



Service Provider

Terms and Conditions of Use

1. DEFINITIONS

In this Agreement:

Account means an account created by Flexischools at the request of a person for the purpose of allowing that person to accept offers of Goods and/or Services from You and make payments to You in respect of those Goods and/or Services;

Account Holder means a person who has opened an Account;

Activity means a service or event operated by You which uses the Flexischools Service to transmit an offer and receive payment;

Administrator means You or any person You have provided with authority to manage the administration area of the Communications Functionality relating to the relevant section of the Website and/or the Flexischools App, including the ability to create and delete boxes, in order to send, receive, and manage Content;

Agreement means the agreement between You and Flexischools comprising the Application Form, these terms and conditions and any fees or requirements later notified by Flexischools in accordance with clause 22.1 below;

Application Form means the application form of which these terms and conditions form part;

App Store means an online store for purchasing and downloading software and applications for mobile phones and other devices;

Authorised Manager means a person appointed as such by You in the Application Form or by written notice to Flexischools;

Chargeback means an amount transferred from a Flexischools account due to a successful refund claim in the banking system by an Account Holder;

Communications Functionality means any communications functionality Flexischools may make available to You through the Flexischools Service, which includes your ability to provide notifications through the Flexischools App or other channels agreed by Flexischools, which will be received or visible by users of the Flexischools App;

Confidential Information means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought to reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement;
- (b) information developed independently by a party; and
- (c) information required for by a party on a need to know basis to employees, contractors, third party service providers and/or professional legal or accounting advisers;

Content means any information, text, files, graphics, photos or other materials uploaded, posted, provided to, or appearing in the Flexischools App or other channel agreed by Flexischools;

Documentation means any and all proprietary documentation made available to you by Flexischools for use with the Flexischools Service, including any documentation available online;

Editor means a person that has been granted limited rights by an Administrator to manage the Content, but not the creation or deletion of boxes that may be allocated by an Administrator;

Facility means a service site, owned or managed by You which is responsible for providing Goods and/or Services and is listed in the Application Form or otherwise agreed between You and Flexischools from time to time;

Fee has the meaning given to it in clause 18;

Flexischools means InLoop Pty Ltd ABN 27 114 508 771 trading as Flexischools;

Flexischools App means the Flexischools application available through an App Store;

Flexischools Card System means a card which is associated with an Account and integrated with the Flexischools Service and used by the card holder for the purpose of purchasing Goods and/or Services from a Facility using the Account;

Flexischools Service means the service offered by Flexischools described in this Agreement and includes use of the Flexischools Website and the Communications Functionality;

Flexischools Website means the Flexischools website located at www.flexischools.com.au;

Goods mean food, drinks and other items supplied by You;

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law;

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property Rights means all intellectual property rights, including: patents, copyright, rights in circuit layouts, registered designs, trademarks; and any application or right to apply for registration of any of those rights;

Law means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct;

Loss means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

Materials means menus, customisation options, pricing, delivery times and other details relating to the offer and supply of Goods and/or Services as notified by You to Flexischools from time to time;

Non-Excludable Guarantees means any statutory rights or guarantees provided under the *Competition and Consumer Act 2010* (Cth) or any other rights in relation to the supply of Goods and/or Services (such as terms implied into a contract by the *Australian Securities and Investments Commission Act 2001* (Cth) or any equivalent State or Territory legislation) that cannot lawfully be excluded;

Personal Information has the meaning given to the term in the Privacy Legislation;

Privacy Legislation means the *Privacy Act 1988* (Cth);

Privacy Policy means the Privacy Statement issued by Flexischools and made available on the Flexischools Website (as updated or amended from time to time);

POS Hardware means any point of sale hardware supplied by Flexischools to You from time to time;

POS Support means any support in relation to POS Hardware agreed between Flexischools and You from time to time;

Services means services performed by You;

Software means the software or tools, and related functionality, provided or made available by Flexischools for use with the Flexischools Service including any software required to use the Communications Functionality; and

You and *Your* means the organisation named in the Application Form and Your employees, agents and contractors (including Administrators and Editors).

In this Agreement, any use of the verb includes, or of words such as for example or such as, do not limit anything else that is included in general speech.

