

FLEXISCALE TERMS AND CONDITIONS OF BUSINESS

IMPORTANT LEGAL NOTICE

The terms and conditions set out below (the “**Terms and Conditions**”) apply to and govern any services used by you (“**you**”, the “**user**”) and marketed by us under the brand name ‘FlexiScale’ including any services provided through any website with a domain name ending ‘flexiscale.com’ (the “**Website**”), and to any email and other correspondence between us relating to such a service.

Please read these Terms and Conditions very carefully. We would suggest that you print these Terms and Conditions out so that you can carefully review and understand the Terms and Conditions and refer to the Terms and Conditions from time to time as you require. These Terms and Conditions create a legally binding agreement between you and us. By continuing to use the Website, or by accepting the services offered by the Website by ticking the box headed ‘Please tick to confirm you agree to our terms and conditions’, you confirm that you accept these Terms and Conditions and have formed a legally binding agreement. If you do not accept any element of these Terms of Conditions, you must not take up any of the services offered by the Website. **In particular we would draw your attention to clauses 7, 12, 13, 14, 15 and 16 which impose significant legal obligations on you and also limit your legal rights.** In this regard if anything is unclear you should consider seeking independent legal advice.

We will commence supplying our services on the basis that you have agreed and accepted these Terms and Conditions.

Variations to these Terms & Conditions

We have the right and entitlement to revise or vary these Terms and Conditions at any time in our absolute discretion. Such revisions or variations will become valid and binding on you on the occurrence of the earlier of: when such updated Terms and Conditions are notified to you via email, when you reconfirm your acceptance of the Terms and Conditions by re-ticking the box headed ‘Please tick to confirm you agree to our terms and conditions’, or when you next purchase Units or use our Control Panel to provision new Services. Consequently we would suggest that you should regularly and carefully review these Terms and Conditions. If you do not accept any revision or variation of these Terms and Conditions you must not take up any of the Services offered by the Website.

Incorporation of Terms

In addition to these Terms and Conditions, these Terms and Conditions consist of the following, each of which is incorporated into these Terms and Conditions by reference:

Acceptable Use Policy: <http://www.flexiscale.com/aup.php>

Privacy Policy: <http://www.flexiscale.com/privacy.php>

We retain the right and entitlement to revise or vary each and any of the above policies and such revisions and variations will become binding on you as referred to above.

CHILDREN AGED UNDER 18 & LAWFUL AUTHORITY

The Website and the services offered by it are offered and provided for adults aged 18 and over. If you are under 18 and/or you are not able to form legally binding contracts you should not use the Website and/or take up or order any of the services offered by the Website. Adults who are 18 and over must also check with the owner and/or provider of the access to this Website that such access is lawful and allowed by any policy and/or terms and conditions governing the use of any equipment or internet connection used to access and use the Website.

By continuing to use the Website and any of the services offered by it, you are confirming that you are 18 or over and are accessing and using the Website and the services offered via the Website lawfully.

If you are entering into these Terms and Conditions on behalf of a company or other legal entity, you warrant and represent that you have the legal authority and entitlement to bind the company or legal entity to these Terms and Conditions in which case “**you**” or the “**user**” shall mean such company or legal entity.

1 ABOUT THE WEBSITE & FLEXIANT

- 1.1 This Website and all of the content and Services are operated and managed by Flexiant Limited (“we”, “us” and “our”). If you have any comments or questions about the Website or any of the Services please contact us by one of the methods shown below.

Contact Details

Telephone: 0870 050 0080 or +44 1506 606000

Fax: +44 1506 606013

Email: info@flexiscale.com

Mail: Flexiant Limited
Geddes House
Kirkton North
Livingston
EH54 6GU
United Kingdom

1.2 Company Details

Flexiant Limited is a company incorporated in England & Wales with company number 07081795.

2 DEFINITIONS

In these Terms and Conditions:

