

# STANDARD TERMS & CONDITIONS

## FOR RESELLERS OR DISTRIBUTORS OF FLEXEBEE LTD

### 1. THE PARTIES

- 1) **Flexebee LTD** is an originator and seller of training courses.
- 2) **Flexebee LTD** is authorised to enter into this Agreement and to grant the rights hereunder.
- 3) **Flexebee LTD** wishes to appoint the Reseller as its sub-distributor and reseller for the promotion and sale of the Products/Services.
- 4) The Reseller is skilled in the promotion and sale of software Products/Services and wishes to acquire/purchase for resale the Products subject to the terms of this Agreement.
- 5) A Reseller may not resell similar products/services from other originators.

### 2. DEFINITIONS

- 1) The definitions in this clause 2 shall apply in this Agreement:

**"BACS"** means the bankers automated clearing service scheme for the electronic processing of financial transactions.

**"Confidential Information"** means all information (whether in oral, written or electronic form) belonging or relating to Flexebee LTD and their respective business affairs or activities, which is not in the public domain and which is made available to the Reseller (or any of its employees, agents or associated persons) under or in connection with this Agreement.

**"Brands"** means any trading name or style used by Flexebee LTD including "Low Cost E-Learning" and "Flexehive" which are included within this agreement.

**"Confirmed Order"** means an order that is confirmed in accordance with clause 4.3.

**"Contract"** means a contract for sale and purchase of the Products under this Agreement.

**"Control"** means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons) either by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate or by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate, and a **"Change of Control"** occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

**"Data Protection Legislation"** means and includes (but is not limited to) the Data Protection Acts of 1998 and 2018, the GDPR and all and any future EU and UK legislation and/or regulations passed at a later date in respect of the holding, management or processing Personal Data.

**"End-User"** means a person who purchases the Products from the Reseller.

**"End-User Licence"** means the licence agreement to be entered into between the End User and Flexebee LTD to regulate the End User's use of the Products.

**"The Company"** or **"Flexebee LTD"** Flexebee LTD, a company incorporated in England and Wales with number 10372858 whose registered office is at The Press Centre, 14 East Bay Lane, London, E15 2GW.

**"First Level Support"** means the support to be provided by the Reseller as defined in clause 9.

**"GDPR"** means The General Data Protection Regulation (EU) 2016/679.

**"Intellectual Property Rights"** means all vested contingent and future intellectual property rights forming part of the Products or any accompanying documentation including (without limitation) inventions, patents, trademarks, service marks, trade secrets, or copyrights (whether registered or unregistered) in any part of the world whether now known or in the future created.

**"Maintenance"** means the analysis, coding, testing and release of corrections to the Products.

**"Margin"** means the margin agreed in writing between Flexebee LTD and the Reseller and expressed as a percentage of the Recommended Price.

**"Normal Support Hours"** means between 09:00 and 17:30 on a Working Day.

**"parties"** means Flexebee LTD and the Reseller together, and each a **"party"**.

**"PDF"** means portable document format open standard ISO 32000.

**"person"** means any natural person, company, partnership or other organisation.

**"Personal Data"** means that data which relates to End-Users or relevant others which is subject to the Data Protection Legislation.



**FLEXEBEE LTD**

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**"Products"** means products including Software and Product Documents together with all other products which may vary from time to time including E-Learning, Webinars, Face-To-Face Learning and Blended Learning.

**"Product Documents"** means any documents concerning the Products, the Software and the End-User Licence as supplied by Flexabee LTD, including marketing documents whether by email, internet or in hard copy format.

**"Recommended Price"** means the recommended resale price for the Products and the End-User Licence based on the number of users of the Products and as set out in Flexabee LTD list prices from time to time, as available from its website at [www.flexabee.co.uk](http://www.flexabee.co.uk).