2. RIGHT TO USE THE FLEXISCHOOLS SERVICE AND LICENCE TO USE SOFTWARE

In consideration of payment of the applicable Fees, Flexischools grants You during the term of this Agreement:

- (a) the right to use the Flexischools Service and the Documentation (as appropriate); and
- (b) a personal, non-transferable, non-exclusive, limited licence to use and install or access the Software on or through Your equipment (as appropriate);

in each case, in accordance with its terms of this Agreement for the purpose of offering Goods and/or Services in Australia to Account Holders.

3. FLEXISCHOOLS WEBSITE AND SOFTWARE

- 3.1 The Flexischools Website and all of the content on the Flexischools Website is and remains the exclusive property of Flexischools.
- 3.2 The Flexischools Website will have the functionality set out in this Agreement or as otherwise made available by Flexischools.
- 3.3 You acknowledge that there is no transfer of title or ownership to the Software or any modifications, updates and new releases thereto.
- 3.4 You acknowledge that Flexischools is not obliged to support the Software, whether by providing error-correction, modifications, new releases or enhancements or otherwise.
- 3.5 You agree that you will not, directly or indirectly (and will not allow others to):
 - (a) use the Software for any purpose or in any manner other than as set out in this Agreement;
 - (b) copy the Software, except as necessary to access or use the Flexischools Service or otherwise install on Your equipment;
 - (c) sell, lease, transfer, give possession of, or sub-licence the Software to others; or
 - (d) write or develop any derivative or other software programs, based, in whole or in part, on the Software.

4. YOUR OBLIGATIONS

- 4.1 Unless otherwise set out in this Agreement, You agree that you will not, and You will not allow any other person to, reproduce, modify or make error corrections to, customise, distribute or adapt the Flexischools Service, the Flexischools Website or its contents.
- 4.2 You agree that you will not, and You will not allow any other person to, use the Flexischools Service, the Flexischools Website or its contents:
- (a) so as to breach any Law, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority;
 - (b) in connection with any information or material that may be, or that may encourage conduct that may be, unlawful, threatening, abusive, defamatory, obscene, vulgar, pornographic, profane or indecent, or in any way that could otherwise damage the reputation of Flexischools or the goodwill or other rights associated with the Flexischools Service; or
 - (c) so as to modify or remove any copyright or proprietary notices on the Flexischools App, the Flexischools Website or in the Documentation.

Policies and Procedures

- 4.3 In using the Flexischools Service You agree to comply with all policies and procedures that are notified to You or otherwise covered in the Documentation provided by Flexischools from time to time.

Keep Confidential

- 4.4 You agree to keep confidential and secure any Confidential Information against any improper or unauthorised access or use any usernames, logins and passwords that are provided to You to access the Flexischools Service and Your Materials. To avoid doubt, You must not allow any third parties to use such usernames, logins and passwords.

Equipment

- 4.5 You acknowledge that Flexischools will not provide or maintain the equipment required to access the Flexischools Service (such as handheld devices, mobile phones, computers, fax machines, telephone lines or internet connections) which is Your sole responsibility.

Liability for Goods and/or Services

- 4.6 You acknowledge that the Flexischools Service acts as a method for You to communicate offers to sell Goods and/or Services to Account Holders and for Account Holders to accept such offers and to make payments in respect of the same. In particular:
- (a) the display of the Materials on the Flexischools Website constitutes an offer to Account Holders to buy the Goods and/or Services displayed;
 - (b) an order placed by an Account Holder through the Flexischools Service (including the Flexischools Website) constitutes acceptance of that offer and creates a legally binding contract between You and the Account Holder to supply the ordered Goods and/or Services at a Facility; and
 - (c) You retain sole responsibility for the quality, safety and supply of Goods and/or Services.
- 4.7 You agree to comply with all applicable Laws relating to the quality, safety and supply of Goods and/or Services (including the Australia New Zealand Food Standards Code and those Laws relating to the storing, supply, handling, preparing, transporting, labelling, distribution and manufacture of food).

- 4.8 You agree to maintain all necessary licences and approvals and authorisations.
- 4.9 You agree to maintain (and, where necessary, renew) appropriate insurance policies (including workers' compensation insurance and public and product liability insurance).

