

## EXICON WEBSITE: TERMS & CONDITIONS OF USE

### 1. Introduction

- 1.1. Welcome to <http://www.exicon.mobi>, an Internet-based directory and marketplace for software application development projects on connected devices.
- 1.2. This agreement (together with any documents referred to in it) (this "Agreement") describes the terms and conditions for the use ("T&Cs") of the internet site <http://www.exicon.mobi> (the "Website") and the content and services available on it ("Exicon Content"). Your use of the Website or the Exicon Content serves as confirmation that you have read and accept these T&Cs, and that you agree to be bound by them. BY USING THIS WEBSITE OR DOWNLOADING MATERIALS FROM THIS WEBSITE, YOU AGREE TO THE TERMS OF THIS AGREEMENT JUST AS IF YOU HAD SIGNED IT. If you do not agree to these T&Cs, do not use the Website. Exicon reserves the right to change the Website or the T&Cs at any time in its sole discretion, effective upon posting updated terms on the Website; any use of the Website after such notice will constitute acceptance by you of such changes.
- 1.3. You do not have to register with Exicon in order to use the Website. However only registered users can access certain premium services such as the Matching Services ("Matching Services") (see Section 4 below) or subscription services (see Section 7 below).
- 1.4. The Website and the Exicon Content is provided by Exicon Limited, a Hong Kong registered company with principal offices at Suite 302, Wilson House, 19-27 Wyndham Street, Central, Hong Kong ("Exicon").

### 2. Conditions of Use

- 2.1. You understand and agree that your use of the Website must be in accordance with these T&Cs, and we may deny access to the Website and Exicon Content without prior notice if you fail to comply with them.
- 2.2. You must treat your username and password as confidential and must not disclose it to any third party. We have the right to disable any username or password at any time, if in our opinion you have failed to comply with any of the provisions of these T&Cs.
- 2.3. We reserve the right to monitor, edit or remove any content posted by you at our sole discretion, for reasons including but not limited to that it is unlawful, threatening, libellous, defamatory, fraudulent, obscene or otherwise objectionable, or because it may infringe or violate any party's intellectual property or privacy.
- 2.4. We reserve the right to make changes to the Website, the Exicon Content, the registration process, including forms, or these T&Cs at any given time, to charge for our services or for particular features, and to modify any fees or services. Any such changes will be notified to users of the Matching Services by means of changes to the Website, and your continued use of the Matching Services constitutes your acceptance of any such changes.
- 2.5. By posting or submitting content, ideas, any intellectual property or information on the Website, you automatically grant, and you represent and warrant that you have the right to grant to Exicon a

worldwide, non-exclusive, royalty-free, fully paid, perpetual, irrevocable right to display such content on the Website. You also grant each user of the Website a non-exclusive license to access any content that you post on a part of the Website that is available for the public to view.

### **3. User Responsibilities**

- 3.1. Except for that information which is in the public domain or for which you have been given permission, you agree not to copy, modify, transmit, distribute, perform, display, publish or sell in any form, electronic or print, any content from the Website or the names of any users.
- 3.2. You may not send or distribute unsolicited or unauthorized advertising, promotional materials, junk mail, chain letters, spam, or any other type of solicitation to other users, nor will you stalk, harass or unreasonably disturb any other user.
- 3.3. You alone are responsible for the confidentiality and security of your account's username, password and usage. You are also accountable for all activities regarding your account, with or without your knowledge or permission. If you knowingly provide your log-in information to another person, your account may be suspended temporarily or terminated. Exicon assumes no liability for activities of your account accessed through your password and username.
- 3.4. You may not use the Website for any illegal purpose in any country or jurisdiction. You are responsible for ensuring that your use of the Website and Exicon Content complies with all applicable laws and regulations.
- 3.5. You cannot post content or initiate any communications that we consider libellous, scandalous, abusive, obscene, discriminatory, unlawful, or otherwise objectionable. Exicon shall have the right to remove any such material that in its sole opinion violates, or is alleged to violate, any applicable law or either the letter or spirit of this Agreement.
- 3.6. You take responsibility for all content that you upload, post or distribute on the Website and the consequences of publishing and posting that content. You represent and warrant that (i) you own or have the necessary rights and licenses to upload, post and distribute that content and to authorize Exicon and the users of the Website to use that content in the manner contemplated by these T&Cs. You agree that you will not upload, post, email or otherwise transmit any content that infringes and/or violates the right of a third party or any law, rule or regulation, including but not limited to (i) copyright, patent, trademark, trade secret or other proprietary rights; (ii) rights of privacy or publicity; (iii) any confidentiality obligation; or (iv) any content that you do not have a right to upload.
- 3.7. You will promptly report to Exicon any violation of these T&Cs by other users.