**"Relevant Requirements"** means all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

**"Reseller"** means the Reseller whose details are set out in Part A of the Schedule.

**"Reseller Price"** means the price to be paid by the Reseller for the Products (including the End-User Licence) being the Recommended Price less the Margin.

**"Second Level Support and Maintenance"** means the provision of a helpdesk by email or by way of a telephone support line to the Reseller during the Normal Support Hours.

**"Software"** means the computer program or suite of computer programs, howsoever recorded comprised in or supplied for use with the Products.

**"Sterling"** means the lawful currency of the United Kingdom.

**"Sub-processor"** means any person authorised by or instructed by the Reseller in processing, receiving or holding Personal Data.

**"Term"** means the duration of this Agreement.

**"Trade Marks"** means those trademarks, whether registered or unregistered and owned or exploited by Flexabee Ltd. Further details of the Trademarks are available to the Reseller on written request to Flexabee Ltd.

**"Working Day"** means a day (other than a Saturday, Sunday, or public holiday) when banks in London are open for business.

**"Writing"** shall include by email and fax.

### 3. APPOINTMENT

1. Flexabee Ltd appoints the Reseller as a non-exclusive reseller of the Products in the Territory subject to the terms and conditions of this Agreement.
2. Nothing in this Agreement shall prevent Flexabee LTD from supplying the Products to any other customer in the Territory either directly or via other resellers or agents.
3. As a condition of this Agreement, the Reseller agrees not to:
  - 1) actively seek End-Users for the Products outside the Territory; or
  - 2) use the Retained Methods of Distribution to resell or otherwise distribute the Products.
  - 3) Act in the capacity of a Distributor by selling to other Resellers.

### 4. ORDERS

1. The Reseller undertakes to purchase the Products and the End-User Licences exclusively from Flexabee LTD.
2. All Contracts entered into by the parties are subject to the terms of this Agreement only. The terms of this Agreement shall prevail over any inconsistent terms, conditions, warranties or representations referred to in the Reseller's order, correspondence or elsewhere and any terms, conditions, warranties or representations to the contrary are hereby excluded. No variation or waiver of or addition to this Agreement shall be binding unless expressly agreed or confirmed in Writing and signed by a director of Flexabee LTD.
3. An order placed by the Reseller for the Products shall constitute an offer to purchase for resale the Products, the corresponding End-User Licence and for Flexabee LTD to enter into a Contract. No Contract shall come into being until Flexabee LTD has confirmed acceptance of the Reseller's order in Writing. A separate Contract shall come into being each time an order is placed which is then accepted by Flexabee LTD. Automated delivery of the Products and the relevant End-User Licence number shall also constitute valid acceptance of the Reseller's order by Flexabee LTD.
4. The Reseller undertakes that it shall not use any form of internet shopping platform (including but not limited to its own internet website) for the sale of the Products without Flexabee LTD prior written consent.

### 5. INTELLECTUAL PROPERTY RIGHTS

1. Flexabee Ltd has and shall retain all right, title and interest including copyright and all other Intellectual Property Rights in and to the Software, the Products and the Product Documents generally and the Reseller shall obtain only such rights under licence as specifically provided or referred to in this Agreement.
2. Flexabee LTD hereby grants to the Reseller the non-exclusive, non-transferable right to market the Products for sale to End-Users using the Product Documents.
3. Neither this Agreement nor any End-User Licence or other licence granted under this Agreement shall be construed to convey or transfer



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any ownership or proprietary interest in the intellectual property rights in the Property, the Software and the Product Documents to the Reseller, the End-User or any third party.

4. The Products shall be sold and promoted under the relevant Trademarks for those specific Products. The Reseller shall be obliged to follow the lawful instructions of Flexabee LTD in its use of the Trademark and to observe the rules stipulated by Flexabee LTD for the use of the Trademark, including, but not limited to those rules set out in the current design manual and the provisions of this Agreement. The Reseller shall be obliged to use the Trademarks solely in compliance with legal regulations, good practices and by non-impeaching means. The Reseller shall be obliged to identify Flexabee LTD as the sole owner of the Trademarks and to protect the ownership of the Trademarks.