Authorised Manager

- 4.10 You may appoint a person or person to act as Authorised Manager by notice in writing to Flexischools.
- 4.11 Flexischools will provide Your Authorised Managers with a username, login and password to the Flexischools Website for the purpose of viewing and modifying Your Materials and viewing other information relating to Your Facilities and the Communications Functionality.
- 4.12 You agree to release, discharge and indemnify Flexischools from and against any claims, liabilities and expenses arising out of or in relation to Your Authorised Manager's use of the Flexischools Service.

5. FLEXISCHOOLS OBLIGATIONS

Service

- 5.1 Flexischools agrees to provide services to Account Holders in accordance with this Agreement, the Schedule to this Agreement and any terms and conditions later agreed in writing between the parties.

Manage Personal Information

- 5.2 Flexischools will manage Your Personal Information in accordance with the Privacy Policy. The Privacy Policy explains how we will collect and use this information, and the way in which you can contact us with any questions or raise issues about any breach of the Privacy Legislation. To obtain further information about this use of information or our Privacy Policy, you may contact us through the contact details available on the Flexischools Website.

Keep Confidential

- 5.3 Flexischools agrees to keep confidential and secure against any improper or unauthorised use any of Your Materials or Account Holder data (including but not limited to Personal Information and transaction details) that are collected by the Flexischools Service. However, You acknowledge that Flexischools may use Account Holder information in the manner disclosed to and consented by Account Holders and You agree that Flexischools may collect, use and disclose information associated with use of the Flexischools Service provided that the information is de-identified, aggregated or otherwise made anonymous and use and disclose that de-identified, aggregated or otherwise anonymous information for any purpose with third parties provided that, in so doing, Flexischools does not reveal any personal information.

Insurance

- 5.4 Flexischools must maintain (and, where necessary, renew) appropriate insurance policies (including public and product liability insurance).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 You acknowledge that this Agreement does not transfer any Intellectual Property Rights to You in the Flexischools Service or its contents, except for the licence granted under clause 2.
- 6.2 You will not directly or indirectly do anything that would or might invalidate or put in dispute Flexischools' rights and title in the Flexischools Service.

- 6.3 Flexischools acknowledges that Materials provided by You or Authorised Managers (as appropriate) while using the Flexischools Service is owned by or licensed to You and Authorised Managers respectively. Notwithstanding, you grant Flexischools a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, copy and display your Materials.
- 6.4 Flexischools acknowledges that Content provided by You, Administrators or Editors (as appropriate) while using the Communications Functionality is owned by or licensed to You, Administrators and Editors respectively. Notwithstanding, you grant Flexischools a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, copy and display your Content.
- 6.4 If a person makes any claim alleging that any Flexischools Service infringes any Intellectual Property Rights or Moral Rights of any person, you must:
- (a) promptly notify Flexischools in writing;
 - (b) not make any admissions or take any action in relation to the claim without Flexischools's written consent;
 - (c) permit Flexischools to take responsibility and control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
 - (d) cooperate with, assist and act at all times in accordance with the reasonable instructions of Flexischools, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

7. FLEXISCHOOLS ACCOUNTS

- 7.1 Flexischools agrees to open and maintain Accounts at the request of any person for the purpose of allowing that person to accept offers of Goods and/or Services and/or communications from You.
- 7.2 Flexischools will hold the balance of each Account and any amounts owing to You for purchases made but unsettled with an Australian Authorised Deposit-taking Institution.
- 7.3 Subject to Clause 7.8, Flexischools is responsible for ensuring that the balance of an Account is sufficient to pay for any Goods and/or Services purchased from You.
- 7.4 Unless otherwise agreed, Flexischools may charge Account Holder's fees from time to time. Flexischools will collect these fees from Account Holders by reducing the balance of their Account.
- 7.5 Unless otherwise agreed, Flexischools has sole responsibility for the collection of fees from Account Holders.
- 7.6 Flexischools will be responsible for the payment of any fees and charges arising from the collection, transmission and refunding of funds from Account Holders, including, but not limited to, bank fees and merchant fees.
- 7.7 If an Account Holder has insufficient funds in their Account to cover fees or transactional charges, Flexischools will suspend their Account.
- 7.8 Where an Account has been suspended by FlexiSchools and the message to suspend the Account has been transmitted to Your server, You are solely responsible for collecting any consideration due in relation to any subsequent transactions which occur on that Account.
- 7.9 Flexischools will provide the You with a weekly statement of all purchases made from Your Facility by Account Holders.