- 2.1 “**Acceptable Use Policy**” means the acceptable use policy as included on the Website from time to time.
- 2.2 “**Acceptance Date**” means the earlier of either: (i) the date on which you accept these Terms and Conditions via the Website and/or (ii) the date you first use of any of the Services including purchasing Units.
- 2.3 “**Agreement**” means the legally binding agreement between you and us to deliver the Services which is strictly subject to these Terms and Conditions.
- 2.4 “**Business Customer**” means any person, organisation, entity or association who is not a Consumer.
- 2.5 “**Business Day**” means any day (other than a Saturday, a Sunday or a bank or public holiday in England) during which the clearing banks are open for business in the City of London.
- 2.6 “**Charges**” means the charges in respect of the Units or otherwise as shown on the Website and varied from time to time.
- 2.7 “**Consumer**” means an individual whose use of the Service is for personal purposes only, and not for use in connection with any trade, business, profession or profitable purpose of any nature.
- 2.8 “**Content**” means any computer file, document, database, text, graphic, logo, photograph, image, moving image, sound, illustration or other material.
- 2.9 “**Control Panel**” means the control panel made available via the Website which the user will use to purchase Units and manage the provision of Services.
- 2.10 “**Our Software**” means the software and related documentation owned by or licensed to us including any upgrades or related documentation, as available as part of the Services from time to time.
- 2.11 “**Services**” means the services branded as FlexiScale to be provided by us to you, as described on the pages of the Website relevant to that service. Such Services shall include only those services which are offered via the Website including without limitation provision of “cloud computing”, hosting services, hosting infrastructure, virtual servers, operating systems CPU power, disk, RAM, network bandwidth and the provision of firewalls.

- 2.12 “**Unit Balance**” means the number of Units you have purchased less the number of units used in respect of the provision of Services in accordance with clause 6.
- 2.13 “**Units**” means the non-refundable units offered for purchase via the Control Panel which can be used to purchase Services only.

3 REGISTERING WITH THE WEBSITE & USER ACCOUNTS

- 3.1 To allow you to access the full and complete functionality of the Control Panel, including ordering Services, it will be necessary for you to register as a user of the Website. Until you have registered as a user of the Website and have been accepted by us as a registered user, your ability to order Services and access the Control Panel will be limited and restricted.
- 3.2 In order to register as referred to in clause 3.1, you must provide current, accurate and complete contact details as set out in the registration form provided; this will include your name, the name of the organization (if applicable) entering into the Agreement, an address and telephone contact details.
- 3.3 You will also be required, once you have taken the time to carefully review the entirety of the Terms and Conditions, to tick a box to confirm your acceptance of these Terms and Conditions.
- 3.4 Once you have completed the basic registration information and submitted this to the Website a confirmation email will be sent to the email address supplied to us. You must then confirm the details of your registration (by clicking on a link sent to you in that email) to complete the registration process.
- 3.5 Upon successful registration you will be supplied with an individual username and password which you can use to access the Control Panel.
- 3.6 We reserve the right to alter and/or cancel your username or password and/or restrict your access to the Control Panel if we have reason to believe you have not complied entirely with these Terms and Conditions.
- 3.7 Your registration is personal to you. You may only share your password with a person whom you have authorised to use your account.
- 3.8 You are responsible for keeping your password secret. If you think that someone else knows your password or has used it to access the Website, you should change your password via the Control Panel immediately.
- 3.9 User accounts are non-transferable and you will be liable for any and all activities undertaken using your user account together with the associated password, whether or not the person undertaking the activities has been authorized by you.
- 3.10 For administration or security reasons, if we believe that someone else is trying to use your password or username, we can require you to change your password and/or username and may suspend or cancel your user account and/or your access to the Website and/or Services.
- 3.11 We do not guarantee that the Website will be compatible with your PC or other hardware and equipment used to access the internet and/or the Website.
- 3.12 Any abuse or operation of your user account which is not strictly in accordance with these Terms and Conditions may result in the disqualification of you as a registered user and may lead to civil or criminal proceedings being brought against you. We may at any time, in our absolute and sole discretion suspend or permanently exclude you as a user of the Website. We will determine and decide upon such expulsion if and, in our reasonable opinion, you have breached any of the provisions of these Terms and Conditions, violated any laws, infringed upon the rights of third parties, undertaken activities for which the Services are not intended or if we have another reasonable suspicion that such action is necessary to protect us.
- 3.13 We have the right to verify your identity as a registered user. In the event that we cannot verify or authenticate your identity using reasonable endeavours and in our absolute satisfaction then we may ask you to provide further proof of identity including without limitation:
- 3.13.1 original and/or certified copies of photographic ID including without limitation driving licences and/or passports;

3.13.2 original and/or certified copies of proof of residential address, such as utility bills, bank statements or other proof of address acceptable to us; and

3.13.3 any other documentation which we may request or require.

3.14 Should you fail to be able to provide such evidence and proof as reasonably requested by us then we shall be entitled to immediately suspend and/or permanently remove such user account and details and/or cancel the same.

3.15 You may also access the Services via a proprietary application programming interface (“**API**”) if we wish to make such an API available to you. We reserve the right to change the API at any time without notice.

4 SERVICES

4.1 In consideration of the prompt payment of the Charges by you, we shall provide the Service to you subject to these Terms and Conditions, from the Acceptance Date until the Services are terminated or the Service suspended in accordance with the provisions of these Terms and Conditions.