5. The Reseller shall not (and shall not permit any third party to):

- 1) adapt, modify, reverse engineer, decompile, disassemble, or make error corrections to the Products in whole or in part save as permitted under section 50(B) of the Copyright, Designs and Patents Act 1988; or
- 2) make or cause to be made any copy, reproduction, translation, adaptation, variation, version or modification of the Products, Software and the Product Documents without prior written consent of Flexabee LTD. To the extent that such consent is obtained in Writing, the Reseller hereby irrevocably assigns to Flexabee LTD all ownership rights and irrevocably waives all other rights it may have in any modifications, enhancements, updates, error corrections, translations or other changes to the Products or accompanying documentation.

6. The Reseller shall not, without the prior written consent of Flexabee LTD, alter or make any addition to the labelling or packaging of the Products displaying the Trademarks, and shall not alter, deface or remove in any manner any reference to the Trademarks, any reference to Flexabee LTD or any other name attached or affixed to the Products or their packaging or labelling.

7. The Reseller shall keep and shall procure that its directors, employees and agents shall keep confidential and shall not unless authorised by this Agreement copy or part with possession of or otherwise disclose in any manner to any other person any of the Products, the Software or Product Documents supplied by Flexabee LTD.

8. The Reseller shall use its best endeavours to protect all Intellectual Property Rights in or relating to the Products, the Software and the Product Documents and shall promptly inform Flexabee LTD of any infringement or suspected infringement of such rights which may come to its attention and irrevocably undertakes to pass the sole conduct of any associated claims or actions (or anything analogous thereto) to Flexabee LTD (or its nominee) on Flexabee LTD's demand, and to assist in any associated proceedings as instructed by Flexabee LTD (or its nominee).

9. Unless authorised in writing to do so by Flexabee LTD, the Reseller shall not be entitled to register internet domain names which are similar in any way or interchangeable with the Trademarks or any other Intellectual Property Rights owned or exploited by Flexabee LTD and/or Flexabee LTD or their Brands. If the Reseller registers such internet domain names, it shall be obliged to assign that registration on request to Flexabee LTD (or its nominee)

10. The Reseller shall promptly give notice in writing to Flexabee LTD in the event that it becomes aware of any claim that any of the Products or the manufacture, use, sale or other disposal of any of the Products, whether or not under the Trademarks, infringes the intellectual property rights of any third party

11. Flexabee LTD shall defend the Reseller against any claims that the Products and/or the marketing, advertising or distribution of the Products in accordance with this agreement infringes any intellectual property rights of third parties and shall indemnify the Reseller for and against any damages, losses, costs and expenses (including reasonable legal costs and expenses) or liabilities incurred by the Reseller as a result of such claim, provided that:

- 1) Flexabee LTD is given prompt notice of such claim;
- 2) The Reseller provides reasonable co-operation to Flexabee LTD in the defence and settlement of such claim, at Flexabee LTD's expense; and
- 3) Flexabee LTD is given sole authority to defend or settle the claim.

12. In the defence or settlement of the claim, Flexabee LTD may obtain for the Reseller the right to continue distributing the Products in the manner contemplated by this agreement, replace or modify the Products so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement forthwith by notice in writing and without liability in any circumstances to the Reseller. Flexabee LTD shall have no liability in any circumstances if the alleged infringement is based on:

- 1) a modification of the Products by anyone other than Flexabee LTD; or
- 2) the Reseller's marketing, advertising, distribution or use of the Products in a manner contrary to the instructions given to the Reseller by Flexabee LTD; or
- 3) the Reseller's marketing, advertising, distribution or use of the Products after notice of the alleged or actual infringement from Flexabee LTD or any appropriate authority.