### **4. Matching Services – Conditions for Clients and Developers**

- 4.1. We provide a platform and environment for matching the buyers of mobile and internet applications development projects (Clients) with the producers of such applications (Developers). The Matching Services provides the platform through which Clients solicit and receive application development proposals from Developers, and Developers learn of and provide such proposals to Clients. Whether you are a Client or a Developer, you acknowledge and agree that Exicon is acting as agent for the

limited purpose of introducing Clients and Developers, and is not liable or accountable to either party for any aspect of performance or non-performance by the other party of its obligations.

- 4.2. You acknowledge that Exicon may be entitled to a fee for matching Developer’s proposals to Clients based on the Project Brief and for the making of introductions of qualified Developers to Clients. To register on is free of charge, but in order to submit a Project Brief or submit a Development Pitch, Clients and Developers are required to pay the fee to Exicon in accordance with the [Matching Services: Client Agreement](#) and the [Matching Services: Developer Agreement](#) , respectively.
- 4.3. The Matching Services are only available to registered “Clients” and “Developers”. A “Client” is a company or individual who has registered as a Client and who is using the Website to solicit proposals for mobile or internet applications for a fee in accordance with the [Matching Services: Client Agreement](#)
- 4.4. A “Developer” is a company or individual who has registered as a Developer with Exicon and who is using the Website to review and respond to project postings from Client(s) by offering to provide innovative solutions to a Client's Project Brief in accordance with the [Matching Services: Developer Agreement](#)
- 4.5. By registering on the Website, you acknowledge that you meet our requirements for registration as Client or Developer and you represent and warrant that: (a) all registration information and content you submit are truthful and accurate; (b) you are at least eighteen (18) years of age and capable of forming binding contracts; (c) your use of the Website does not violate any applicable law, regulation, or other agreement; (d) you are responsible for all activities that occur under your user name; (e) you are responsible for maintaining the confidentiality of your user name and password.
- 4.6. You may not have more than one account as a Client, nor as a Developer, nor may you open an alternative account if your account is suspended or terminated for any reason. Within your account as Client or Developer, you may make multiple postings for purposes of the Matching Services. You may not sell, trade, or transfer an account to another person or entity, nor accept or use an account that was not originally yours. Any Client or Developer that violates these conditions shall be considered to be in breach of these T&Cs, and Exicon will seek all available remedies, including termination of such user’s account.
- 4.7. Your participation in the Matching Services is based upon the assumption that all information you provide regarding yourself during registration or at any other time is truthful and accurate. Your provision of misleading or false information is sufficient reason for us to terminate your account.
- 4.8. We reserve the right to change or modify registration criteria at any time and without prior notice.
- 4.9. We do not endorse, support, or ensure the accuracy, truthfulness, originality, ownership or reliability of any work by Developers, although we are obliging Developers to be responsible for all the information they publish.

## 5. Matching Services - Development Pitches and Conduct

- 5.1. Developer account holders may submit content comprised of video, graphic, audio, textual and the like in accordance with this Agreement and the Developer’s Agreement (the “Developer Content”).

Such Developer Content, and any communications on the Website regarding the Developer Content or otherwise, are collectively referred to as "Development Pitches."