4.2 The Services offered via the Website may vary in scope and nature from time to time. You acknowledge, accept and agree that elements of the Services may be varied, updated, replaced, removed, supplemented or added to from time to time as we so determine appropriate.

4.3 Subject to your compliance with the remaining provisions of these Terms and Conditions, we grant you a non-exclusive, non-transferable, revocable, non-sublicensable and restricted licence for the term of this Agreement to use any software which forms part of the Service only for the period of the provision of the Services.

4.4 Any third party software provided as part of the Service, together with such third party’s electronic or printed licence agreement, is included for use at your sole option, and any use of such third party software shall be governed by the third party’s licence agreement.

4.5 The Service may contain errors and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as (without limitation) in the operation of nuclear facilities, aircraft navigation, traffic or communication systems, air traffic control, direct life-support machines, or weapons systems, in which the failure of the Service could lead to death, personal injury, or severe physical or environmental damage (“**High Risk Activities**”). Accordingly, without prejudice to any other disclaimer or limitation of liability in these Terms and Conditions, we specifically disclaim any express or implied warranty of fitness of the Service for use for High Risk Activities.

4.6 You acknowledge that you have no right to any physical access to the premises from which the Service is provided or any other of our premises, without our explicit prior permission (which will be determined in our absolute discretion).

4.7 You acknowledge, accept and agree that various elements of the Website and/or Services may be offered to you whilst being under development and/or whilst still subject to completion of compliance testing. Such elements of the Website and/or Services will be labeled ‘Beta Testing’ and shall be used by you accepting that these elements of the Website and/or Services may not be reliable or secure.

4.8 The Services includes both free services that we make available for no Units and services which are offered subject to Charges.

4.9 You shall not use the Services to distribute, store, host, display, transmit, receive or disseminate any Content or other information that:

4.9.1 infringes any intellectual property rights;

4.9.2 is in breach of any law, statute or regulation;

4.9.3 is defamatory, libelous, unlawfully threatening or harassing;

4.9.4 is obscene, pornographic or indecent;

4.9.5 contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information; or

4.9.6 is not solicited.

4.10 For the avoidance of doubt, we do not monitor, and will have no liability for the contents of, any communications transmitted by you by virtue of our provision of the Services.

4.11 You grant to us a non-exclusive, royalty-free licence, during the term of this Agreement, to use, store and maintain the Content on a server for the purposes of providing the Services in accordance with this Agreement. We may (in our absolute discretion) make such copies as may be necessary to perform the obligations under this Agreement, including back up copies of the Content or deliver to you all such copies of the Content and other materials provided by you as and when requested by you.

5 ACCEPTABLE USE POLICY

5.1 You shall undertake and may only use the Services in accordance with our Acceptable Use Policy.

6 PAYMENTS AND FLEXISCALE UNITS

6.1 You acknowledge and agree that any payments made via the Website described as being for 'units' are for Units that can only be used to pay for Services. No amounts received will be:

6.1.1 refundable; or

6.1.2 capable of being exchanged or used in any manner other than as credit which can be used to pay for Services.

Making a Payment

6.2 All payments on the Website for Units must be made via:

6.2.1 Credit card or debit card purchases made via the Website;

6.2.2 Direct debit payments made monthly once the necessary direct debit paperwork has been completed and signed by you and then accepted by us; or

6.2.3 Credit account, which is strictly subject to the successful completion and acceptance of a credit application.

6.3 All payments required to be made pursuant to a credit account shall be made in full without set-off within 30 days of the date of the relevant invoice in cleared funds to such bank account as we may from time to time nominate.

6.4 Invoices will be issued by us shortly following any purchase of Units by you as we deem appropriate and necessary, and made available to you via the Control Panel.

6.5 You acknowledge and accept that the Services and/or your continued access to the Control Panel may be immediately suspended or terminated if any payments for Units are declined, delayed or refused by your financial institution and/or credit card or debit card provider.

Payment Plans

6.6 You will pay for Units using the Control Panel by selecting from the packages on offer at the point of purchase. Payment must be made using one of the payment mechanisms set out above. If your package is described as having an 'Automatic Top-Up', then whenever your Unit Balance reach a set minimum level as described on the Website, you will automatically purchase the same quantity of Units again based on the number of Units initially purchased via the Control Panel using the same payment method.

6.7 The prices of packages of Units will be displayed on the Website. Prices may be changed from time to time at our discretion. Details of any volume discounts may be made available to you on the Website.