8. FLEXISCHOOLS ONLINE ORDERING

- 8.1 You agree to collect the online orders from the Flexischools Service in accordance with the procedures and Software provided by Flexischools as updated from time to time.
- 8.2 In the event of an internet or equipment failure at Your site, Flexischools will provide an email or fax-based method of receiving the orders.
- 8.3 Flexischools will make the day's orders available to You as they are placed online.
- 8.4 You acknowledge that the fulfilment of the orders is Your sole responsibility, and in the event of an error in the supply of Goods and/or Services, You are responsible for resupplying the Goods and/or Services, or refunding the Account Holder for the value of the Goods and/or Services.
- 8.5 If Flexischools has transferred You consideration for any Goods and/or Services, and Flexischools incurs a Chargeback due to a failure by You to meet the obligations outlined in Clause 8.4, You agree to transfer an amount equal to the total Chargebacks and related fees to Flexischools within 2 days of Flexischools providing notification to You.

9. FLEXISCHOOLS CARD SYSTEM

- 9.1 As part of the Flexischools Card System, You are responsible for issuing, and re-issuing, cards to Account Holders. You will provide Flexischools with the required details and technical specifications for any existing student cards for the purposes of utilising these cards in the Flexischools Service. If changes to these specifications require development work by Flexischools, Flexischools will provide You with a quote for this work prior to commencing development.
- 9.2 Flexischools will allocate any purchases made with a card to the associated Account using the card number provided by the Account Holder, regardless of who actually makes the purchase and whether or not the person who makes the purchase using the card is an Account Holder.

10. COMMUNICATIONS FUNCTIONALITY

- 10.1 Flexischools may make available to You the Communications Functionality. Where You choose to use this functionality, including by posting, uploading or otherwise incorporating any Content, the additional terms set out in this clause apply.

Your Communications Functionality obligations and acknowledgements

- 10.2 You have the following obligations and make the following acknowledgments under this Agreement:
- (a) to have all rights and/or licences to any Content that You upload to or include on the Flexischools App, including any third-party Content; and
 - (b) during the Term:
 - (i) Flexischools may update, alter or change the Communications Functionality at any time. Such updates, alterations or changes shall be effective immediately and incorporated into this Agreement where such updates, alternations or changes impact these terms and conditions;
 - (ii) Flexischools may delete Your Content in the Flexischools App after a minimum of one year during the Term and after a minimum of one month following termination;
 - (iii) Flexischools cannot guarantee the Flexischools App will be available at all times. Events such as maintenance, capacity restraints, security requirements and

disruptions beyond the control of Flexischools (such as power failures and network disruptions) may result in disruptions or malfunctions;

- (iv) the Flexischools App relies for part of its operation on other services, including as provided by third parties relevant to the App Stores (such as Apple or Google). As such, delivery of Content is not guaranteed and is subject to the data delivery policies or other requirements of these third parties; and
- (v) Flexischools, in performing the required technical steps to provide the Communications Functionality, may:
 - (A) transmit or distribute any information about Your Content over various public networks and in various media; and
 - (B) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media, and You agree that this Agreement shall permit Flexischools to take these actions.

10.3 You must not publish or provide Content that is:

- (a) subject to copyright or other lawful restrictions without written permission of the copyright owner; and/or
- (b) misleading, discriminatory, fraudulent, objectionable, pornographic, violent, hateful, vilifying, inciteful, illegal or in poor taste.

10.4 You must not publish images of a child under the age of 18 years without the express consent of the parent or guardian of such child.

10.5 You acknowledge that Flexischools may, at its absolute discretion, investigate and remove any Content.

10.6 You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or organisations.

10.7 You must not use the Communications Functionality for any illegal purpose and Flexischools shall adhere to mandatory legal standards of reporting where illegal use is discovered or where Flexischools becomes aware of any illegal use.