13. The foregoing states the Reseller's sole and exclusive rights and remedies, and Flexabee LTD's entire obligations and liability, in the case of any matter falling under Clause 5.10.

14. Each party shall, at the request and expense of the other, provide all reasonable assistance to the other (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by the other party, provided that that party is given such indemnity as it may reasonably require against any



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damage to its name.

## **6. END-USER LICENCE AGREEMENT**

1. The Products shall be licensed by Flexebee LTD directly to End-Users under the End-User Licence.
2. The Reseller shall not assert or attempt to assert any authority (either in its own name or on behalf of Flexebee LTD) to:
  - 1) modify or execute any End-User Licence (whether in original or modified form); or
  - 2) make statements, representations or warranties concerning the Products or any associated services that exceed or are inconsistent with the Product Documents or the provisions of the End-User Licence.
3. The Reseller shall not supply the Products, the Software or the Product Documents to any person without first obtaining an End-User Licence number from Flexebee LTD for that person.
4. The Reseller undertakes to ensure that the End-User agrees to the terms of the End-user Licence prior to using the Products.
5. Supply of the Software to the Reseller when not an End-User shall not confer on the Reseller any right, licence or interest in (including the right to use) the Software. The Reseller shall be entitled to acquire an "In-house Licence" from Flexebee LTD and in such case the Reseller shall be treated as an End-User and shall be required to enter into an End User Licence.

## **7. PRICE & PAYMENT**

1. The Reseller agrees to pay the Reseller Price for the Products and the End-User Licence.
2. The Reseller Price shall be paid in Sterling. The Reseller Price is VAT exclusive and VAT shall be charged thereon together with any other applicable taxes, which shall be paid by the Reseller.
3. If the Reseller requests a version of the Products which is different to the standard version, then the Reseller Price shall be subject to adjustment as mutually agreed in Writing between the parties.
4. Unless otherwise agreed in Writing, where the Reseller places an order for an "In-house Licence" for its own use as an End-User then the price to be paid shall be the Recommended Price.
5. Flexebee LTD shall give the Reseller 14 days' notice of any increase in the price for the Products and the End-User Licence. Any price increase pursuant to such notice shall not affect Confirmed Orders.
6. Flexebee LTD reserves the right to invoice the Reseller by e-mail. E-mailed invoices will be in PDF or other electronic format.
7. Where the Reseller has a credit account with Flexebee LTD then all invoices shall be paid in full by the Reseller within 30 days of the invoice date. Payments may be made by debit or credit card, BACS or cheque. Where the Reseller does not have a credit account with Flexebee Ltd then all invoices shall be payable on a pro-forma basis by debit, credit card or BACS only.
8. The Reseller shall not be entitled by reason of any set-off, counterclaim, abatement, or other similar deduction to withhold payment of any amount due to the Flexebee LTD under an invoice.
9. The Reseller shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the sale, lease, licence or other distribution of the Products and the End-User Licence by the Reseller.
10. Interest shall be chargeable on any amounts overdue at the rate of 4% per annum above the base rate of Barclays Bank PLC as applying from time to time to run from the due date for payment until receipt by the Flexebee LTD of the full amount whether or not after judgment and without prejudice to any other right or remedy of Flexebee LTD.
11. If the Reseller shall at any time default in payment of an invoice on the due date or if the Reseller's credit standing is at any time in the opinion of Flexebee LTD impaired for any other reason Flexebee LTD may without prejudice to any other of its rights:
  - 1) demand immediate payment for the Products and or End-User Licence;
  - 2) withhold all deliveries of the Products or End-User Licence under any other Contract;
  - 3) supply the Products and the End-User Licence on such terms as to payment as Flexebee LTD may require;
  - 4) suspend the Reseller from ordering the Products and further End-User Licence; and/or
  - 5) cancel any unpaid End-User Licences and remove the Reseller and the relevant End-User from Products update servers.
12. Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under this Agreement (including any Software Support Services) shall be paid by the Reseller unless Flexebee LTD has expressly agreed beforehand in Writing to pay such expenses, costs and charges.



