

FlexiTime Subscription Agreement

This Agreement constitutes a binding contract on You and Flexitime (being the “Parties” and each a “Party”) and governs Your use of and access to the Services by You and Users whether in connection with a paid or free trial subscription to the Services.

By accepting this Agreement, either by accessing or using a Service, or authorising or permitting any User to access or use a Service, You agree to be bound by this Agreement. If You are entering into this Agreement on behalf of a company, organisation or another legal entity (an “Entity”), You are agreeing to this Agreement for that Entity and representing to Flexitime that You have the authority to bind such Entity and its Affiliates to this Agreement, in which case the terms “Subscriber,” “You,” “Your” or a related capitalised term shall refer to such Entity and its Affiliates. If You do not have such authority, or if You do not agree with this Agreement, You must not accept this Agreement and may not use any of the Services.

1. DEFINITIONS

When used in this Agreement with the initial letters capitalised, in addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

Account: means any accounts created by or on behalf of Subscriber or its Users within the Services.

Affiliate: means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby “control” (including, with correlative meaning, the terms “controlled by” and “under common control”) means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

Agreement: means this subscription and any Order Forms including the Privacy Policy and Terms of Use located on Our Site, which are incorporated in and form part of this Agreement.

API: means the application programming interfaces developed and enabled by Flexitime that permit Subscribers to access certain functionality provided by the Services that enables the integration of the Services with other web applications.

Associated Services: means products, services, features and functionality designed to be used in conjunction with the Services but not included in the Service Plan to which You subscribe, including, without limitation, integrations and applications created or developed by Flexitime which will be governed by this Agreement unless Flexitime otherwise communicates a different agreement to You at the time of Your deployment of or access to the integration or application. For the avoidance of doubt, none of the Services or any other product, service, feature or functionality that is expressly stated to be governed by any alternative license, agreement or terms shall be deemed an Associated Service.

Beta Services: means a product, service or functionality provided by Flexitime that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, non-production, early access, evaluation or by a similar description.

Confidential Information: means all information disclosed by You to Flexitime or by Flexitime to You which is in tangible form and labelled "confidential" (or with a similar legend) or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to, information relating to Flexitime's security policies and procedures. For the purposes of this Agreement, this Agreement and Service Data shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving Party at the time of disclosure by the disclosing Party; (b) was or is obtained by the receiving Party by a third party not known by the receiving Party to be under an obligation of confidentiality regarding such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without use of the disclosing Party's Confidential Information.

Documentation: means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the Services or describing Service Plans, as applicable, provided or made available by Flexitime to You in the applicable Flexitime help centre(s); provided, however, that Documentation shall specifically exclude any "community moderated" forums as provided or accessible through such knowledge base(s).

Flexitime: means Flexitime Limited (Company Number 2333570) or any of its successors or assignees.

Order Form: means any of Our generated service order forms executed or approved by You regarding Your subscription to a Service.

Personal Data: means any information or an opinion relating to an identified or reasonably identifiable natural person, including where an identifiable person can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

Personnel: means employees and/or non-employee service providers and contractors of Flexitime engaged by Flexitime in connection with performance hereunder.

Privacy Policy: means Our privacy policy as set out on Our Site and as amended by us from time to time.

Process/Processed: means any operation or set of operations performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Service(s): means the products and services that are ordered by You online through a link or via an Order Form referencing this Agreement, whether on a trial or paid basis, and made available online by Us, via the applicable subscriber login link and other web pages designated by Us, including, individually and collectively, the applicable Software, updates, API, Documentation, that are provided under this Agreement, and this also includes the marketing of any third party products and services. "Services" exclude Third Party Services as that term is defined in this Agreement and Associated Services that are not provided under this Agreement. Occasionally the names and descriptions of the Services or any individual Service may be changed. To the extent Subscriber is given access to such Service as so

described by virtue of a prior Order Form or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

Service Data: means electronic data, text, messages, communications or other materials submitted to and stored within a Service by You and Users in connection with Your use of such Service, which may include, without limitation, Personal Data.

Service Plan(s): means the packaged Service plan(s) and the functionality and services associated therewith (as detailed on the Site applicable to the Service) for the Services to which You subscribe.