10.8 You agree to comply with all laws, rules, and regulations applicable to the use of the Communications Functionality, including the applicable Australian state or territory laws.

10.9 You must not do any of the following while accessing or using the Communications Functionality:

- (a) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures;
- (b) access or search or attempt to access or search the Communications Functionality by any means (automated or otherwise) other than through published interfaces that are provided by Flexischools;
- (c) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Communications Functionality to send altered, deceptive or false source-identifying information; and/or
- (d) interfere with, or disrupt, or attempt to disrupt, the access of any user, host or network, including, without limitation, by sending a virus, overloading, flooding, or spamming through the Communications Functionality, or by scripting the creation of Content in such a manner

as to interfere with or create an undue burden on the Flexischools Service and/or the Flexischools App in attempt to gain access to a locked box or purpose built secured area in an administration area, unless express permission has been granted by Flexischools.

- 10.10 You must not permit any third party other than a designated Editor to use the Communications Functionality without your authorisation.
- 10.11 If this clause 10 is breached, Flexischools reserves the right to seek injunctive relief without notice to you in a court of competent jurisdiction along with damages and legal costs and fees incurred in seeking such relief.
- 10.12 You acknowledge that when an Account Holder adds itself or is added to the Administrator's or Editor's section in the Flexischools App (as applicable):
- (a) the Administrator will be able to view the name (but not the password or email address) of the Account Holder;
 - (b) Content provided by You will be visible to that Account Holder;
 - (c) You may be exposed to objectionable Content provided by that Account Holder; and
 - (d) you may be exposed to advertising or promotional material provided by Flexischools, a Flexischools approved third party or that Account Holder.

Communications Functionality Content

- 10.13 Flexischools will investigate complaints made regarding inappropriate Content, or make its own enquiries, and may remove the Content, at Flexischools' absolute discretion.
- 10.14 You are fully responsible for any Content included and/or notified as part of the Flexischools Service. Flexischools does not endorse, support, represent, or guarantee the completeness, truthfulness, tact, accuracy, or reliability of any Content or endorse any opinions expressed in the Content. Accordingly, You may not make any such representations in the Content.
- 10.15 Flexischools is not liable for any Content, including, but not limited to, any promises, errors or omissions, or any Loss or damage incurred as a result of use of or reliance on any Content that Flexischools has not included in the Flexischools Service itself or through a Flexischools third party service provider.
- 10.16 Flexischools will not honour any deals, promotions or promises made in the Content (other than those made directly by Flexischools or a Flexischools third party service provider).

11. TRAINING AND SUPPORT

- 11.1 Flexischools will provide You with instructions for Account Holders on the use of the Flexischools Service.
- 11.2 You will be responsible for disseminating the Flexischools Service instructions to Account Holders.
- 11.3 Flexischools staff will monitor the Flexischools Service and report faults to Your designated Flexischools Service contact.

12. POS HARDWARE AND POS SUPPORT

- 12.1 The provisions of this clause apply where you purchase POS Hardware and/or POS Support from Flexischools.

- 12.2 Subject to Non-Excludable Guarantees, no warranty is given by Flexischools as to the quality, suitability, fitness, merchantability, uninterrupted use, correspondence with any description or sample and accuracy of the POS Hardware for any purpose and any implied warranty is expressly excluded. Flexischools does not guarantee that the POS Hardware will work on all computer hardware platforms or configurations. You acknowledge that Flexischools provides products on an 'as is' basis. Flexischools will not be responsible for any Loss or damage to the POS Hardware arising out of its misuse or caused by the use of the POS Hardware other than in accordance with the intended purpose. The warranty applicable to the POS Hardware will be the current warranty provided by the manufacturer of the POS Hardware and any freight associated with a warranty claim on such products shall be at Your own cost. Flexischools shall not be bound by nor be responsible for any term, conditions, representation or warranty given by the manufacturer of the POS Hardware.
- 12.3 POS Support does not include support for third party hardware or software which remains the responsibility of the third party.

13. PROMOTION AND MARKETING

- 13.1 You are responsible for the promotion of the Flexischools Service to potential Account Holders.
- 13.2 Flexischools will provide you with information in electronic form to promote the Flexischools Service.
- 13.3 You will be responsible for disseminating the Flexischools Service instructions to Account Holders.

