

# END USER LICENSE AGREEMENT AND TERMS OF USE

eBooks in Motion Inc.

## 1. Purpose, Parties and Definitions

### A. Overview

To help you get started, eBooks in Motion (eBiM) has provided this review of our license agreement, our Terms of Use and our privacy policy. They appear in detail below. Please make sure the materials you provide to us are in the right formats, free of viruses, and that you own the Intellectual Property Rights associated with them. When you open your account, make sure the information you provide is accurate. You'll always keep the rights to your manuscripts. We'll always protect your privacy by following the privacy laws that apply in the place where you reside. eBiM uses proprietary technology, some of which is subject to patents, to provide our Services. eBiM can enforce its proprietary rights under patent laws and other rules anywhere in the world. eBiM is not responsible or liable for the Publications you Produce using our Services, or for Files you upload to our website. This Agreement contains limitations on our liability and includes our limited warranty. You can be liable to us if you violate this Agreement. You should read it carefully before accepting it.

### B. Purpose and Parties

This End User License Agreement and Terms of Use (this "Agreement") is a contract made between eBooks in Motion Inc., a Delaware USA Corporation, hereinafter "eBiM" the "Company" "we" "us" or "our" and you, hereinafter "you" or "your." It contains the terms and conditions that apply to you, and or your company, and to eBiM when you use our Services. If you have signed a contract with eBiM, you may have an account with multiple logins. You are responsible for all logins that are issued under your account, and you are legally bound by this Agreement as well as your contract. If you are using an account supplied to you by a third party, both you and the third party are bound by this Agreement, and your use of the eBiM Services constitutes acceptance of this Agreement by both you and that third party. Accordingly, the terms "you" and "your" apply to both users of Reseller and Publisher accounts, and to contract account holders. Vendors have been selected by eBiM to provide Services such as server hosting. The Company has made commercially reasonable efforts to select competent and responsible vendors. Nevertheless, we are not responsible for the acts or omissions of our vendors.

### C. Your Acceptance of this Agreement

Before using eBiM Services, you must agree to be bound by this Agreement. You will be required to check a box when you set up your account. In addition, every time you use eBiM Services, by doing so you reaffirm that you agree to be bound by this Agreement. You may be

asked to reaffirm your acceptance of this Agreement or another agreement when you use other Services that the Company may offer in the future. eBiM may change this Agreement without notice, and without your consent. ebooksinmotion.com is operated by eBooks in Motion Inc., a Delaware USA Corporation. By accessing our Site you are agreeing to the Terms of Service described in this Agreement. You warrant that you fully understand this Agreement, that you have the right, authority and legal capacity, including your age (at least 13 years) to enter this Agreement and that you acknowledge it to be legally binding as a signed written agreement. You agree to: i) provide true, accurate, current and complete information about yourself as prompted by the account creation process; and ii) maintain and promptly update the information provided during sign up to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if eBiM has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, eBiM may terminate your user account and refuse current or future use of any or all of the Services. You must truthfully identify yourself as an end user, Reseller or Publisher. If you accept discounts that you do not have a contractual right to receive, eBiM may recover the amount of the discount from you, together with attorneys' fees and other costs incurred in recovering them. If you do not fully understand and agree with the terms and conditions of this Agreement, do not accept them and do not use the eBiM Services or enter our web Site. Your continued use of this Site confirms your acceptance of any changes in these Terms of Service. You will be notified of any such changes through your account or through a notification on the eBiM Site, at our option.

#### D. Definitions

- i. Accepted File(s) means a File or Files in a format or formats acceptable to eBiM. A list of accepted file types appears on our web Site in our "How 2 Tutorials," or may be provided by another means. This list is subject to change.
- ii. Company Software means the eBiM proprietary software that resides on our Site, and any additional software the Company uses in connection with it.
- iii. File(s) mean(s) digital files that may consist of text, online or offline images, multimedia or related data, and/or metadata.
- iv. Intellectual Property Rights (IPR) means all rights associated with works of authorship throughout the world, including but not limited to, copyrights, moral rights, and mask works; trademarks and trade name rights and similar rights; trade secret rights; patents, designs, algorithms, and other intellectual or industrial property rights. The term includes pending applications and applies where such rights arise by operation of law, contract, license, or otherwise.
- v. Illicit Code means viruses, Trojan Horses, ad ware, malware, spyware, key loggers, root kits, super cookies and the like. Illicit code includes macros. The Company reserves the right to determine what constitutes Illicit Code. Submitting Illicit Code is prohibited.
- vi. Permitted Use means any use of our Services that conforms to all the provisions of this agreement.
- vii. Produce, Producing or Production means the process by which eBiM processes an Accepted File, using proprietary Company Software, into a Publication, a target