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## **8. DELIVERY & RETENTION OF TITLE**

1. Delivery of the Products and the End-User Licence shall be by email or other electronic medium. Other products may have different but appropriate delivery methods.
2. Delivery dates are approximate only and shall not be of the essence of the Contract. The Reseller specifically acknowledges that online delivery of the Products is automated and reliant on technology. No warranty is given as to the reliability of or the speed of the technology require to effect the delivery and Flexebee LTD shall be under no liability for any loss, injury, damage or expense consequent upon any delay in adhering to any delivery date from whatever cause including its negligence. Delay shall not entitle the Reseller to cancel any Contract or to refuse to accept delivery of the Products.
3. Risk in the Products shall pass to the Reseller on delivery.
4. Until payment of the Reseller Price has been received in full in cleared funds by Flexebee LTD:
  - 1) the title in the Products shall remain vested in Flexebee LTD;
  - 2) Flexebee LTD may maintain an action against the Reseller for such total price notwithstanding that title to the Product has not passed or that the Contract has terminated.

## **9. FIRST LEVEL SUPPORT**

1. The Reseller shall, unless otherwise agreed in Writing provide the following First Level Support and Maintenance for the Products to the End-Users:
  - 1) a "help desk" to receive, respond to and resolve End User questions or complaints concerning the Products. The helpdesk shall be available to during 0830 to 1730 (UK local time) on each Working Day during the Term and shall be operated by adequately trained technical support personnel at the sole cost and responsibility of the Reseller;
  - 2) where the Reseller is unable to resolve the question or complaint to the satisfaction of the End-User then the Reseller may contact Flexebee LTD to provide the Second Level Support as set out in clause 10 below.
2. The Reseller shall ensure that First Level Support and Maintenance for the Products is efficiently managed so as to preserve the integrity of the Products and in a manner where persons with administrative authority over the Products shall be competent trained employees only or shall be persons under their supervision.
3. The Reseller shall provide co-operation and support to Flexebee LTD in their efforts to provide Second Level Support and Maintenance to include (without limitation):
  - 1) a reasonable level of responsiveness to Flexebee LTD's requirements and communications;
  - 2) the timely transmittal and release to Flexebee LTD of appropriate and accurate documentation and information;
  - 3) the prompt review and analysis of the work performed by Flexebee LTD; and
  - 4) the making of facilities and personnel available to assist the Flexebee LTD when and to the extent as is reasonably requested.

## **10. SECOND LEVEL SUPPORT**

1. Subject to the terms of this Agreement and unless otherwise agreed in Writing between the parties Flexebee LTD shall provide Second Level Support and Maintenance to the Reseller but where appropriate for the benefit of an End-User during the Normal Support Hours.
2. Flexebee LTD shall be under no obligation to provide Second Level Support and Maintenance to the Reseller in respect of:
  - 1) any problems resulting from any modification or customisation of the Products not made by or authorised in Writing by Flexebee LTD;
  - 2) incorrect or unauthorised use of the Products or operator error, being use or operation not in accordance with the Product Documents;
  - 3) any fault in any computer hardware or use of the Products with computer hardware, operating systems or other supporting software other than as specified in the Product Documents;
  - 4) use of the Products other than as specified in the Product Documents; and
  - 5) use of the Products with any other third party software or Products that Flexebee LTD has not expressly authorised in Writing to be used with the Products.
3. Flexebee LTD shall not be responsible for training End-Users in the features, use and operation of the Products.