14. LIMITATION OF LIABILITY

- 14.1 Nothing in this Agreement limits, excludes or modifies or purports to limit, exclude or modify any Non-Excludable Guarantees.
- 14.2 You acknowledge that Flexischools:
- (a) is a distributor of Your Materials and Content and is not responsible for the content of Your Materials and Content;
 - (b) except for Non-Excludable Guarantees, makes no warranties or representations about the Flexischools Service or its accuracy, reliability, completeness, currency, or ability to achieve any purpose;
 - (c) except for liability for breach of any Non-Excludable Guarantees, is not liable for any Loss or damage arising out of an Account Holder's use of the Flexischools Service;
 - (d) does not warrant that You or the Account Holders will have continuous access to the Flexischools Service;
 - (e) except for Non-Excludable Guarantees, does not provide any representations, warranties or guarantees in relation to the Software in any way whatsoever;
 - (f) is not liable if the Flexischools Service is unavailable for any reason;
 - (g) is not liable for any claims in relation to the Goods and/or Services, including their quality, merchantability or fitness for any particular purpose.
- 14.3 To the maximum extent permitted by law, Flexischools excludes:
- (a) from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any Non-Excludable Guarantees;

- (b) except for liability in relation to a breach of a Non-Excludable Guarantees, all liability to You for any Loss (including, without limitation, loss of profits or opportunity and any indirect, special or consequential loss) or damage suffered as a result of claims by any third person, such as an Account Holder, or in connection with the services and this Agreement, even if:
 - (i) Flexischools knew that loss or damage was possible; or
 - (ii) the loss or damage was otherwise foreseeable; and
- (c) all liability for any negligent acts or omissions of Flexischools, its employees, agents and contractors arising out of, or in connection with, the services and this Agreement.

14.4 To the maximum extent permitted by law, Flexischools' total liability to You for any and all breaches of this Agreement or any other matter for which liability is not validly excluded under this Agreement is limited, at Flexischools' option, to any one of:

- (a) supplying again, the services in respect of which the breach occurred; or
- (b) paying to You an amount equivalent to any amount received from You in respect of the provision of the services to which the breach or liability relates.

15. INDEMNITY

15.1 You agree to indemnify Flexischools against, and must pay Flexischools on demand, the amount of:

- (a) any Loss, claim, action, demand, fine, payment or legal liability which Flexischools pays, suffers, incurs or is liable for arising out of or connected with a breach by You of this Agreement or related to the offer and /or supply of Goods and/or Services under this Agreement, including:
 - (i) the death or personal injury of any person; or
 - (ii) any breach of Law or infringement of a third party's rights (including Intellectual Property Rights; or
 - (iii) the supply, consumption of or failure to supply the Goods and/or Services; or
 - (iv) any act or omission of fraud, dishonesty, recklessness or wilful misconduct or misrepresentation;
- (b) any tax and associated penalties which may be incurred by Flexischools (including any Goods and Services Tax) arising from the performance by You of Your obligations under this Agreement; and/or
- (c) any Loss, claim, action, demand, fine, payment or legal liability which Flexischools pays, suffers, incurs or is liable for arising out of or connected with any and all Content uploaded or provided by You, including while using the Communications Functionality.

15.2 Flexischools agree to indemnify You against, and must pay You on demand, the amount of any Loss, claim, action, demand, fine, payment or legal liability which You pay, suffer, incur or are liable for arising out of or connected with a breach by Flexischools of this Agreement.

16. MARKETING AND ADVERTISING

You agree that in marketing or promoting the Flexischools Service, Flexischools may use Your name or logo and You grant all necessary licenses to Flexischools to permit this.

17. PAYMENT

- 17.1 Each week, Flexischools will provide You with a statement of all transactions successfully completed during the preceding week and will electronically transfer the consideration in respect of those transactions into Your nominated bank account, less any Fees incurred during the week.
- 17.2 You are responsible for ensuring Your pricing reflects any GST payable in respect of the Goods and/or Services supplied by you, the assessment of and payment of any GST associated with the supply of Goods and/or Services by You and the provision of valid tax invoices. Flexischools is not be responsible for any GST payable in relation to Goods and/or Services supplied by You or the production of valid tax invoices.

