

Exactify.IT Website Terms of Service

These Exactify.IT Website Terms of Service (the “**Terms of Service**”) describe the terms pursuant to which Exactify.IT LLC (“**Exactify.IT**” “**we**” or “**us**”) offers you access to the Exactify.IT website located at <https://exactify.it>, and any publicly-accessible webpage within the exactify.it domain (the “**Site**”). Subject to Section 8, These Terms of Service apply when you access, visit or use any portion of the Site. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, THEN YOU SHOULD NOT ACCESS OR USE THE SITE.

1. **Acceptance of the Terms of Service.** You accept these Terms of Service and agree to be bound by these Terms of Service when you access, visit, or use the Site. Please read these Terms of Service carefully because they govern your access to and use of the Site and set forth legally binding terms applicable to your use of the Site.

Notice Regarding Dispute Resolution: These Terms of Service contain provisions that govern how claims you and Exactify.IT have against each other are resolved (see Section 10 (Limitation of Liability), Section 12 (Choice of Law and Forum) and Section 13 (Arbitration Agreement and Waiver of Class Action Remedies) below). It also contains an Agreement to Arbitrate (see Section 13(A)), which will, with limited exception, require you to submit claims you have against us to binding and final arbitration, unless you opt-out of the Agreement to Arbitrate in accordance with Section 13(D). Unless you opt-out: (A) you will only be permitted to pursue claims against Exactify.IT on an individual basis, not as part of any class or representative action or proceeding and (B) you will only be permitted to seek relief (including monetary, injunctive, and declaratory relief) on an individual basis.

2. **Amendments.** We may amend these Terms of Service from time to time. We will post any material changes to these Terms of Service on the Site with a notice advising of the changes at least thirty (30) days before the effective date of the changes.
3. **Exactify.IT Privacy Policy.** In connection with your use of the Site, please review the Exactify.IT Website Privacy Policy (the “**Privacy Policy**”), located at <https://exactify.it/privacy/>, in order to understand how we collect and use information about you when you access, visit or use the Site. The Privacy Policy is part of and is governed by these Terms of Service and by accepting these Terms of Service, you agree to be bound by the terms of the Privacy Policy, and agree that we may use information collected from you in accordance with the Privacy Policy.
4. **Ownership of the Site.** Except for User Content (as described below in Section 7), you agree that Exactify.IT and its licensors or partners own all rights, title and interest in the Site and all materials provided by us in connection with the Site, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, Site marks, copyrights or photographs, (the “**Exactify.IT Content**”), and all intellectual property rights related to the Exactify.IT Content. You may not (and you may not allow any third party to) copy, modify, create a derivative work from, decompile, reverse engineer, reverse assemble or otherwise attempt to discover any source code of the Site.

The Exactify.IT name, logo and symbols and related names are trademarks and service marks of Exactify.IT (the “**Exactify.IT Marks**”). You agree not to display or otherwise use any Exactify.IT Marks without Exactify.IT’s prior written consent.

5. User Content.

A. Responsibility for User Content. You may be able to submit, send, transmit or otherwise make available content to Exactify.IT through the Site including text, graphics, or other materials (“**User Content**”). By submitting User Content through the Site, you agree to assume full responsibility for the applicable User Content and represent that: (i) you are the sole owner of all User Content that you make available to Exactify.IT through the Site or that you have all rights, licenses, consents and/or releases necessary to make your User Content available through the Site and to grant to Exactify.IT the rights to your User Content described in these Terms of Service, (ii) the User Content does not and will not infringe the rights of any third party, including any intellectual property rights, publicity rights or rights of privacy, and (iii) all of your User Content and other information that you provide to us is truthful and accurate.

B. Exactify.IT’s Rights in User Content. Exactify.IT does not claim ownership of your User Content. However, you grant Exactify.IT a perpetual, worldwide, royalty-free, non-exclusive, sub-licensable, transferable and irrevocable right and license to use, distribute, publish, reproduce, copy, modify, adapt, publicly perform and publicly display your User Content and to incorporate your User Content into any form, medium or technology, and to exercise any and all copyright, trademark, publicity, and database rights you have in your User Content in any media known now or in the future in connection with the Site, all without compensation to you. You release Exactify.IT from and against any and all claims of any kind which you may have against Exactify.IT in connection with such use, including, but not limited to, those based on rights of publicity or privacy. You understand that the technical processing and transmission of data associated with the Site, including your User Content, may require: (i) transmissions over various networks; and (ii) changes to your User Content to conform and adapt to technical requirements of connecting networks or devices. The permissions granted in this Section 6 are subject to, and are superseded by, any applicable laws and regulations governing personally identifiable information, to the extent that any of your User Content includes personally identifiable information and these Terms of Service conflict with such laws and regulations with respect to such personally identifiable information.

