



TERMS & CONDITIONS

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.

Agreement means the agreement between You and Flexischools comprising the Application, these terms and conditions and any Appendix.

Appendix means an appendix to this Agreement which forms part of this Agreement.

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

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

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general banking business in Sydney.

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

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.

Fee has the meaning given to it in clause 17.

Flexischools means The Scotney Group Pty Ltd ABN 271 14508771 trading as Flexischools.

Flexischools Card System means a card which is associated with an Account and integrated with the Service and used by the card holder for the purpose of purchasing Goods

and/or Services from a Facility using the Account.

Flexischools Service (or the *Service*) means the service offered by Flexischools described in this Agreement and includes use of the Website.

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.

New Service Form means a request by You to offer additional Goods and/or Services on the Service, accepted by Flexischools, and added as an Appendix to this Agreement.

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.

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 provided by Flexischools for use with the Service.

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

You and Your means the organisation named in the Application and Your employees, agents and contractors.

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

2.1 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
- (b) a personal, non-transferable, non-exclusive, limited licence to use and install the Software on Your equipment,

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. WEBSITE AND SOFTWARE

3.1 The Website and all of the content on the Website is and remains the exclusive property of Flexischools.

3.2 The Website will have the functionality set out in this Agreement.

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) copy the Software, except as necessary to install on Your equipment;
 - (b) sell, lease, transfer, give possession of, or sub-licence the Software to others;
 - (c) write or develop any derivative or other software programs, based, in whole or in part, on the Software.

4. YOUR OBLIGATIONS

- 4.1 You agree that you will not, and You will not allow any other person to, reproduce, modify or adapt the Flexischools Service, the 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 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; or
 - (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.

Policies and Procedures

- 4.3 In using the Flexischools Service You agree to comply with all policies and procedures that are notified to You by Flexischools from time to time.

Keep Confidential

- 4.4 You agree to keep confidential and secure 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 and not to 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 Service (such as 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 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 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 Website for the purpose of viewing and modifying Your Materials and viewing other information relating to Your Facilities.

- 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 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 Appendices.

Keep Confidential

- 5.2 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 and credit card details and transactions) that are collected by the Service. However, You acknowledge that Flexischools may use the personal information of Account Holders 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

- 5.3 Flexischools must maintain (and, where necessary, renew) appropriate insurance policies (including workers' compensation insurance and 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.

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 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 Service in accordance with the procedures and Software provided by Flexischools and 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 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.

- 9.3 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. TRAINING AND SUPPORT

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

11. POS HARDWARE AND POS SUPPORT

- 11.1 The provisions of this clause 11 apply where you purchase POS Hardware and/or POS Support from Flexischools.
- 11.2 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.

11.3 POS Support does not include support for third party hardware or software which remains the responsibility of the third party.

12. PROMOTION AND MARKETING

12.1 You are responsible for the promotion of the Service to potential Account Holders.

12.2 Flexischools will provide you with information in electronic form to promote the Service.

12.3 You will be responsible for disseminating the Service instructions to Account Holders.

13. LIMITATION OF LIABILITY

13.1 Nothing in this Agreement limits, excludes or modifies or purports to limit, exclude or modify any Non-Excludable Guarantees.

13.2 You acknowledge that Flexischools:

- (a) is a distributor of Your Materials and is not responsible for the content of Your Materials;
- (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 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 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.
- 13.3 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.
- 13.4 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.
- 14. INDEMNITY**
- 14.1 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.
- 13.2 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.
- 15. MARKETING AND ADVERTISING**
- 15.1 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.
- 16. PAYMENT**
- 16.1 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.
- 16.2 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.
- 17. FEE**
- 17.1 You agree to pay such Fees for use of the Service as are advised to you by Flexischools from time to time.
- 17.2 Flexischools will provide You with a valid tax invoice for any Fees.
- 17.3 Flexischools may set-off any amount payable to You against any amounts payable by You to Flexischools (including the Fees).
- 18. SERVICE LEVELS**
- 18.1 Flexischools agrees to perform the services to meet or exceed the service levels specified in the Schedule to this Agreement.
- 19. TERMINATION**
- 19.1 Flexischools may terminate the licence granted under clause 2 and remove Your access to and Your participation in the Flexischools Service:
- (a) with immediate effect, if You breach any terms of this Agreement; or
 - (b) at any time, by giving You 30 days written notice.
- 19.2 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.
- 19.3 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; and
 - (b) Your access to the Flexischools Service may be removed by Flexischools and You may be liable for reconnection fees if You wish to be later reconnected and Flexischools agrees.
 - (c) Flexischools must cease using and return to You, or destroy, all copies of any of Your Materials in Flexischools' possession or control.
- 20. MISCELLANEOUS**
- 20.1 Any prices included as part of the Materials will be Your sole responsibility and risk.
- 20.2 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 Service. The operating hours of the help desk will be as advised by Flexischools from time to time.
- 20.3 Flexischools will use reasonable commercial efforts to maintain the Flexischools Service.
- 20.4 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.
- 20.5 Flexischools cannot guarantee that the Flexischools Service will be free of errors or viruses.
- 20.6 Flexischools does not guarantee or warrant that Your existing equipment, hardware or software is compatible with the Flexischools Service.
- 20.7 This document (including the Application, these terms and conditions and any Appendix) sets out the entire agreement between the parties in relation to its subject matter and all prior representations are excluded.
- 20.8 If Flexischools believes that there is a threat to the security, stability or operation of the 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.
- 20.9 Each party must pay its own legal costs and disbursements in relation to the preparation and execution of this Agreement.
- 21. VARIATION**
- 21.1 Each time a new Facility or Activity begins using the Flexischools Service, a new Appendix will be added to the end of this Agreement detailing the agreed requirements and fees. Each additional Appendix forms part of this Agreement.
- 21.2 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
- 20.3 Flexischools may amend this Agreement at any time and from time to time by posting a revised version on the Website. Any such amendment to this

Agreement will take effect as soon as it is posted on the 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 19.2.

22. 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 hours	95%

Availability

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

END OF DOCUMENT