## **11. TERM & TERMINATION**

1. This Agreement shall come into effect on the date on which the Reseller signs this Agreement or confirms acceptance. Acceptance of this Agreement shall be a condition for the placing of an order. Subject to clauses 11.2 and 11.3 this Agreement shall continue in force indefinitely thereafter until terminated by either party giving not less than one month's prior written notice.
2. Without prejudice to any other rights to which it may be entitled, Flexebee LTD may give notice in writing to the Reseller terminating this Agreement with immediate effect if:



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- 1) the Reseller commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified of the breach; or
  - 2) an order is made or a resolution is passed for the winding up of the Reseller, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Reseller, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the Reseller or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver is appointed of any of the Reseller's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the Reseller takes or suffers any similar or analogous action in consequence of debt;
  - 3) There is Change of Control of the Reseller.
3. Termination of this Agreement howsoever arising shall be without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination which are of a continuing nature and any valid End-User Licence validly subsisting prior to termination.
4. On termination of this Agreement:
- 1) all outstanding monies due from the Reseller to Flexebec LTD shall become immediately due and payable;
  - 2) the Reseller shall return to Flexebec LTD or destroy (as Flexebec LTD shall direct) all Confidential Information and certify to Flexebec LTD that to the best of its knowledge all such information has been returned or destroyed (as appropriate); and
  - 3) the Reseller shall return to Flexebec LTD or destroy (as Flexebec LTD shall direct) the Products, the Software, the Product Documents and all copies (in whole or in part) in its possession or under its control and certify to Flexebec LTD that to the best of its knowledge all such copies have been returned or destroyed (as appropriate).
5. The termination of this Agreement shall not of itself give rise to any liability on the part of Flexebec LTD to pay any compensation to the Reseller for loss of profits or goodwill.
6. Subject to clause 11.3 all other rights and licences of the Reseller under this Agreement shall terminate on the termination date.
7. Flexebec LTD shall be entitled to cancel all orders placed by the Reseller prior to the termination date, whether or not such orders have been accepted by Flexebec LTD, without incurring any liability of any nature to the Reseller.

## 12. WARRANTY

1. Flexebec LTD does not warrant that the functions of the Products will meet any particular requirements or that its operation will be entirely error-free or that all program defects are capable of correction or improvement. All other warranties including any implied warranties of merchantability, satisfactory quality or fitness for purpose or ability to achieve a particular result are hereby excluded to the fullest extent permissible in law

## 13. LIABILITY

1. Flexebec LTD does not exclude liability for:
  - 1) death or personal injury resulting from the negligence of Flexebec LTD or of its employees whilst acting in the course of their employment (to the extent the law does not permit such liability to be excluded); or
  - 2) direct physical loss of or damage to the property of the Reseller or the End User which is directly attributable to Flexebec LTD's breach of a Contract, negligence or other cause related to a Contract (to the extent the law does not permit such liability to be excluded) provided that in no case shall the amount of such liability in respect of any one incident or series of incidents arising from a common cause exceed the value of the Reseller Price for that particular Contract.
2. Save as set out in 13.1, Flexebec LTD shall have no liability to the Reseller in respect of any defect or malfunction in the Products, the Software or the Product Documents or other breach of a Contract of whatsoever nature or other default or negligence on the part of Flexebec LTD, its employees, sub-contractors or agents and all conditions, warranties, terms or representations whether express or implied statutory or otherwise are hereby excluded to the fullest extent permitted by the law. Without prejudice to the generality of the foregoing, Flexebec LTD shall not be liable to the Reseller for any indirect or consequential loss or damage of any kind including any loss of business, contracts, profits or anticipated savings.

## 14. NON-SOLICITATION AND CONFIDENTIALITY

1. In order to protect the business connections, the Confidential Information and workforce stability of Flexebec LTD to which the Reseller has access as a result of this Agreement, the Reseller covenants with Flexebec LTD that it shall not during the Term of this Agreement and for a period of one year following its termination, offer to employ or engage or otherwise endeavour to entice away from Flexebec LTD anyone employed or engaged by Flexebec LTD who could



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materially damage the interests of Flexebee LTD if they were involved in any business which competes with the business of Flexebee LTD.