Site: means a website operated by Flexitime, including www.flexitime.co.nz, as well as all other websites that Flexitime operates.

Software: means software provided by Flexitime (either by download or access through the Internet) that allows Users to use any functionality in connection with the applicable Service.

Subscription Term: means the period during which You have agreed to subscribe to a Service.

Terms of Use: means Our Site terms of use as set out on Our Site and as amended by us from time to time.

Third Party Services: means third party products, applications, services, software, networks, systems, directories, websites, databases and information obtained separately by You which a Service links to, or which You may connect to or enable in conjunction with a Service, including, without limitation, Third Party Services which may be integrated directly into Your Account by You or at Your direction.

User: means an individual authorised by Flexitime to use a Service through Your Account.

“We,” “Us” or “Our”: means Flexitime Limited.

2. GENERAL CONDITIONS; ACCESS TO AND USE OF THE SERVICES

2.1. During the Subscription Term and subject to compliance by You and Users with this Agreement, You have the limited right to access and use a Service consistent with the Service Plan(s) that You subscribe to for Your internal business purposes. We will:

- A. make the Services and Service Data available to You under this Agreement and the applicable Order Forms;
- B. provide applicable standard customer support for the Services to You at no additional charge as detailed on the applicable Site and Documentation and/or upgraded support if purchased;
- C. use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except (i) during planned downtime for upgrades and maintenance to the Services (of which We will use commercially reasonable efforts to notify You in

advance through Our Site) ("Planned Downtime"); and (ii) for any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Our employees), Internet service provider failure or delay, Third Party Services, or acts undertaken by third parties, including without limitation, a denial of service attack ("Force Majeure Event").

- D. Flexitime reserves the right to monitor and periodically audit Your use of the Services to ensure that Your use complies with the Agreement and the Service Plan restrictions on Our Site. Should We discover that Your or any User's use of a Service is not in compliance with the Agreement or the Service Plan restrictions on Our Site, Flexitime reserves the right to charge You, and You hereby agree to pay for, said usage in addition to other remedies available to Us.

2.2. You may not use the Services to provide outsourced business process services on behalf of more than one third party (other than Affiliates) through a single Account. Without limiting the foregoing, Your right to access and use the API is also subject to the restrictions and policies implemented by Flexitime from time to time with respect to the API as set forth in the Documentation or otherwise communicated to You in writing.

2.3. A high speed Internet connection is required for proper transmission of the Services. You are responsible for procuring and maintaining the network connections that connect Your network to the Services, including, but not limited to, "browser" software that supports protocols used by Flexitime, including the Transport Layer Security (TLS) protocol or other protocols accepted by Flexitime, and to follow procedures for accessing services that support such protocols. We are not responsible for notifying You or Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Service Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Flexitime. We assume no responsibility for the reliability or performance of any connections as described in this section. You are solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communication services that allow a user to access and use the Services.

2.4. In addition to complying with the other terms, conditions and restrictions in this Agreement, You agree not to:

- A. license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than authorised Users to further Your internal business purposes as expressly permitted by this Agreement;
- B. use the Services to Process data on behalf of any third party other than Users;
- C. modify, adapt, or hack the Services or otherwise attempt to gain unauthorised access to the Services or related systems or networks;
- D. falsely imply any sponsorship or association with Flexitime;
- E. use the Services in any unlawful manner, including, but not limited to, violation of any person's privacy rights;
- F. use the Services in breach of the Unsolicited Electronic Messages Act 2007;

- G. use the Services to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights;
- H. use the Services in any manner that interferes with or disrupts the integrity or performance of the Services and its components, including the Software and API;
- I. attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software;
- J. use the Services to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, libellous, obscene, or discriminatory;
- K. use the Services to knowingly post transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software ("Malicious Software");
- L. use or launch any automated system that accesses a Service (i.e., bot) in a manner that sends more request messages to a Service server in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; or
- M. attempt to use, or use the Services in violation of this Agreement;
- N. act in a manner that is abusive or disrespectful to a Flexitime employee, partner, or other Flexitime User.

