay or failure results from any cause beyond such party's reasonable control, including but not limited to but not limited to, acts of God, acts of government, acts of terror or civil unrest, pandemics, shutdowns or lockdowns through government orders, Internet failures, or acts undertaken by third parties not under the performing party's control, including, without limitation, denial of service attacks ("**Force Majeure Event**"). In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, the other party may terminate this Publishers Terms written notice to the non-performing party.

13. GOVERNING LAW AND JURISDICTION

- a. The Parties to this Publishers Terms intend to discharge their obligations in utmost good faith. The Parties therefore agree that they will, at all times, act in good faith, and make all attempts to resolve all differences howsoever arising out of or in connection with this Publishers Terms through mutual discussion. Any dispute arising out of or in connection with this Publishers Terms ("**Dispute**") shall first be referred to the respective senior management of the Parties for discussion and resolution no later than 30 (thirty) working days from the date on which either Party gives written notice to the other Party that such a Dispute exists. Such discussion may be held telephonically if travel is impractical for either Party. If the Dispute does not get resolved by mutual discussion, Parties may refer the Dispute to appropriate courts for resolution.
- b. This Publishers Terms shall be governed by the laws of India ("**Applicable Law**") and the courts at New Delhi shall have the exclusive jurisdiction in respect of any matter or dispute connected with this Publishers Terms.

14. DEFINITIONS

- a. "**Account**" means any accounts or instances created by or on behalf of Publisher for access to and use of any of the Platform.
- b. "**Affiliate**" or "**Subsidiary**" means, with respect to a party to this Publishers Terms, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, where "control" means the possession, directly or indirectly, of the power to

direct, or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

- c. **“Applicable Law”** means any applicable law, regulation, ordinance, order, treaty, judgment, notification, decree, bye-law, governmental approval, directive, guideline, requirement or other governmental restriction, or any similar form of decision of, or determination by, or any interpretation, policy or administration, having the force of law and shall include any of the foregoing, injunction, permit or decision of any central, state or local, municipal government, authority, agency, court having jurisdiction over the matter in question, whether in effect as of the date of this Publishers Terms or thereafter.
- d. **“Applicable Privacy Laws”** means all applicable international, national, federal, and state data protection and privacy laws.
- e. **“Confidential Information”** means and consists of (a) any technical information or plans concerning the Platform, services provided through it, or any Platform or other technology of Indixital o; (b) any financial information of the Parties; (c) other information disclosed by the Disclosing Party to the Receiving Party that is marked as confidential or should reasonably be assumed to be confidential under the circumstances; and (d) the content of this Publishers Terms. The Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of the Receiving Party (ii) is rightfully known by the Receiving Party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or (iv) is rightfully obtained by the Receiving Party from a third party that has no duty of Confidentiality to the Disclosing Party.
- f. **“Publisher Data”** includes, but is not limited to, any profile information, data, and other content or information provided by the Publisher, directly or indirectly, to Indixital in connection with the Publisher’s use of the Service, including without limitation such data, content, and information related to Publisher’s business.
- g. **“Intellectual Property”** means and includes ideas, concepts, creations, discoveries, domain names, inventions, improvements, know how, trade or business secrets; patents, copyright (including all copyright in any designs and any moral rights), trademarks, service marks, designs, utility models, tools, devices, models, methods, procedures, processes, systems, principles, algorithms, works of authorship, flowcharts, drawings, books, papers, models, sketches, formulas, teaching techniques, source codes, object codes, electronic codes, proprietary techniques, research projects, and other confidential and proprietary information, computer programming code, databases, images, audio, video, Platform programs, data, documents, instruction manuals, records, memoranda, notes, user guides; in either printed or machine-readable form, whether or not copyrightable or patentable, or any written or verbal instructions or comments, which is capable of being recognized and protected as intellectual property under any statute or common law. Indixital’s Intellectual Property shall additionally include its Platform and all trademarks, service marks, copyrights and Intellectual Property vesting with Indixital and/or its affiliates and for which an authorization to use and license is granted to Indixital for a limited period under an Publishers Terms and all parts and contents therein. Publisher’s Intellectual Property shall additionally include the Publisher Sites and all trademarks, service marks, copyrights and Intellectual Property vesting with Publisher and/or its affiliates and for which an authorization to use and license is granted to Publisher for a limited period under an Publishers Terms and all parts and contents therein;
- h. **“Privacy Policy”** means, Indixital’s [privacy policy](#) as updated from time to time.
- i. **“Platform”** as defined in this document.
- j. **“Update”** means, the generally available updates, upgrades, hot fixes, patches, workarounds to the Platform or service provided by Indixital to all subscribing Publishers, but excludes separately priced new products or modules.

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