18. FEE

- 18.1 You agree to pay such Fees for use of the Flexischools Service as are advised to you by Flexischools from time to time.
- 18.2 Flexischools will provide You with a valid tax invoice for any Fees.
- 18.3 Flexischools may set-off any amount payable to You against any amounts payable by You to Flexischools (including the Fees).

19. SERVICE LEVELS

- 19.1 Flexischools agrees to perform the services to meet or exceed the service levels specified in the Schedule to this Agreement.

20. TERMINATION

- 20.1 Flexischools may terminate the licence granted under clause 2 and remove Your access to and Your participation in any or all of the Flexischools Services: (a) with immediate effect, if You breach any terms of this Agreement; or (b) at any time, by giving You 30 days written notice.
- 20.2 You may terminate this Agreement:
- (a) with immediate effect, if Flexischools breach any material term of this Agreement; or;
 - (b) by giving 30 days written notice to Flexischools, in which case Flexischools will remove Your access to and Your participation in the Flexischools Service.
- 20.3 On termination of this Agreement:
- (a) You must cease using and return to Flexischools, or destroy, all copies of any Flexischools materials in Your possession or control;
 - (b) Your access to the Flexischools Service (including any Materials and Content) may be removed by Flexischools and You may be liable for reconnection fees if You wish to be later reconnected and Flexischools agrees; and
 - (c) Flexischools must cease using and return to You, or destroy, all copies of any of Your Materials and Content in Flexischools' possession or control.

21. MISCELLANEOUS

- 21.1 Any prices included as part of the Materials will be Your sole responsibility and risk.
- 21.2 Flexischools will provide a help desk for any queries for the purpose of answering queries from Your staff and Account Holders on the operation of the Flexischools Service. The operating hours of the help desk will be as advised by Flexischools from time to time.
- 21.3 Flexischools will use reasonable commercial efforts to maintain the Flexischools Service.
- 21.4 You acknowledge that: (a) communications through the Flexischools Service are not secure and may be subject to interception and loss of data; and (b) You are responsible for Your network security.
- 21.5 Flexischools cannot guarantee that the Flexischools Service will be free of errors or viruses.
- 21.6 Flexischools does not guarantee or warrant that Your existing equipment, hardware or software is compatible with the Flexischools Service.
- 21.7 These terms and conditions set out the entire agreement between the parties in relation to its subject matter and all prior representations are excluded.
- 21.8 If Flexischools believes that there is a threat to the security, stability or operation of the Flexischools Service, Flexischools may suspend Your access to the Flexischools Service in whole or in part at any time without notice or compensation where deemed necessary in Flexischools' sole discretion.
- 21.9 Each party must pay its own legal costs and disbursements in relation to the preparation and execution of this Agreement.

22. VARIATION

- 22.1 Each time a new Facility or Activity begins using the Flexischools Service, Flexischools will notify you of the applicable fees and any additional requirements. Such additional fees and requirements will form part of this Agreement.
- 22.2 You are responsible for notifying Flexischools of any changes to Your Authorised Managers, including additions, deletions or changes of details, in writing or via email.
- 22.3 Flexischools may amend this Agreement at any time and from time to time by posting a revised version on the Flexischools Website. Any such amendment to this Agreement will take effect as soon as it is posted on the Flexischools Website. By continuing to use the Flexischools Service after any amendments to this Agreement, you agree to abide by and be bound by any changes. If you do not agree with any changes Flexischools make to this Agreement, you may terminate this Agreement in accordance with clause 20.

23. GOVERNING LAW

This Agreement is governed by the law applicable in New South Wales, Australia and You irrevocably and unconditionally submit to the non- exclusive jurisdiction of the courts of that state.

SCHEDULE 1

SERVICE LEVEL AGREEMENT

Customer Service

Service Level	Performance Threshold	Rate of Success
Maximum time to answer call on 1300 number during business hours	Percentage of calls answered within 120 seconds	80%

Emails

Service Level	Performance Threshold	Rate of Success
Maximum time to respond to Customer queries via email	24 business hours	95%

Availability

Service Level	Performance Threshold	Rate of Success
Availability of web portal for real-time reports on account transactions	99.9%	100%