- 5.2. Developers are requested to submit Development Pitches that meet the requirements described in the [Matching Services: Developer Agreement](#)
- 5.3. Exicon will use reasonable commercial efforts to ensure the non-disclosure of Development Pitches other than to Client account holders in response to a qualified Project Brief. You understand that whether or not such Development Pitches are shared with Clients in response to a Project Brief, Exicon cannot guarantee any confidentiality with respect to any Development Pitches.
- 5.4. You shall be solely responsible for your own Development Pitches and the consequences of submitting them through Exicon. In connection with your own Development Pitches, you affirm, represent, and/or warrant that: you own or have the necessary licenses, rights, consents, and permissions to use and authorize Exicon to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all Development Pitches to enable the submission to Clients of the Development Pitches in the manner contemplated by the Website and these T&Cs.
- 5.5. By submitting Development Pitches to Exicon, you hereby grant Exicon a worldwide, non-exclusive, royalty-free, sub-licenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Development Pitches in connection with the Website and Exicon's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Exicon Website (and derivative works thereof) in any media formats and through any media channels. You also hereby grant the relevant Client a non-exclusive license to access your Development Pitches through the Website, and to access, display, review, and sort such Development Pitches as permitted through the functionality of the Website and under these T&Cs. You understand and agree that Exicon may retain, but not display, distribute, or perform, server copies of Development Pitches that have been removed or deleted.
- 5.6. In connection with your own Development Pitches, you further agree that you will not submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Exicon all of the license rights granted herein.
- 5.7. You further agree that you will not, in connection with your own Development Pitches, submit material that is contrary to the Exicon Developer's Agreement, which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.
- 5.8. Exicon does not endorse any Development Pitch or any opinion, recommendation, or advice expressed therein, and Exicon expressly disclaims any and all liability in connection with any Development Pitches. Exicon does not permit copyright infringing activities and infringement of intellectual property rights on its Website, and Exicon will remove all Developer Content and Development Pitches if properly notified that such Developer Content or Development Pitch infringes on another's intellectual property rights. Exicon reserves the right to remove Developer Content and Development Pitches without prior notice and in its sole discretion.

## 6. Matching Services – Termination of Your Account

- 6.1. You may terminate your account at any time if you do not at that time have an active Project Brief pending. You may send your request to terminate your account to [bam@exicon.mobi](mailto:bam@exicon.mobi). In the event you have an active Project Brief pending you may contact us at [bam@exicon.mobi](mailto:bam@exicon.mobi) to request termination of your account, which will be effective upon completion of the active Project Brief.
- 6.2. Exicon may, at our discretion and with or without cause, immediately terminate your account and all access to the Website without prior notice. Any account termination by us may take into account the business interests of Exicon and the interests of the community as a whole. In the event your account is terminated due to a breach by you of this Agreement, you agree that all fees then paid by you to Exicon shall be non-refundable.
- 6.3. Our proprietary rights, disclaimer of warranties, indemnities, limitations of liability, and other provisions of these T&Cs shall survive termination of your account. We will not be liable to you or any third party for the termination of your user account. If your account is terminated, you may not re-register to use the Matching Services without our express permission.

## 7. Subscription Services

- 7.1. We offer subscription services to various Exicon Content through the Website, including The App Directory. Exicon reserves the right to vary the amount of content and types of service that it makes available to different categories of user which means that we may increase or reduce the content and services that are only available to paying subscribers from time to time.
- 7.2. *Contract formation:* Exicon will try to process your subscription promptly but does not guarantee that your subscription will be activated by any specified time. By submitting your payment and other subscription details, you are making an offer to us to buy a subscription. Your offer will only be accepted by us and a contract formed when we have successfully verified your payment details and email address, at which point we will provide you with access to your subscription. Exicon reserves the right to reject any offer in its discretion, for any or no reason.
- 7.3. *Payment details:* when you subscribe you must provide us with complete and accurate payment information. By submitting payment details you promise that you are entitled to purchase a subscription using those payment details. If we do not receive payment authorization or any authorization is subsequently cancelled, we may immediately terminate or suspend your access to your subscription and may in suspicious circumstances contact the issuing bank/payment provider and/or law enforcement authorities/other appropriate third parties. If you are entitled to a refund under these terms and conditions we will credit that refund to the card or other payment method you used to submit payment, unless it has expired in which case we will contact you. If you buy a subscription using a corporate credit card then we will treat your subscription as being for the benefit of both you and the relevant company.
- 7.4. *Pricing:* the subscription price and currency will be made clear to you on our sign-up pages or otherwise during the sign-up process and may vary from time to time. You agree to pay the fees at the rates notified to you at the time you take out your subscription. We will always tell you in advance of

any increase in the price of your subscription and offer you an opportunity to cancel it if you do not wish to pay the new price.