- 6.8 Your Unit Balance will be adjusted by us in line with the Services you select from time to time according to the rates for those Services as advertised on the Website. In addition to any hourly or daily rates there may also be various administration charges.
- 6.9 If at any time during the continuation of the Agreement you fail to meet the appropriate standard of creditworthiness deemed acceptable by us in our reasonable discretion, we may, irrespective of whether or not your account is a credit account, either:
- 6.9.1 require you to make such regular advance payment(s) as we deem necessary;
 - 6.9.2 require you to make any payment by electronic funds transfer that you would otherwise be required to make under these Terms and Conditions by credit card, debit card or direct debit;
 - 6.9.3 impose a limit on the amount of Units you may purchase;
 - 6.9.4 adjust the credit limit attached to your credit account (if you have a credit account); and/or
 - 6.9.5 impose such restrictions or conditions on your right to use the Services as we deem appropriate.

Units

- 6.10 The provision of Services is strictly subject to you maintaining sufficient levels of Units and you acknowledge, accept and agree that we may suspend or terminate the Services if the Units available via your user account are insufficient for the Services you require from time to time. Once you have used all of the Units in your user account you will need to purchase additional Units via the Control Panel in order to continue to use the Services.
- 6.11 If your Unit Balance reaches zero at any time then you acknowledge and accept that we may automatically and immediately cease the provision of the Services.

Expiration of Units & User Accounts

- 6.12 Units do not expire unless the description of the package you used to purchase the Units describes such an expiry process, in which case those Units will expire according to the terms so set out.
- 6.13 You acknowledge, accept and agree that if you use more Units than you have purchased (and thus your Unit Balance becomes negative), you shall forthwith purchase sufficient Units to make your Unit Balance positive. If your Unit Balance remains negative for more than 24 hours, we may at our discretion purchase on your behalf such Unit package as we reasonably determine is appropriate to make your Unit account positive using any form of payment you have previously authorized us to use in relation to any purchase of Units.
- 6.14 If your user account is not used for a continuous period of 3 months or more then we shall be entitled to cancel your user account and immediately delete any Services associated with such user account. Any unused Units will be forfeited and lost.
- 6.15 If your Unit Balance is zero (or negative) and you do not purchase any additional Units within 7 days then we shall be entitled to immediately delete all data, information and any configuration previously supplied as part of the Services.
- 6.16 If you believe that the Services and/or access to the Website have been suspended and/or terminated incorrectly then you shall ensure that you contact us immediately to allow us to investigate this matter fully and thereby reinstate access to the Website and/or Services as appropriate and thereby limit and mitigate against any downtime and potential consequences suffered as a result of such suspension and/or termination.

Payment Returns

- 6.17 Should any payment made by you for Units not be honoured or accepted by your associated financial institution and/or the Website's automated payment function then we may charge a returned payment fee to cover the additional administration cost and any other associated costs which we may incur. We reserve the right, in our absolute discretion, to suspend or cancel access to your user account until payment in full of such amounts, including any fees we may charge you to return an unhonoured payment and we reserve the right to withhold the provision of any Services until payment has been received by us in full.

No Unit Refunds

6.18 Upon termination of the Agreement, or otherwise, no Units (unused or otherwise) you have purchased will be refunded or returned to you.

VAT & Taxes

6.19 All sums payable for the Services and Units are stated exclusive of VAT unless stated otherwise and we shall be entitled to charge VAT as appropriate.

6.20 You agree it is your responsibility to account for any tax or duty imposed on you as a result of utilising the Services.

Payments in Sterling

6.21 All payments for Units must be made in pounds sterling.

6.22 If any sum payable pursuant to the Agreement is calculated in a currency other than pounds sterling it shall be converted into pounds sterling by reference to the average of the relevant buying and selling rates of Clydesdale Bank plc prevailing in London at the close of business on the payment date or, if that is not a Business Day, on the next following Business Day.

7 USER RESPONSIBILITIES & WARRANTIES

7.1 You acknowledge and agree that whilst using the Services you cannot:

7.1.1 interfere with the Services or provision of the Services;

7.1.2 continue to use the Services or attempt to use the Services if you have had a registered user account suspended or cancelled; nor

7.1.3 act in a manner which is in breach of the Acceptable Use Policy.

7.2 You represent and warrant to us that:

7.2.1 you are 18 years of age or over, of sound mind and capable of taking responsibility for your own actions;

7.2.2 you can enter into a legally binding agreement with us and you are the person whose details are provided in connection with your user registration;

7.2.3 in the event that another person uses your account you are solely responsible for all their actions whether or not their access was authorised by you and for this purpose you hereby indemnify us and hold us harmless against all costs, claims, expenses and damages howsoever arising in connection with the use of or access to your account by any third party;

7.2.4 you are not an undischarged bankrupt or in a voluntary arrangement with your creditors;

7.2.5 you will at all times act in good faith in relation to the Services; and

7.2.6 you will only utilise the Services for entirely lawful and legitimate purposes.