format supported by eBiM that you have selected. Production includes Services and tools such as: automatic association between keywords and media, preview and editing, and media conversion to address multiple devices, subject to the capacities and limitations of the Company Software.

viii. Publication means a File, Produced by our Services into a format you have selected from our supported platforms.

ix. Services means all the services offered by the Company including but not limited to Production and the use of the Company Software.

x. Site means the eBiM branded web site or sites operated or approved by the Company where eBiM user accounts are created, payments may be processed (by eBiM or a third party), and through which eBiM Services are delivered.

xi. Your Local Laws means the laws and regulations in effect in the place where you legally reside. The term “illegal” includes but is not limited to material, Files or links that violate Your Local Laws.

## **2. Applicability**

This Agreement applies to the eBiM Services currently available, and to any new versions, revised, updated, upgraded, modified or substituted Services the Company may provide in the future.

## **3. Warranty, Limitation and Disclaimer**

THE REMEDIES SET FORTH IN THIS SECTION WITH RESPECT TO WARRANTIES ARE THE EXCLUSIVE REMEDIES AGREED UPON BY YOU AND EBIM.

Nothing in this Agreement shall be construed to unlawfully limit or exclude the Company’s liability, or unlawfully limit or exclude mandatory warranties provided by law in some jurisdictions. The provisions of this Agreement, including this section 3, shall be understood to exclude all warranties except those that are expressly offered here to the greatest extent not prohibited by your local law. We expressly disclaim warranties of merchantability and fitness for a particular purpose to the fullest extent not prohibited by your local law. We do not warrant that your Publication will be usable on all devices, or that it will continue to be usable after software or hardware updates or other modifications of the hardware, software or firmware. We do not warrant that embedded links will work properly, or that multimedia Files will run or behave or look as desired. We do not warrant that your Publication will not infringe any third party IPR. If you duplicate your Publication, you are responsible for any errors or omissions that occur in the duplication process.

### **A. Production**

We warrant to attempt to perform a Production of the Accepted Files you submit to us, if such Files conform to the terms and conditions of this Agreement, and do not constitute or cause a Prohibited Use. If we breach this warranty, we will attempt to re-perform the Production. This is your sole remedy for breach of this warranty. At our sole and unfettered discretion, we may alternatively choose to refund all or a portion of the price you paid for the Services if, in our sole opinion, we cannot satisfactorily (as defined by us) Produce your Files. Such refunds

will be considered only if we determine, in our unfettered discretion, that the Publication is completely illegible or unusable. All other warranties are disclaimed. This warranty shall be deemed to remain in effect for the minimum length of time specified in Your Local Laws, but no longer. If no period is specified, this period is 15 days after you download your Publication. e-mail delivery is equivalent to a download.

#### B. Other Services

As eBiM makes other Services available, they may be subject to different warranties.

### **4. Terms of Use of Services**

#### A. Conditions of Use

- i. Production
- ii. You may use our Services pursuant to our Guidelines and How 2 Tutorials through our Site to process Accepted Files. You may Produce and download your Publication.
- iii. Your use of the Services will comply with all the terms and conditions of this Agreement.

#### B. Prohibited Uses

The following are strictly prohibited:

- i. Any use that violates, is prohibited by or does not conform to any term or condition of this Agreement, or violates or may violate any law or the rights (including IPR) of any third party or of eBiM.
- ii. Removing any Trademark or other IPR related markings.
- iii. Using your access to our Site or our Services to:
  - a) Provide any information learned, observed, copied or downloaded from our Site to unfairly or illegally compete with eBiM.
  - b) Reverse engineer our Software or our Services;
  - c) Make screen-shots or other copies or representations of all or any part of our user interface, except to facilitate the Permitted Use described in paragraph “A” of this section.
  - d) Produce a Publication that is illegal in the place where it is Produced, is defamatory, incites violence, incites illegal behavior, or facilitates illegal activities.