6. User Feedback. Exactify.IT welcomes and encourages your feedback, but please do not submit any proprietary or confidential information, suggestions or materials via the site, email, or any other method. By submitting opinions, suggestions, feedback, and/or proposals through the Site, or through any other communication with Exactify.IT, you acknowledge and agree that: (i) the suggestions or feedback you provide will not contain confidential or proprietary information; (ii) Exactify.IT is not under any obligation of confidentiality, express or implied, with respect to the suggestions and feedback you provide; (iii) Exactify.IT shall be entitled to use or disclose (or choose not to use or disclose) the suggestions and feedback you provide for any purpose, in any way, in any

media worldwide; (iv) Exactify.IT may have similar ideas to the suggestions and feedback you provide already under consideration or in development; (v) the suggestions and feedback you provide will automatically become the property of Exactify.IT without any obligation of Exactify.IT to you and you hereby assign all of your rights in the suggestions and feedback to Exactify.IT; (vi) you are not entitled to any compensation or reimbursement of any kind from Exactify.IT under any circumstances, and (vii) you will not submit any materials that you do not have the right to make available under any law or contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements). You expressly agree that you will solely bear any liability related to your submission of these materials through the Site or to Exactify.IT.

- 7. Links to Other Websites.** The Site may contain links to third party websites, resources or data, and other users of the Site may post links to third party websites, resources or data. You acknowledge and agree that Exactify.IT is not responsible or liable for the availability of these websites or resources, or for any content, advertising, products, services or other materials on or available through these websites or resources, including payment or delivery of such goods or services from these websites. You also acknowledge that you are solely responsible for and assume all risk arising from the use of any of these websites, resources or data. Links to third party websites on the Site are not intended as endorsements or referrals by Exactify.IT of any products, services or information contained on the applicable websites. These Terms of Service do not apply to third party websites, including the content of and your activity on those websites. You should review third-party websites' terms of service, privacy policies and all other website documents, and inform yourself of the regulations, policies and practices of third-party websites.
- 8. Other Exactify.IT Services.** Exactify.IT operates other services, applications, products, websites, and entities (collectively "**Exactify.IT Properties**"). Other Exactify.IT Properties may have their own terms of use, privacy policies, regulations, rules, or other agreements (collectively, "**Other Terms**"). Unless expressly stated otherwise, your use of other Exactify.IT Properties is governed exclusively by the Other Terms associated with such Exactify.IT Properties and not by these Terms of Service or by the Privacy Policy.
- 9. Disclaimer of Warranties.** THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, EXACTIFY.IT LLC AND ITS PARENTS, SUBSIDIARIES, PARTNERS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (COLLECTIVELY, THE "**EXACTIFY.IT PARTIES**") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE EXACTIFY.IT PARTIES DO NOT WARRANT THAT THE SITE WILL BE UNINTERRUPTED OR

ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVERS THAT MAKE THE SITE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ANY PRODUCT DESCRIPTIONS OR DEPICTIONS, OR OTHER CONTENT OFFERED AS PART OF THE SITE, ARE ACCURATE, RELIABLE, CURRENT OR COMPLETE.

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. IF YOU DOWNLOAD ANY CONTENT FROM THE SITE, YOU DO SO AT YOUR OWN DISCRETION AND RISK, UNLESS EXACTIFY.IT EXPRESSLY STATES OTHERWISE IN A SEPARATE AGREEMENT GOVERNING SUCH CONTENT. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY CONTENT THROUGH THE SITE. WE RESERVE THE RIGHT TO RESTRICT OR TERMINATE YOUR ACCESS TO THE SITE OR ANY FEATURE OR PART THEREOF AT ANY TIME. THE EXACTIFY.IT PARTIES ASSUME NO RESPONSIBILITY FOR THE DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT OR PERSONALIZATION SETTINGS.