7.3 You acknowledge, accept and agree that the availability of the Services and the Website is strictly subject to:

7.3.1 your compliance in full with these Terms and Conditions;

7.3.2 payment of all fees and charges in a prompt and timely manner;

7.3.3 compliance with all relevant laws and regulations; and

7.3.4 the maintenance of a suitable level and amount of Units to ensure that the Services are fully paid up and appropriate amount of Units are in place.

8 OUR RIGHTS AND ENTITLEMENTS

- 8.1 Other than personally identifiable information, which is covered under our Privacy Policy, any material you publish to the Website which shall exclude data stored by you on the Services and information submitted by you to our ticket system, but shall include without limitation your posts or comments on blogs and forums shall be considered non-confidential and non-proprietary.

Liaison with Law Enforcement Authorities

- 8.2 We may fully co-operate with any law enforcement authorities or court order requesting or directing us to disclose the identity or locate anyone acting in breach of these Terms and Conditions.

Notification of Under Age

- 8.3 If we are notified that you are under 18 or were under 18 when you purchased any Services ('under age'):
- 8.3.1 we may immediately prevent you from utilising the Services or making any use of your Units;
 - 8.3.2 we may investigate the claim that you are or were under age;
 - 8.3.3 if having found that you are or were under age, we may take such action as we deem reasonably appropriate; and
 - 8.3.4 we will not return to you any amounts paid by you in respect of any Units utilised whilst you were under age.

9 SUPPORT SERVICES

- 9.1 We will use reasonable endeavours to respond to any request in relation to a fault connected with the Services.
- 9.2 We will use reasonable endeavours to resolve any fault referred to us in accordance with clause 9.1.
- 9.3 Any requirement for support should be notified to us in accordance with the details as set out on the Website from time to time.
- 9.4 We shall be entitled to undertake scheduled maintenance and/or downtime upon reasonable notice to you.
- 9.5 We shall be entitled to undertake emergency maintenance and/or downtime at any time without the requirement to provide notice to you as we deem reasonably necessary.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Flexiant and FlexiScale and the associated logos and graphics are our trade marks. Any unauthorised use of the trade marks may result in civil and/or criminal prosecution.
- 10.2 The Website, its design and content including all text, information, still and motion video, audio and audio visual material, code and/or software and/or the Services (the "**Material**") and all associated intellectual, property rights are owned by us.
- 10.3 No element of the Website or the Material may be taken out of context or presented in a misleading or discriminatory manner. You agree not to modify, copy, reproduce, broadcast, modify, adapt, transmit, republish, sell, resell, exploit, create derivative works or distribute in any way any portion of the Website or the Material.
- 10.4 You are granted a personal, limited, non-transferable, non-exclusive licence to access the Website and print and download extracts from the Website for your own private personal use on the following basis:
- 10.4.1 no documents or related graphics on the Website are modified in any way;
 - 10.4.2 no graphics on the Website are used separately from the accompanying text;

- 10.4.3 the Company's copyright and trade mark notices and this permission notice appear in all copies of any material from the Website; and
- 10.4.4 you do not, and you do not allow any third party, to modify or create a derivative work, reverse engineer or otherwise attempt to discover any source code or software available on the Website.
- 10.5 The grant of this limited licence is conditional upon your agreement to and compliance with all these Terms and Conditions. We may revoke this licence at any time and in our absolute discretion.
- 10.6 Your registration and use of the Website and Services confers no rights whatsoever to the content and related intellectual property rights contained on the Website. You agree not to publish, use or copy our web pages or any content on the Website, including without limitation any pages associated with the Services other than as permitted under these Terms and Conditions or in accordance with the license terms displayed with those web pages or content. Any unauthorised publication, use or reproduction may be prosecuted.
- 10.7 Any data licensed to us from third parties is provided for use strictly in connection with the Services and subject to the third party licence terms only and may not be used for any other commercial purposes without the prior written consent of such third parties.
- 10.8 You acknowledge, accept and agree that any internet protocol address (the "**IP address**") which is provided to you as part of the Services shall be owned and retained by us and upon termination of this Agreement you shall have no right, title to, entitlement to or interest in such IP address whether during the term of this Agreement or upon its termination, and that any such IP address is not portable or otherwise transferrable by you in any manner whatsoever. Upon termination of this Agreement, the acquisition by you of a new IP address for your purposes following termination of the Agreement shall be your exclusive responsibility. We may at any time allocate a different IP address to you, but if we do, we shall use reasonable endeavours to avoid any disruption to you.
- 10.9 If and to the extent that you require use of Our Software in order to use the Services, we grant to you a royalty-free, world-wide, non-transferrable licence to use Our Software in object code form only. You have the right to use Our Software strictly subject to the licence terms applicable to Our Software.