#### C. Inactive Accounts

We reserve the right to terminate unpaid user accounts that are inactive for a continuous period of 30 days. In the event of such termination, all data associated with any such user account will be deleted. We will provide you with prior notice of such termination and backup of your data by email. This data deletion policy may be implemented with respect to any or all of the Services. Each account or login will be considered an independent and separate service for the purpose of calculating the period of inactivity. In the case of accounts with more than one user, only the inactive user account will be deleted. Nothing in this section shall be

construed to limit the Company’s right to close or suspend Service to delinquent Reseller or Publisher accounts.

D. Your IPR

The Company hereby disclaims any interest in IPR arising out of or relating to your Files and your Publication, except IPR belonging to the Company or licensed to the Company by a third party subsisting in code or Files installed during Production by the Company Software. All title, interest and IPR in and to your Files and your Publication shall belong and remain the exclusive property of the owner of the IPR that is contained therein.

E. Uploads and Links

You are solely responsible for uploaded Files and links contained in or added to your Publication.

i. Files

It is your responsibility to make sure that you have the appropriate IPR associated with any Files you incorporate into a Publication. It is also your responsibility to make sure that such Files are free of Illicit Code. Where you are using a third party’s Intellectual property with permission, you represent that any DRM that was present when the Files were made available to you has not been removed.

ii. Links

It is your responsibility to make sure that you have the appropriate permission to use any links you place in your Publication. You are also responsible for making sure your links access the intended URL; that the links do not lead to or expose eBiM or any subsequent user of your Publication to Illicit Code. You are responsible if any link you incorporate into your Publication leads to a site that contains illegal or libelous content, content that you are not or were not permitted to access or distribute, or is otherwise prohibited by this Agreement. You are hereby advised that once you complete the Production process, eBiM will be unable to repair, alter, block, retract or otherwise modify you Publication or the links it may contain.

F. Proofreading your Publication

eBiM offers an automated process for publishing your Publication. We do not undertake to edit, review, censor or proofread your Publication. You bear the entire responsibility and liability for your Publication and everything it contains, including embedded Files and links. If you discover errors or omissions in a Publication after it has been published, your sole option will be to correct your Word based manuscript and reproduce your Publication at your sole cost and effort.

**5. License**

Provided that you adhere to all other terms and conditions of this Agreement, the Company grants you a limited, revocable, non-exclusive, non-transferable, non-sub licensable license to use the Services including the Company Software, but only as provided in this Agreement. Your payment for use of the Services does not give you any ownership rights in or to the Company Software or other intellectual property. All rights not expressly granted are reserved. All elements of our Services, including the Company Software, are protected by IPR. This license is void from the beginning if material misrepresentations are made when you

open your account, and any subsequent use of the Services is prohibited. However, if you continue to use the Services, you remain subject to the terms and conditions of this Agreement. This license, and the Services, are terminable at will by the Company with or without notice once any Services that have been paid for have been rendered.

## **6. Logo and Marks**

### **A. The eBiM Logo and Marks**

The eBiM logo and marks may appear in certain Publications Produced under corporate accounts. When our logo or marks appear in your Publication, the Company hereby grants you a non-exclusive right to display such trademarks in the location where and manner in which they may, at the Company's option, be embedded or displayed by the Company Software. They may not be moved, altered copied to or used in other media. Such displays of our logo do not give you any other display rights or any ownership rights in or to our logo, our name, or any associated trademarks or other IPR.

### **B. Other Marks**

Trademarked logos and word marks may appear on the eBiM Site, How 2 Tutorials, or other materials published by eBiM. Such trademarked logos and word marks are the property of the trademark owners, and are used with permission.