2.5. You are responsible for compliance with the provisions of this Agreement by Users and for any and all activities that occur under Your Account, as well as for all Service Data. Without limiting the foregoing, You are solely responsible for ensuring that use of the Services to store and transmit Service Data is compliant with all applicable laws and regulations as well as any and all privacy policies, agreements or other obligations You may maintain or enter into with Users. You also maintain all responsibility for determining whether the Services or the information generated thereby is accurate or sufficient for Your purposes. You agree and acknowledge that each User will be identified by a unique username and password ("Login") and that a User Login may only be used by one (1) individual. You will not share a User Login among multiple individuals. You and Your Users are responsible for maintaining the confidentiality of all Login information for Your Account.

2.6 In addition to Our rights as set forth in Sections 2 and 7.4, We reserve the right, in Our reasonable discretion, to temporarily suspend Your access to and use of a Service if We suspect or detect any Malicious Software connected to Your Account or use of a Service by You or Users.

2.7 You acknowledge that Flexitime may modify the features and functionality of the Services during the Subscription Term.

2.8 You may not access the Services if You are a direct competitor of Flexitime as determined by Us, except with Flexitime's prior written consent. You may not access the Services for the purposes of monitoring performance, availability, functionality, or for any benchmarking or competitive purposes.

2.9 If You register for a free trial for the Services, We will make such Services available to You on a trial basis free of charge until the earlier of:

- A. the end of the free trial period for which You registered to use the applicable Service(s);
- B. the start date of any subscription to such Service purchased by You for such Service(s);
or
- C. termination of the trial by Us in our sole discretion.

Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Please review the applicable Documentation during the trial period so that You become familiar with the features and functions of the Services under applicable Service Plans before You make Your purchase.

Any Service Data You enter into a Service, and any configurations or customisations made to a Service by or for You, during Your free trial will be permanently lost unless You purchase a subscription to the same service as covered by the trial, purchase the applicable Service, or export such Service Data, before the end of the trial period.

2.10 Occasionally, We may make Beta Services available to You at no charge. You may choose to try such Beta Services in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms that will be presented to You. Beta Services are not considered "Services" under this Agreement; however, all restrictions, Our reservation of rights and Your obligations concerning the Service, and use of any Third Party Services shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage relating to a Beta Service.

2.11 You represent that You have provided notice to and received all necessary consents from Your Users to contact them using the Service. Where You require Your Users to access the Services as part of their employment or similar relationship with You, Your Users may at any time opt out of receiving marketing concerning third party products or services, without impacting on their ability to use the Services.

2.12 You acknowledge that in accessing the Services You are subject to Flexitime's Fair Use Policy:

- A. We will apply this policy where, in our reasonable opinion, your usage of our Services and/or Software is excessive and/or unreasonable as detailed in this paragraph.
- B. We have developed this policy by reference to average customer profiles and estimated usage of our Software and Services.
- C. If Your usage materially exceeds normal usage patterns over any month, or is inconsistent with normal usage patterns by Flexitime subscribers, then your usage will be excessive and/or unreasonable.
- D. If Your usage of the Software and/or Services is excessive and/or unreasonable, we may contact you to advise you that your usage is in breach of our Fair Use Policy. We may then request that you stop or alter your usage to come within our Fair Use Policy.
- E. If Your excessive or unreasonable usage continues after receipt of a request to stop or alter the nature of such usage, we may without further notice, apply charges to Your account for the excessive and/or unreasonable element of Your usage; suspend,

modify or restrict Your use of the Software and/or Services or withdraw Your access to the Software and/or Services.

- F. The usage of Software and/or Services is dependent on the level of usage selected by You at the date of subscription or monthly thereafter.

2.13 We may provide, at an additional fee, employee conversion services to assist You with migrating your payroll information from third party payroll software into the Software. You agree to provide all information required by us to enable accurate payroll processing into the Software. You warrant that all information you provide us is accurate and complete and indemnify us for any loss or damage resulting from incorrect information being entered into our Software.