- 7.5. *Other costs:* in addition to any subscription fees you pay, you are responsible for paying any internet connection or other telecommunications charges that you may incur by accessing Exicon.mobi or using the services available on it. For example, if you use any of our mobile services then your network operator may charge you for data or messaging services.
- 7.6. *Free trials:* we may from time to time and at our discretion make a free trial available to users, in which case we will only charge you for your subscription with effect from the expiry of the free trial period.
- 7.7. *Renewals:* we will send you an email letting you know when your annual subscription is close to ending (unless you have already told us that you wish to cancel your subscription). Unless you then notify us before the end of your annual subscription period that you no longer wish to receive it, your annual subscription will renew for another year. We will charge the subscription using the same card or other payment method that you previously used. We will notify you in advance of any changes to the price in your subscription that will apply upon renewal.
- 7.8. *Cancellations by you and refunds:* unless you cancel your subscription before we have started providing any part of it to you (in which case we will provide you with a full refund), then you agree that once we have started providing any part of your subscription to you, you do not have any right to cancel your subscription or any part of it until the end of your then current subscription period. This means that you are not entitled to a refund once we have started providing any part of your subscription to you, except in the very limited circumstances which are referred to in these terms and conditions. Although you may notify us of your intention to cancel at any time, such notice will only take effect at the end of your then current subscription period. You may notify us of your wish to cancel your subscription by contacting our Customer Services team at [bam@exicon.mobi](mailto:bam@exicon.mobi). Or alternatively, call +852 2176 8133.
- 7.9. *Cancellations by us:* Exicon reserves the right to suspend or terminate your subscription if you breach these T&Cs, with or without notice and without further obligation to you. You will not be entitled to any refund in these circumstances. If however we terminate or suspend your subscription for any other reason and/or permanently cease publishing the App Directory, the Exicon Content, or cease to provide subscription services then, unless there are exceptional circumstances, we will provide you with a pro rata refund via PayPal or by cheque to the subscription address, which means that we will refund you with any amounts that you have paid us in advance that relate to any remaining and unexpired period of your subscription.

## **8. Intellectual Property Rights**

- 8.1. Exicon owns and retains all rights in the Website and the Exicon Content, which contain proprietary and confidential information that is protected by applicable intellectual property and other laws. All content on the Website, other than the Development Pitches, including, without limitation, all text, software, scripts, graphics, photos, sounds, music, videos, interactive features and the like are owned

or licensed by Exicon, subject to copyright and other intellectual property rights. Any trademarks or logos used throughout the Website are the property of their respective owners.

- 8.2. Our status (and that of any identified contributors) as the authors of material on our Website must always be acknowledged.
- 8.3. You must not use any part of the materials on our Website for commercial purposes without obtaining a license to do so from us or our licensors.
- 8.4. If you print, copy or download any part of our Website in breach of these T&Cs, your right to use our Website will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.
- 8.5. You may not use the Exicon or service names or logo for any purpose, event or promotion without our express consent.
- 8.6. You understand that when using the Website, you will be exposed to content from a variety of sources, and that Exicon is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such content. You further understand and acknowledge that you may be exposed to content that are inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Exicon with respect thereto. You further agree to indemnify and hold Exicon, and its affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to your use of the Website.

## 9. Changes to our Website

- 9.1. We aim to update our Website regularly and may change the content at any time. If the need arises, we may suspend access to our Website, or shut it down indefinitely. Any of the material on our Website may be out of date at any given time, and we are under no obligation to update such material.

## 10. Data and Information Protection

- 10.1. All personal information provided to Exicon is treated with the utmost confidence and care. We process information about you in accordance with the terms of our [Privacy Policy](#). By using our Website, you consent to such processing and you warrant that all data provided by you is accurate.
- 10.2. Except as set out in our Privacy Policy and in 10.5 below, we will not disclose any personal data to any third party without being entitled to do so and first obtaining your consent.
- 10.3. While we make every effort to keep the Exicon Website a trusted and safe environment, Exicon cannot be held liable should content you have posted on the Website that is viewable by users be copied or distributed elsewhere.
- 10.4. Access to your private account information is limited to administrators of the Exicon Website. No other employees, contractors or third parties will have access to this information without your consent.

- 10.5. Exicon may access, preserve, and disclose the contents of your account if required to do so by law, or in the belief that such actions are reasonably necessary to comply with legal requirements or to protect the rights, property or safety of Exicon, our users, or others.