2. The Reseller undertakes that it shall not at any time, disclose to any person any Confidential Information, except as permitted by clause 14.3.

3. The Reseller may disclose the Confidential Information:

- 1) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Reseller's obligations under this Agreement. The Reseller shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- 2) as may be required by law, court order or any governmental or regulatory authority.

4. The Reseller shall not (and shall procure that its employees, officers, representatives or advisers do not) use the Confidential Information for any purpose other than to perform its obligations under this Agreement.

## **15. NO AUTHORITY**

1. The Reseller shall not represent itself as an agent of Flexebee LTD or any purpose, or pledge Flexebee LTD's credit or give any condition or warranty or make any representation on Flexebee LTD's behalf or commit Flexebee LTD to any contracts. Further, the Reseller shall not without Flexebee LTD's prior Written consent make any promises or guarantees with reference to the Products beyond those contained in the Product Documents or otherwise incur any liability on behalf of Flexebee Ltd.

## **16. FORCE MAJEURE**

1. Neither party shall have any liability to the other under a Contract if it is prevented from or delayed in performing its obligations under that Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the relevant party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or sub-contractor or outbreak of disease, virus or pandemic.

## **17. NOTICE**

1. Any notice or communications about this Agreement must be in Writing and must be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by email (provided that the sender confirms the email by sending an original confirmation copy by certified or registered mail or expedited delivery service within 3 business days after transmission) to the recipient party at its registered office as set out in this Agreement or such other address as shall be notified by one party to the other in Writing for the purposes of this clause. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of fax or email upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 3 Working Days after the date and time of mailing.

## **18. ANTI-BRIBERY**

1. The Reseller shall:

- 1) comply with the Relevant Requirements;
- 2) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 3) have and shall maintain in place throughout the Term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 18.1.2, and will enforce them where appropriate;
- 4) promptly report to Flexebee LTD any request or demand for any undue financial or other advantage of any kind received by the Reseller in connection with the performance of this Agreement;
- 5) immediately notify Flexebee LTD (in writing) if a foreign public official becomes an officer or employee of the Reseller or acquires a direct or indirect interest in the Reseller (and the Reseller warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- 6) within 3 months of the date of this Agreement, and annually thereafter, certify to Flexebee LTD in writing signed by an officer of the Reseller, compliance with this clause 18 by the Reseller and all persons associated with it under clause 18.2. The Reseller shall provide such supporting evidence of compliance as Flexebee LTD may request.

2. The Reseller shall ensure that any person associated with the Reseller who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Reseller in this clause 18 (the "Relevant Terms"). The Reseller shall be responsible for the



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observance and performance by such persons of the Relevant Terms, and shall be directly liable to Flexebee LTD for any breach by such persons of any of the Relevant Terms.

3. Breach of this clause 18 shall be deemed a material breach of this Agreement.

4. For the purpose of this clause 18, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 18 a person associated with the Reseller includes but is not limited to any subcontractor of the Reseller.

## 19. EXPORT CONTROL

1. The Reseller hereby declares that it is aware of the fact that the Software and any media on which it is stored, as well as results achieved by using the Software may be subject to export control measures specified in legal regulations enacted by the governments responsible for their enactment in accordance with applicable laws. Such measures of control may restrict the granting of licenses, deliveries of the goods and technologies to certain countries or to certain organisations or individuals ("Export Control Measures"). Inter alia, the Software is subject to measures of export control, as established by the Government of United States of America, in particular by Export Administration Act of 1979 as amended, Export Administration Regulations published by the US Department of Commerce, International Trade Administration and Office of Export Administration.

2. The Reseller hereby declares that it is aware of the fact and consents hereby that it may not, directly or indirectly, deliver, distribute, export, re-export or transfer Software, Software-related technical data, media or the Products to countries, organizations or individuals, if it is in violation of the Export Control Measures and that it may not violate or bypass such measures by other means.