11 PRIVACY POLICY & USE OF DATA

- 11.1 The collection, storing and use of your data and information is governed by the Privacy Policy, a copy of which is available at <http://www.flexiscale.com/privacy>.

12 LINKING & THIRD PARTY WEBSITES

- 12.1 The Website may contain links to other websites operated by third parties who may also contain links to other third party websites. Links to third party websites on the Website are provided solely for your convenience. If you use these links, you leave the Website. We have not reviewed all of these third party websites and do not control and are not responsible for these websites or their content or availability. As a result, we do not endorse or make any representations about them, or any material found there, or any results that may be obtained from using them. If you decide to access any of the third party websites linked to the Website, you do so entirely at your own risk.
- 12.2 Please note that we are not responsible for the terms of use or data collection practices of any other websites and we encourage you to read the privacy statements and terms of use of those linked websites.

13 RESPONSIBILITY FOR BACKUP

- 13.1 You acknowledge, accept and agree that:
 - 13.1.1 You shall be solely and entirely responsible for backing up and making duplicate copies of all content, data and information which is used and included within the Services.
 - 13.1.2 We shall not be responsible for any back up, recovery or other step required to ensure that the data and information stored as part of the Services is recoverable in the case of any data loss, system fault or other activity which creates any loss of data, information or other item which is stored via the Service.
 - 13.1.3 You will take steps to regularly and consistently back up all information, and other material which are used as part of the Services to ensure that the potential for losses are mitigated.

- 13.2 Notwithstanding the proceeding provisions of this clause 13 you shall effect and maintain sufficient insurance cover in respect of any loss, damage or claim which may result from any data loss, system fault or similar failure in associated with the Services

14 DISCLAIMER & LIABILITY

DISCLAIMER

- 14.1 **WHILE WE ENDEAVOUR TO ENSURE THAT THE INFORMATION ON THE WEBSITE IS CORRECT, WE DO NOT WARRANT THE ACCURACY AND COMPLETENESS OF THE MATERIAL ON THE WEBSITE. WE MAY MAKE CHANGES TO THE MATERIAL ON THE WEBSITE, OR TO THE SERVICES DESCRIBED IN IT, AT ANY TIME WITHOUT NOTICE. THE MATERIAL ON THE WEBSITE MAY BE OUT OF DATE, AND THE COMPANY MAKES NO COMMITMENT TO UPDATE SUCH MATERIAL.**

LIABILITY

- 14.2 **THE SERVICES AND ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS AND OTHER DATA OR INFORMATION PROVIDED BY US OR OUR LICENSORS IN CONNECTION THEREWITH (COLLECTIVELY THE “SERVICE OFFERINGS”) ARE PROVIDED “AS IS”. WE AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICE OFFERINGS. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, WE AND OUR LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WE AND OUR LICENSORS DO NOT WARRANT THAT THE SERVICE OFFERINGS WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED OR ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE DATA YOU STORE WITHIN THE SERVICE OFFERINGS WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WE AND OUR LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS, INCLUDING THOSE THAT AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY PAYMENT SERVICES. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM US OR FROM ANY THIRD PARTY OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.**
- 14.3 **NOTHING IN THESE TERMS AND CONDITIONS SHALL EXCLUDE OR LIMIT OUR LIABILITY FOR:**
- 14.3.1 **DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE (AS SUCH TERM IS DEFINED BY THE UNFAIR CONTRACT TERMS ACT 1977); OR**
 - 14.3.2 **FRAUD; OR**
 - 14.3.3 **ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.**
- 14.4 **YOU ASSUME ALL COSTS IF YOUR USE OF THE SERVICES RESULTS IN THE NEED FOR SERVICING, REPAIR OR CORRECTION OF EQUIPMENT, SOFTWARE OR DATA.**
- 14.5 **WE DO NOT WARRANT THAT FUNCTIONS CONTAINED IN THE SERVICES CONTENT WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES ARE FREE OF VIRUSES, WORMS, TROJAN HORSES OR BUGS.**