3. CONFIDENTIALITY; SECURITY AND PRIVACY

3.1. Subject to the express permissions of this Agreement, each Party will protect each other's Confidential Information from unauthorised use, access or disclosure in the same manner as each protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each of us may use each other's Confidential Information solely to exercise our respective rights and perform our respective obligations under this Agreement and shall disclose such Confidential Information:

- A. solely to the Personnel who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information;
- B. as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or
- C. as reasonably necessary to comply with any applicable law or regulation. The provisions of this Section 3.1 shall supersede any non-disclosure agreement by and between the Parties that would purport to address the confidentiality and security of Service Data and such agreement shall have no further force or effect with respect to Service Data.

3.2 Flexitime will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data, as described in the Agreement. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Service Data by Personnel except:

- A. to provide the Services and prevent or address service, support or technical problems;
- B. as compelled by law under Sections 3.1 (b) or 3.1 (c); or
- C. as You expressly permit in writing. Flexitime's compliance with the provisions of Sections 3.2 through 3.3 shall be deemed compliance with Flexitime's obligations to protect Service Data as set forth in the Agreement.

3.3 You agree that Flexitime and the third-party service providers that are utilised by Flexitime to assist in providing the Services to You shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose Service Data to the extent necessary to provide the Services, including, without limitation, in response to Your support requests. Any third-party service providers utilised by Flexitime will only be given access to Your Account and Service Data as is reasonably necessary to provide the Services and will be subject to

confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in Section 3.2.

3.4 Whenever You or Your Users interact with our Services, We automatically receive and record information on Our server logs from the browser or device, which may include IP address, "cookie" information, the type of browser and/or device being used to access the Services. "Cookies" are identifiers We transfer to the browser or device of Your Users that allow Us to recognise User and their browser or device along with how our Services are being utilised.

3.5 We receive and store any information You knowingly provide to Us. This includes Personal Data, which will be collected, held, Processed and disclosed only in accordance with the Privacy Policy. In addition, We may communicate with You and Your Users and by accepting this Agreement You consent to Us communicating with You and Your Users by any means, including but not limited to email and other electronic message. For example, We may send You and Your Users product announcements and promotional offers or contact You and Your Users about Your use of the Services. If You or a User does not want to receive communications from Us, please indicate this preference by sending an email to support@flexitime.co.nz and provide us with the name and email address of each User that no longer wishes to receive these communications.

4. INTELLECTUAL PROPERTY RIGHTS

Each Party shall retain all rights, title and interest in and to all its respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, "Intellectual Property Rights"). The rights granted to You and Users to use the Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any associated Intellectual Property Rights. Subject only to the limited rights to access and use the Service(s) as expressly stated in this Agreement, all rights, title and interest in and to the Services and all hardware, Software and other components of or used to provide the Services, including all related Intellectual Property Rights, will remain with Flexitime and belong exclusively to Flexitime. Flexitime shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You, Users, or other third parties acting on Your behalf. Flexitime's other product and service names and logos used or displayed in or on the Services are registered or unregistered trademarks of one or more members of Flexitime (collectively, "Marks"), and You may only use applicable Marks to identify You as a Subscriber; provided You do not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent Us, Our services or products.

5. THIRD PARTY SERVICES

If You decide to enable, access or use Third Party Services, be advised that Your access and use of such Third Party Services are governed solely by the terms and conditions of such Third Party Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Service Data) or any interaction between You and the provider of such Third Party Services. We cannot guarantee the continued availability of such Third Party Service features, and may cease enabling access to them without entitling You to any refund, credit, or Third

Party compensation, if, for example and without limitation, the provider of a Third Party Service ceases to make the Third Party Service available for interoperation with the corresponding Service in a manner acceptable to Us. You irrevocably waive any claim against Flexitime with respect to such Third Party Services. We are not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Third Party Services, or Your reliance on the privacy practices, data security processes or other policies of such Third Party Services. You may be required to register for or log into such Third Party Services on their respective websites. By enabling any Third Party Services, You are expressly permitting Flexitime to disclose Your Login, as well as Service Data as necessary to facilitate the use or enablement of such Third Party Services.

6. BILLING, PLAN MODIFICATIONS AND PAYMENTS

6.1 Unless otherwise indicated on an Order Form referencing this Agreement all charges associated with Your access to and use of a Service ("Subscription Charges") are due on the date specified on the invoice which will be issued to You on a monthly basis. If You fail to pay Your Subscription Charges or other charges indicated on any Order Form before the due date of Our invoice issued to You, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend or terminate access to and use of such Service by You and Users, and charge interest on any unpaid amount from the due date until the date of the actual payment at 2% per annum over the base overdraft facility charged by Flexitime's bankers from time to time.