## **7. Passwords and Security**

### **A. Your obligation to secure your password(s).**

When you set up an account, a password will be assigned to you. This password provides you with access to your account and any information you have provided to us in connection with your account or the use of our Services. It is your sole responsibility to secure your password and keep it safe from unauthorized disclosure. If you fail to protect your password and your information is copied, corrupted or erased, eBiM is not responsible. Furthermore you will continue to be financially responsible and legally liable for any use of your account, including Prohibited Use. We reserve the right to reject quarantine and erase Files that we reasonably believe to be Prohibited Files, and to share such Files with third parties for security purposes.

### **B. Our Security and Data Storage Practices**

eBiM adheres to data security policies that are customary in our industry. eBiM does not undertake storage of your Files or your Publication.

## **8. Privacy**

eBiM does not share your personal information except to the extent necessary to provide the Services, such as necessary payment information for billing purposes. At a minimum, our privacy practices meet the legal requirements of Your Local Laws. We collect certain information to establish your account, and help you prevent its misuse. We may also use such information to enforce the terms of this Agreement. Data is routinely deleted when a user account is no longer active. We work with world-class service providers who adhere to

industry standards for data protection. To learn more about our privacy policies relating to your personal information, you can click on the “Privacy” link on our Site.

## **9. Effective Date and Survival**

This Agreement becomes effective the first time you log on to our Site and begin creating a user account, even if you are granted access by a third party. During and after your use of the Services, whether or not a Publication is delivered, this Agreement, including your indemnity obligations set forth in §11, remain in full force and effect.

## **10. Our Liability Disclaimers**

### **A. Our Disclaimers of Liability**

To the fullest extent not prohibited by applicable law, the Services are provided “AS IS,” and the Company fully disclaims all liability except those liabilities that it expressly accepts in this Agreement. Company is not responsible to any person or entity for any damage or loss allegedly caused by the use or inability to use the Services, either directly or indirectly, including (but not limited to) business interruptions, monetary loss or loss of anticipated income as a result of the use of the Services. The Company does not promise that its Services will be available at any particular time or times; that Productions in progress will be completed in a timely manner or will not be interrupted; that all Services will be offered at all times or will not be discontinued, modified or limited; or that your Productions are secure. The Company is not liable for any costs, expenses or liability arising from the delayed delivery or non-delivery of its Services. The Company does not undertake long-term storage of your Files or your Publication. The Company is not liable and is not responsible for the loss of Files, data, work in progress or anything you submit to us. eBiM is not responsible for your loss of time, or the value of that time, if your work is lost, deleted or corrupted for any reason while you are Producing a Publication. By using our Site, you agree to accept the liabilities that eBiM does not. We are liable only if our software infringes the IPR of a third party. IN NO EVENT SHALL eBiM’s ENTIRE DIRECT AND/OR INDIRECT LIABILITY TO YOU IN RESPECT OF ANY SERVICE EXCEED THE FEES PAID BY YOU FOR SUCH SERVICE.

### **B. Our Disclaimer of Consequential Damages**

YOU CAN RECOVER FROM eBiM ONLY DIRECT DAMAGES FOR LIABILITIES THAT THE COMPANY HAS ACCEPTED IN THIS AGREEMENT. eBiM FULLY DISCLAIMS ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES WHICH MAY BE INCURRED AS A RESULT OF OR RELATED TO THE USE OF THE SERVICES. YOU HEREBY WAIVE ANY RIGHT TO ASSERT SUCH DAMAGES FOR ANY REASON OR AT ANY TIME. IN NO EVENT SHALL eBiM’s ENTIRE LIABILITY TO YOU IN RESPECT OF ANY ONE USE OF SERVICE TO PRODUCE OR ATTEMPT TO PRODUCE ONE PUBLICATION, WHETHER RESULTING IN DIRECT OR INDIRECT DAMAGE TO YOU, EXCEED THE FEES PAID BY YOU FOR SUCH INCIDENT OF SERVICE. THIS WAIVER AND DISCLAIMER IS A MATERIAL PART OF THE CONSIDERATION FOR THE PRICE THAT YOU AGREE TO PAY FOR THE SERVICES. YOU UNDERSTAND AND AGREE THAT EBIM WOULD NOT BE ABLE TO OFFER ITS SERVICES TO YOU ON AN ECONOMICALLY FEASIBLE BASIS WITHOUT THESE LIMITATIONS AND WOULD NOT

OFFER SUCH SERVICES ABSENT THIS LIMITATION OF LIABILITY.