10. **Limitation of Liability.** YOU UNDERSTAND AND AGREE THAT THE EXACTIFY.IT PARTIES WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF A EXACTIFY.IT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM YOUR USE OR ACCESS OF, OR INABILITY TO USE OR ACCESS, THE SITE.
11. **Indemnity.** You agree to indemnify and hold the Exactify.IT Parties harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of: (i) your User Content; (ii) your use of the Site; (iii) your violation of these Terms of Service; or (iv) your violation of any law rights of another party.
12. **Choice of Law and Forum.** The laws of the State of California apply to these Terms of Service and to your relationship with the Exactify.IT Parties, without regard to conflict of law principles, and the parties irrevocably consent to bring any action to enforce this Agreement in the federal or state courts located in California. You consent to the exclusive jurisdiction of the federal or state courts located in Santa Clara County, California.
13. **Arbitration Agreement and Waiver of Class Remedies.**
 - A. **Arbitration.** The parties shall use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration. All claims arising out of or relating to these Terms of Service (including its formation, performance and breach) and your use of the Site shall be finally settled by binding arbitration

administered by the American Arbitration Association (“AAA”) in accordance with the provisions of its Commercial Arbitration Rules and the supplementary procedures for consumer related disputes of the AAA, excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms of Service, including, but not limited to, any claim that all or any part of these Terms of Service is void or voidable. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator’s award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, we will pay the additional cost.

The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

B. Class Action Waiver. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. If any court or arbitrator determines that the class action waiver set forth in this section is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

C. Exception- Litigation of Small Claims Court Claims. Notwithstanding the parties’ decision to resolve all disputes through arbitration, either party may also seek relief in a small claims court for disputes or claims within the scope of that court’s jurisdiction.

D. Thirty Day Right to Opt Out. You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth in this section by sending written notice of your decision to opt-out to the following address: Exactify.IT LLC, Legal Department, 101 Jefferson Drive, Menlo Park, CA 94025. The notice must be sent within thirty (30) days of your first visit to the Site, otherwise you shall be bound to arbitrate disputes in accordance with the terms set forth above. If you opt-out of these arbitration provisions, we also will not be bound by them. If you opt-out of these arbitration provisions, we also will not be bound by them. In addition, if you elect to opt-out of these arbitration provisions, we may terminate your right to use any Other Exactify.IT Properties.

14. **Notices.** Except as explicitly stated otherwise, legal notices shall be served on Exactify.IT’s national registered agent.

15. **Assignability.** You may not assign or delegate any right or obligation you have under these Terms of Service, whether by operation of law or otherwise, without the prior written consent of Exactify.IT. Exactify.IT may assign or delegate any right or obligation under these Terms of Service, whether by operation of law or otherwise, without your consent.
16. **Waiver and Severability.** Our failure to exercise or enforce any of these Terms of Service or to act with respect to a breach by you or others will not constitute a waiver and does not waive our right to act with respect to subsequent or similar breaches. If any provision of these Terms of Use is held to be invalid, void or unenforceable under applicable law, then the applicable provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its unenforceability.
17. **Headings.** Headings are for reference purposes only and do not limit the scope or extent of such section.
18. **Entire Agreement.** These Terms of Service (including incorporated policies and rules) sets forth the entire understanding and agreement between us with respect to the subject matter hereof.
19. **No Oral Modifications.** Employees of the Exactify.IT Parties are not authorized to modify the terms of these Terms of Service, either verbally or in writing. If any employee of the Exactify.IT Parties offers to modify these Terms of Service, he or she is not acting as an agent for the Exactify.IT Parties or speaking on our behalf. You may not rely, and should not act in reliance on, any statement or communication from an employee of the Exactify.IT Parties or anyone else purporting to act on our behalf.
20. **Third Party Beneficiaries.** These Terms of Service are between you and Exactify.IT LLC. There are no third party beneficiaries.
21. **Independent Contractor.** No agency, partnership, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by these Terms of Service.
22. **Contact Information.** If you have any questions about these Terms of Service or your account, you may contact us by email at [info\(at\)exactify.it](mailto:info@exactify.it) or by postal mail at Exactify.IT, Legal Department, 101 Jefferson Drive, Menlo Park, CA 94025.