3. The Reseller undertakes to implement appropriate measures to prevent a violation of the Export Control Measures. Should the Reseller wilfully or knowingly violate the Export Control Measures, Flexebee LTD has the right to terminate this Agreement immediately. If Flexebee LTD becomes aware of a violation of the Export Control Measures committed by the Reseller, Flexebee LTD shall immediately terminate this Agreement.

## 20. GENERAL DATA PROTECTION REGULATION (GDPR)

1. The reseller undertakes with Flexebee LTD to fully comply with the requirements of the Data Protection Legislation when controlling or processing data on behalf of Flexebee LTD including (but not limited to) End Users' data. The reseller shall provide proper and reasonable evidence of such compliance upon request by Flexebee LTD and Flexebee LTD shall be entitled to immediately terminate this agreement if, in its reasonable opinion, the minimum requirements of the Data Protection Legislation have not been met on any occasion.

2. Flexebee LTD shall also comply with all applicable requirements of the Data Protection Legislation.

3. The Reseller shall ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Personal Data to Flexebee LTD for the purposes of the supply by Flexebee LTD of its software and services.

4. The parties agree that the Reseller shall:

- 1) ensure that all persons engaged by it in processing such Personal Data are all subject to an appropriate obligation of confidentiality to the Reseller and, further, it shall ensure that only those persons who need to have access to Personal Data are granted access to such data and then only for the purpose of the proper performance of their duties;
- 2) take all appropriate technical, organisational and other measures to ensure the security of processing of all Personal Data including (but not limited to) ensuring the provision of an appropriate level of training to all persons involved in the receipt of or processing of Personal Data so as to ensure compliance with the Data Protection Legislation;
- 3) the Reseller may only engage Sub-processors on terms which impose (as a minimum), the same data protection obligations as are contained in this agreement;
- 4) the Reseller must promptly assist Flexebee LTD in responding to subject access requests from individuals exercising their rights under the Data Protection Legislation;
- 5) the Reseller must co-operate with supervisory authorities (such as the ICO) in accordance with GDPR;
- 6) the Reseller shall maintain complete, accurate and up to date records of its data processing activities carried out on behalf of Flexebee LTD in accordance with Article 30.2 of the GDPR; and
- 7) the Reseller must notify Flexebee LTD without undue delay on it becoming aware of a breach of the Data Protection Legislation relating to an Flexebee LTD end user.

5. The Reseller agrees that it will not transfer data outside of the E.E.A. without Flexebee LTD prior written consent and, where Flexebee LTD consents to any such transfer, the Reseller shall ensure that the following conditions are fulfilled:

- a. it provides all appropriate safeguards in accordance with the Data Protection Legislation in relation to the transfer; and



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- b. it fully complies with its obligations under the Data Protection Legislation by providing a proper level of protection to any Personal Data that is transferred by it or to it.

## **21. GENERAL**

1. All recommendations and advice whether oral or written given by or on behalf of Flexebee LTD to the Reseller as to any methods of using or applying the Products or the Software and the purposes to which the Products or the Software may be applied are given without liability on the part of Flexebee LTD.
2. This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior Agreements, negotiations and discussions between the parties relating to it. Nothing in this Agreement shall be interpreted to create a contract of partnership, or an agent and principal or employee and employer relationship in law.
3. No relaxation, forbearance, delay or indulgence by Flexebee LTD in enforcing any of the terms of this Agreement or the granting of time by it to the Reseller shall prejudice, affect or restrict its rights and powers under this Agreement.
4. The Reseller shall not assign, transfer, charge or otherwise deal with the whole or any part of the Contract without the prior written consent of Flexebee LTD.
5. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
6. This Agreement and each Contract shall be governed by and shall be interpreted in accordance with English law and the parties agree to submit themselves to the non-exclusive jurisdiction of the English courts.



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