6.2 Unless otherwise stated, Our charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, goods and services, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). You are responsible for paying Taxes, except those assessable against Flexitime measured by its net income. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

6.3 If You pay by credit card or certain other payment instruments, the Services provide an interface for the Account owner to change credit card information (e.g. upon card renewal). The Account owner will receive a receipt upon each receipt of payment by Flexitime, or they may obtain a receipt from within the Services to track subscription status. You hereby authorise Flexitime to bill Your credit card or other payment instrument on a periodic basis in accordance with the terms of the Service Plan for the Services to which You subscribe until Your subscription to the Services terminates, and You further agree to pay any Subscription Charges so incurred. You agree to promptly update Your Account information with any changes (for example, a change in Your billing address or credit card expiration date) that may occur. Flexitime uses a third-party intermediary to manage credit card processing and this intermediary is not permitted to store, retain or use Your billing information except to process Your credit card information for Flexitime.

6.4 Any Subscriber that mandates Flexitime to use a vendor payment portal or compliance portal which charges Flexitime a subscription fee or a percentage of any uploaded invoice as a required cost of doing business, shall be invoiced by Flexitime for the cost of this fee.

7. CANCELLATION AND TERMINATION

7.1 Either Party may elect to terminate Your Account and subscription to a Service as of the end of Your then current Subscription Term by providing notice, in accordance with this

Agreement, on or prior to the date thirty (30) days preceding the end of such Subscription Term. Unless Your Account and subscription to a Service is so terminated, Your subscription to a Service will renew for a Subscription Term equivalent in length to the then expiring Subscription Term. Unless otherwise provided for in an Order Form, the Subscription Charges applicable to Your subscription to a Service for any such subsequent Subscription Term shall be Our standard Subscription Charges for the Service Plan to which You have subscribed as of the time such subsequent Subscription Term commences.

7.2 To the extent permitted by law, no refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Service or cancel Your Account prior to the end of Your then effective Subscription Term.

7.3 Except for Your termination under Section 7.5, if You terminate Your subscription to a Service or cancel Your Account prior to the end of Your then effective Subscription Term or We effect such termination or cancellation pursuant to Sections 2, 7.4 and 7.5, in addition to other amounts You may owe Flexitime, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term. This amount will not be payable by You in the event You terminate Your subscription to a Service or cancel Your Account as a result of a material breach of this Agreement by Flexitime, provided that You provide advance notice of such breach to Flexitime and give Flexitime not less than thirty (30) days to reasonably cure such breach as provided for in Section 7.5 herein.

7.4 We reserve the right to modify, suspend or terminate the Services (or any part thereof), Your Account or Your and/or Users' rights to access and use the Services, and remove, disable and discard any Service Data if We believe that You or Users or have violated this Agreement. Unless legally prohibited from doing so, We will use commercially reasonable efforts to contact You directly via email to notify You when taking any of the foregoing actions. We shall not be liable to You, Users or any other third party for any such modification, suspension or discontinuation of Your rights to access and use the Services. Any suspected fraudulent, abusive, or illegal activity by You or Users may be referred to law enforcement authorities at Our sole discretion.

7.5 A Party may terminate this Agreement for cause:

- A. upon thirty (30) days' written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or
- B. if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

If this Agreement is terminated in accordance with this section, We will, to the extent permitted by applicable law, refund You any prepaid fees covering the remainder of the Subscription Term after the effective date of termination and You will pay any unpaid fees covering the remainder of the Subscription Term pursuant to all applicable Order Forms as the case may be. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

8. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

8.1 Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 We warrant that during an applicable Subscription Term:

- A. this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data; and
- B. the Services will perform materially under the applicable Documentation. For any breach of a warranty above, to the extent permitted by law, Your exclusive remedies are those described in Section 7.5 herein.