SERVICES

- 14.6 **YOU ACKNOWLEDGE, ACCEPT AND AGREE THAT SUBJECT TO THE PROVISIONS OF THESE TERMS AND CONDITIONS OUR LIABILITY, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT OR OTHERWISE SHALL NOT INCLUDE:**
- 14.6.1 **LOSS OF BUSINESS, USE, CONTRACTS, OR ANTICIPATED SAVINGS;**
 - 14.6.2 **LOSS OF PROFIT;**
 - 14.6.3 **LOSS OF REVENUE;**
 - 14.6.4 **LOSS OF DATA OR USE OF DATA; AND**

OR ANY INDIRECT OR CONSEQUENTIAL LOSSES EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

- 14.7 **IN NO EVENT SHALL WE BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES RESULTING FROM ANY DISRUPTION OR INTERRUPTION IN THE SERVICES AND ANY ASSOCIATED LOSS OF DATA OR INFORMATION.**

15 LIMITATION OF LIABILITY

- 15.1 Other than the payment obligations set out in clause 6 and/or indemnity obligations set out in clause 16 and subject to clause 14: (i) each party's liability to the other arising from any given event or series of connected events, shall be limited to the greater of; (a) the amount paid or payable by you to us under these Terms and Conditions in the three months immediately preceding the month in which the event (or first in a series of connected events) occurred and (b) £15,000; (ii) neither party shall be liable in contract, tort (including, without limitation, negligence), for pre-contract or other representations (other than fraudulent misrepresentations) or otherwise arising out of or in connection with these Terms and Conditions for any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings); any loss of goodwill or reputation; or any special, indirect or consequential losses in any case, whether or not such losses were within the contemplation of the parties upon entering into these Terms and Conditions, suffered or incurred by that party arising out of or in connection with the provisions of, or any matter under, these Terms and Conditions.

16 INDEMNITY

- 16.1 You shall indemnify and defend us, our agents, affiliates, directors, officers, employees and partners ("**Flexiant Indemnified Persons**") from and against any claims, losses, liabilities, expenses, damages and settlement amounts including legal fees and costs) incurred by Flexiant Indemnified Person(s) arising out of your breach of these Terms and Conditions. These indemnification obligations shall exist only if Flexiant: (i) promptly notifies you of any claim; (ii) provides you with reasonable information and cooperation in defending any claim; and (iii) gives you full control and sole authority over the defence and settlement of such claim. The Flexiant Indemnified Persons may join in the defence with counsel of its choice at its or their own expense.

17 TERMINATION

- 17.1 This Agreement shall commence on the Acceptance Date and shall continue either until terminated by either us or you for convenience.
- 17.2 We may terminate this Agreement at any time by giving you 30 days' written notice (including without limitation email notice).
- 17.3 You may terminate this Agreement at any time by canceling your account using the Control Panel.
- 17.4 In addition to our rights under clause 17.2, we may suspend the Service or terminate the Agreement immediately without notice to you and without giving you any refund if any of the following occurs:
- 17.4.1 we are precluded from providing the Service by law or by the decision of any competent judicial, governmental or regulatory body;
 - 17.4.2 you provide us with any false, inaccurate or misleading information for the purpose of using the Service;
 - 17.4.3 you fail to pay any sum due to us when it falls due, and have not made payment within 7 days of the due date, or you breach any other provision of the Agreement and, if the breach is remediable, fail to remedy the breach within 7 days of written notice from us specifying the nature of the breach, and the steps required to remedy it; or
 - 17.4.4 (in accordance with the law of any jurisdiction in the world) you become bankrupt or apparently insolvent, are sequestered, wound up, make a proposal for a voluntary arrangement under the Insolvency Act 1986, cease or threaten to cease to carry on your business, or otherwise are unable to meet your debts as they fall due; or
 - 17.4.5 we decide (acting reasonably) that any event has occurred which adversely affects your ability to pay for Units, or otherwise to perform your obligations under the Agreement (including, without limitation, your

credit or debit card being declined, or us receiving notice that you have disputed any charges with your credit card or debit card company or in the case of direct debit your bank); or

17.4.6 your death, or (if you are a body corporate) your ceasing to exist.

17.5 Upon termination of the Agreement:

17.5.1 we may immediately cease provision of the Services to you and/or disable or delete your user account;

17.5.2 you shall continue to be bound by the obligations set out in these Terms and Conditions and to pay charges incurred in connection with any use of such Services beyond the date of termination; and

17.5.3 you shall remain liable for any amounts which are outstanding (including without limitation any negative Unit Balance) at the date of expiry or termination.

17.6 Termination of this Agreement for whatever reason shall not affect:

17.6.1 the accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other or;

17.6.2 provisions expressed to survive this Agreement, which shall remain in full force and effect.