## 11. Disclaimers and Limitations

- 11.1. *Disclaimer of warranties:* Exicon and its licensors, partners, suppliers, parents, subsidiaries, affiliates, assigns, consultants and agents disclaim any and all responsibility or liability for the accuracy, content, completeness, usefulness, legality, reliability, operability or availability of information or materials displayed on the Website or the conduct of any brand or developer. The Matching Services, and all materials, information (including, without limitation, any information or materials obtained or accessed through the Website), products and services included therein are provided "as is," with no warranties whatsoever. Exicon expressly disclaims to the fullest extent permitted by law all express, implied, and statutory warranties, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement of proprietary rights.
- 11.2. *Indemnity:* You agree that your use of the Website and Exicon Content is entirely at your own risk. You agree to hold harmless and indemnify Exicon, its officers, directors, employees and agents from and against any third-party claim arising from or in any way related to your use of the Exicon Content and Website, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and legal fees, of every kind and nature. If you are dissatisfied with any of the materials contained in the Website or the Exicon Content, or with these T&Cs, your sole and exclusive remedy is to discontinue accessing and using the Website and/or the Exicon Content.
- 11.3. *Limitation of liability:* under no circumstances will Exicon be liable to you for any indirect, incidental, consequential, special or exemplary damages arising out of or in connection with your use of the Website or the Matching Services, whether or not Exicon has been advised of the possibility of such damages. Such limitation of liability shall apply (i) whether the damages arise from use or misuse of and reliance on the Website or the Exicon Content, from inability to use the Website or the Exicon Content, or from the interruption, suspension, or termination of the Website (including such damages incurred by third parties), and (ii) notwithstanding any failure of essential purpose of any limited remedy and to the fullest extent permitted by law in the applicable jurisdiction.
- 11.4. Exicon does not warrant that your use of the Exicon Website or the Exicon Content will be secure, uninterrupted, always available, error-free or will meet your requirements, or that any defects in the Exicon Content will be corrected. Exicon disclaims liability for, and no warranty is made with respect to, the connectivity and availability of the Exicon Content.
- 11.5. You specifically acknowledge that Exicon shall not be liable for the defamatory, offensive, or illegal conduct of any third party and that the risk of harm or damage from the foregoing rests entirely with you.
- 11.6. The Website is controlled and offered by Exicon in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR). Exicon makes no representations that the Website is appropriate or available for use in other locations. Those who access or use the

Website from other jurisdictions do so at their own volition and are responsible for compliance with local law.

## **12. IT Security**

We will not be liable for any loss or damage caused by viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Website or to your downloading of any material posted on it, or on any Website linked to it.

## **13. Linking to our Website**

- 13.1. You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. You agree that you will remove any such link within twenty four (24) hours of any request by Exicon.
- 13.2. If you wish to make any use of material on our Website other than set out above, please address your request to [info@exicon.mobi](mailto:info@exicon.mobi)

## **14. Links from our Website**

Where our Website contains links to other Websites and resources provided by third parties, these links are provided for your information only. We have no control over the contents of those Websites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them.

## **15. Governing Law and Jurisdiction**

- 15.1. The Website, Exicon Content and these T&Cs shall be governed by and construed in accordance with the laws of the HKSAR.
- 15.2. Each of Exicon, the Client and the Developer submits to the non-exclusive jurisdiction of the Courts of the HKSAR but these Terms and Conditions may be enforced in the Courts of any competent jurisdiction

## **16. Severability**

If for any reason a court of competent jurisdiction finds any provision or portion of these T&Cs to be unenforceable, the remainder of the T&Cs will continue in full force and effect.

## **17. Assignment**

You shall not assign these T&Cs or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without our prior written consent. Any such purported assignment or delegation will be null and void and of no force or effect.

## **18. Entire Agreement**

These T&Cs, together with the Privacy Policy and any Client's Agreement or Developer's Agreement between you and Exicon, constitute the entire agreement between you and Exicon with respect to the subject matter hereof and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

## **19. Waiver**

The failure of Exicon to enforce any provision of these T&Cs shall not be deemed a waiver of such provision nor the right to enforce such provision. Furthermore, any waiver of any provision of T&Cs by a party hereto will be effective only if in writing and signed by a party.

## **20. Electronic Signatures**

You acknowledge that by clicking on the “I Agree”, or similar button at the payment gateway, you are indicating your intent to sign the relevant document or record and that this shall constitute your signature.