8.3 Except as specifically set forth in section 8.2, the Site and the Services, including all server and network components are provided on an "as is" and "as available" basis, without any warranties of any kind to the fullest extent permitted by law, and we expressly disclaim any and all warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, title, fitness for a particular purpose, and non-infringement. You acknowledge that we do not warrant that the Services will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software, and no information or advice obtained by You from Us or through the services shall create any warranty not expressly stated in this agreement.

9. LIMITATION OF LIABILITY

9.1 Under no circumstances (whether in contract, tort, negligence or otherwise) will either party to this Agreement, or their affiliates, officers, directors, employees, agents, service providers, suppliers or licensors be liable to the other party or any third party for any lost profits, lost sales or business, lost data, business interruption, loss of goodwill, or for any type of indirect, incidental, special, exemplary, consequential or punitive loss or damages, or any other loss or damages incurred by the other party or any third party in connection with this agreement, the Services or consulting services, regardless of whether such party has been advised of the possibility of or could have foreseen such damages.

9.2 Notwithstanding anything to the contrary in this agreement and to the extent permitted by law, Flexitime's aggregate liability to You or any third party arising out of this Agreement or otherwise in connection with any subscription to, or use or employment of the services, in any 12 month period commencing on the date of the commencement of the subscription term or an anniversary thereof ("liability period") shall in no event exceed the Subscription Charges paid by You for such Services provided in the immediately preceding 12 month period. You acknowledge and agree that the essential purpose of this section 9.2 is to allocate the risks under this Agreement between the parties and limit potential liability given the Subscription Charges, which would have been substantially higher if We were to assume any further liability. We have relied on these limitations in determining whether to provide You the rights to access and use the Services provided for in this Agreement.

9.3 You agree to indemnify and keep indemnified Flexitime (including each of its personnel, agents, contractors or other representatives) against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by Flexitime, arising out of or in connection

with any breach of privacy caused by You, or Users, or through Your or Your Users use of the Services.

9.4 Any claims or damages that You may have against Flexitime shall only be enforceable against Flexitime and not any other entity or its officers, directors, representatives or agents.

10. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT

10.1 You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Your rights under this Agreement or delegate performance of Your duties under this Agreement without Our prior consent, which consent will not be unreasonably withheld. We may, without Your consent, assign this Agreement to any member of Flexitime or in connection with any merger or change of control of Flexitime or the sale of all or substantially all of Our assets provided that any such successor agrees to fulfil its obligations pursuant to this Agreement. Subject to the foregoing restrictions, this Agreement will be fully binding upon, and will be enforceable by, the Parties and their respective successors and assigns.

10.2 This Agreement constitutes the entire agreement, and supersedes any and all prior agreements between You and Flexitime with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order or other order documentation You or any Entity which You represent provides (all such terms or conditions being null and void), and, except as expressly stated herein, there are no other agreements, representations, warranties, or commitments which may be relied upon by either Party with respect to the subject. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind between the Parties, except as may otherwise be expressly provided herein.

10.3 We may amend this Agreement from time to time, in which case this Agreement as amended will supersede prior versions. We will make reasonable efforts to notify You prior to the effective date of any such amendment and Your continued use of the Services following the effective date of any such amendment may be relied upon by Flexitime as Your consent to any such amendment. Our failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

11. SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12. RELATIONSHIP OF THE PARTIES

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the Parties.

13. NOTICE

13.1 All notices to be provided by Flexitime to You under this Agreement may be delivered in writing:

- A. by nationally recognised overnight delivery service ("Courier") to the contact mailing address provided by You on any Order Form; or
- B. electronic mail to the electronic mail address provided for Your Account owner.

13.2 You must give notice to Flexitime in writing by Courier to 11 Chews Lane (Level 1), Willis Street, PO Box 10067, Wellington 6143, New Zealand. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited with a Courier as permitted above.

14. GOVERNING LAW

This Agreement is governed by the laws of New Zealand and You hereby submit to the exclusive jurisdiction of the Courts of New Zealand for all disputes arising out of or in connection with this Agreement.

15. SURVIVAL

Sections 1, 3.1, 4 and 8-15 shall survive any termination of this Agreement with respect to use of the Services by You and Users. Termination of such agreement shall not limit a Party's liability for obligations accrued as of or prior to such termination or for any breach of this Agreement.