**11. Indemnity**

As a material Term of Use and as a material part of the compensation you pay us for the use of our Services, you agree to indemnify eBiM, its directors, officers, owners, agents, co-branders or other partners, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (including without limitation, our payment processor(s) (collectively the “indemnitees”) and hold the indemnitees harmless from and against any cost, loss or damages they or any of them suffer, including reasonable attorneys fees and other legal costs, arising from or related to any claim or assertion that you have used the Services in violation of another party's rights, in violation of any law, in violation of any of the provisions of this Agreement, or any other claim related to your use of the Services. Without limiting the generality of the foregoing indemnity, you expressly agree to hold the indemnitees harmless and indemnify them from and against any and all costs they or any of them incur, including attorneys’ fees, arising out of or related to:

- A. Your use of the Services, including, without limitation, your violation or alleged violation of any law, or the rights of a third party;
- B. Your distribution to any third party of any Publication you publish using our Services;
- C. Any legal action, dispute or litigation caused by, arising out of or related to your Publication, your actions or your omissions;
- D. Any damages we suffer, including consequential damages, arising out of or related to your use of the Services;
- E. The use of your account by any person including your employees or anyone who gains access to your account with your permission or due to your negligence.
- F. Your use of a payment processor to pay for our Services. You expressly indemnify the indemnitees for fees, fines or other expenses they or any of them may be required to pay or incur by a payment processor or scheme owner arising out of your acts or omissions.

**12. General Legal Provisions**

A. Integration

Unless you and eBiM have entered into a separate Reseller or Publisher contract, this Agreement (and any documents it expressly references) contains the entire agreement governing your use of eBiM Services. This Agreement shall replace and supersede in all respects any and all prior agreements, promises or representations, written or oral, between you and eBiM (except such separate contracts) with respect to the subject matter contained in this document.

## B. Revisions

The Company may revise this Agreement at any time without notice.

## C. Assignment

You may not assign this Agreement unless you have our written permission to do so. If you assign it without our permission, we may accept or refuse the assignment.

## D. Severability

If any part of this Agreement is found to be unenforceable, all other parts remain in full force and effect. In place of the unenforceable provision, the parties will substitute or add a provision that will be as similar as possible to what was intended by the unenforceable provision. The consequential damages waiver set forth in §10 above shall survive any finding that the exclusive remedy failed of its essential purpose.

## E. Choice of Law

This Agreement is governed by the laws of the State of Delaware, USA, even if Delaware's choice of law provisions provide otherwise. However, at the sole option of Company, any claim or dispute arising from the use of Company Services or from this Agreement may be removed to or filed in, in whole or in part: (i) the courts of the United States; or (ii) the courts of another nation or community where IPR has arisen, is registered or can be protected through legal action; or (iii) the place where you reside. eBiM may apply for injunctive relief against you in any jurisdiction without proving actual damages or meeting the requirement of posting a bond or other security. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, and the parties agree that these rules and the tribunals that enforce them have no application to or jurisdiction of the parties or this Agreement.

## F. Taxes

Taxes levied by law on the sale of our Services are collected at that time. You are responsible for all other taxes. You hereby agree to comply with any and all applicable tax laws in connection with your use of the Services.

## G. Notices

If you want to provide written notice to the Company under this Agreement, please provide a hard copy to the following address:

eBooks in Motion Inc.  
Legal Department, EULA Notification  
3531 Starboard Circle

Oceanside, California, 92054

Notification to any other address or by any other means, including e-mail, does not constitute effective legal notice under this Agreement. If we change our address, we will post the new address on our Site [www.ebooksinmotion.com](http://www.ebooksinmotion.com).

Statements, notices and other communications to you may be made by mail, email, postings on the eBiM Site or other reasonable means. We may also provide notices of changes to this Agreement or other matters by displaying links to notices on the eBiM Site.

#### H. Translations

This Agreement was written in English. For the convenience of our Customers, it may be translated into other languages. If there is a dispute regarding this Agreement, which involves the interpretation of its language or wording, the English version shall control.

#### I. eBiM Right to Refuse Service

eBiM reserves the right to refuse service any time without explanation or liability.