18 CONSUMER'S RIGHT TO CANCEL

18.1 This clause 18 only applies if you are a Consumer.

18.2 In accordance with the Consumer Protection (Distance Selling) Regulations 2000, subject to Clause 18.4, you may cancel the Agreement at any time during the period of seven (7) working days, beginning on the day after the Acceptance Date (the "**Cancellation Period**"). For further information on your rights under these Regulations please refer to the Consumer Direct website at:

http://www.consumerdirect.gov.uk/after_you_buy/buying_at_home/returning-cancelling/.

18.3 If you wish to cancel you must contact us via the Website before the expiry of the Cancellation Period, informing us that you are a Consumer and that you wish to cancel the Agreement in accordance with this clause 18.

18.4 You do not have an automatic right to cancel the Agreement if at your request or otherwise with your consent we commence providing the Services to you within the Cancellation Period.

19 DISPUTE RESOLUTION

19.1 In the event of a dispute arising between us and you, our customer service staff will attempt to reach an agreed resolution.

19.2 Should our customer service staff not be able to reach an agreement with you, our senior management and/or Board of Directors may intervene to resolve any outstanding grievance.

19.3 You agree to follow any grievance/dispute policy we may put in place from time to time. You agree to diligently and faithfully exhaust this process before taking any grievance/dispute to any Court or regulatory authority. Failure to do so may require us to seek to recover any legal costs from you.

19.4 You acknowledge and agree that nothing contained in this clause 19 or the Terms and Conditions more generally shall limit or restrict our ability to issue proceedings against you in our absolute discretion.

20 FORCE MAJEURE & EVENTS BEYOND OUR CONTROL

We are not liable for any loss or damage that you may suffer because of any: act of God; power cut; power surge; trade or labour dispute or shortage, terrorist attack, illness or pandemic, act, failure or omission of any government or authority; power surge or power loss; obstruction or failure of telecommunication services; or any other delay or failure caused by a third party. In such an event, we reserve the right to cancel or suspend the Website and/or our

Services without incurring any liability.

21 GENERAL

- 21.1 These Terms and Conditions and the entirety of the provisions are binding on you, on your respective successors and assigns. You may not assign, charge, sub-licence or otherwise dispose any of your rights or entitlements under these Terms and Conditions.
- 21.2 We may at any time assign, transfer, charge or deal in any other manner with any of our rights and entitlements under these Terms and Conditions.
- 21.3 If any provision of these Terms and Conditions are found by any Court of competent jurisdiction to be invalid or unlawful, the invalidity and unlawfulness of that provision will not affect the validity of the remaining provisions which shall continue to have full force and effect.
- 21.4 No delay and/or failure to enforce our rights or entitlements under these Terms and Conditions will be deemed to be a waiver and any waiver will require our express written confirmation. Any such waiver by us of any breach of these Terms and Conditions shall not be considered a waiver of any subsequent breach of the same or any other provision.
- 21.5 Only the parties to these Terms and Conditions may seek to enforce them and in this regard the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.
- 21.6 If you authorise, assist, encourage or facilitate another person or entity to take any action related to the subject matter of these Terms and Conditions, you shall be deemed to have taken action yourself.
- 21.7 These Terms and Conditions are not intended to nor do they create any type of joint nature, escrow, partnership or any employer/employee relationship or franchise relation between you and us.
- 21.8 These Terms and Conditions and other terms as referred to in the incorporation of terms constitute the entire agreement between you and us relating to the provision of the Service, and supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between us in relation to this, and all past courses of dealing or industry custom. No oral explanation or oral information given by any party (including any information given via our customer services, sales or support departments) shall alter the interpretation of these Terms and Conditions. In agreeing to these Terms and Conditions, you have not relied on any representation other than those expressly stated in these Terms and Conditions.
- 21.9 Nothing on the Website is intended or shall be interpreted to mean that we are making a legal offer to you to provide the Service; we are inviting you to make a legal offer to us to purchase the Service. It is entirely at our discretion to accept or reject the offer to purchase.
- 21.10 A legally binding contract for the provision of Services is concluded upon the earlier of:
- 21.10.1 When your credit card, debit card is first charged to purchase Units;
 - 21.10.2 When Units are purchased in any other manner than via your credit card or debit card; or
 - 21.10.3 When you first make use of the Services.
- 21.11 These Terms and Conditions shall be governed by interpreted by and construed in accordance with English law. Disputes arising out of or in connection with these Terms and Conditions shall be subject to the exclusive jurisdiction of the English Courts.

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