

FLEX TERMS OF SERVICE

Last Updated: 09/14/2023

These terms of service (this “Agreement”) constitute a binding legal agreement between the company or other legal entity you represent (“Customer”) and Flexbase Technologies, Inc, a Delaware corporation, d/b/a Flex (“Flex”, “we”, or “us”) and govern Customer’s use of all portals, applications, APIs, and financial or other services as described in Section 2 below or otherwise associated with the website www.flex.one, any mobile or desktop application that provides or links to this Agreement, or that is otherwise provided by Flex to Customers (collectively, the “Services”). For clarity, any legal entity that issues invoices for which Services are provided constitutes a “Customer” for purposes of this Agreement, with respect to such Services.

BY ACCEPTING THIS AGREEMENT, YOU ARE ENTERING INTO A MUTUALLY BINDING AGREEMENT BETWEEN CUSTOMER AND FLEX AS TO THE TERMS SET FORTH BELOW AND REPRESENT THAT YOU HAVE SUCH AUTHORITY ON BEHALF OF CUSTOMER. WITHOUT LIMITING THE FOREGOING, BY USING THE SERVICES, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MUST NOT ACCESS OR USE THE SERVICES. NOTE: THESE TERMS CONTAIN AN ARBITRATION PROVISION WITH A CLASS ACTION WAIVER AND A WAIVER OF THE RIGHT TO A JURY. PLEASE REVIEW SECTION 12 BELOW BEFORE USING THE SERVICES.

Flex may change any of the terms of this Agreement at any time, at our sole discretion. Please check periodically for updates to this Agreement so you are aware of any changes. We will notify Customer of any changes to this Agreement that materially modify Customer’s rights or obligations (“Material Modifications”) by e-mail to the address provided in Customer’s account profile and/or by posting a notice in our applications. Any Material Modifications will be effective upon Customer’s acceptance of the modified agreement, or upon the Customer’s continued use of the Services after we send or post a notice of the changes, whichever is earlier. Changes to this Agreement that do not materially modify Customer’s rights or obligations will be effective immediately upon publication. However, any disputes arising under this Agreement will be resolved pursuant to the version of this Agreement in effect at the time the dispute arose.

1. Definitions.

- (a) **“Aggregated Statistics”** means data and information related to Customer’s use of the Services that are used by Flex in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

- (b) **“Authorized User”** means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
- (c) **“Customer Data”** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.
- (d) **“Documentation”** means Flex’s end-user documentation relating to the Services made available on Flex’s websites or applications from time to time.
- (e) **“Flex IP”** means the Services, the Documentation, and any and all intellectual property provided to customers or any Authorized User in connection with the foregoing. For the avoidance of doubt, Flex IP includes Aggregated Statistics and any information, data, or other content derived from Flex’s monitoring of Customers’ access to or use of the Services, but does not include Customer Data.
- (f) **“Invoice”** means an invoice generated by Flex on behalf of Customer as part of the Services provided hereunder.
- (g) **“Parties”** means Flex and Customer.

2. **Services.** The Flex Services include, but are not limited to the following, as well as all means of accessing or using the same:

- (a) **Flex Commercial Card** - Flex offers the Flex Commercial Card issued by Patriot Bank, N.A. ("Patriot Bank"). Once you have established an account with Flex, you may choose to apply for a Flex Commercial Card, to access the revolving line of credit from Flex (the "LoC"). If approved for the Flex Commercial Card and Flex LoC, the terms and conditions will be set out in the Commercial Cardholder agreement. Please refer to the separate fee Schedule available in the Commercial Cardholder agreement for fees and charges associated with your Flex Commercial Card and your LoC.
- (b) **Flex Pay** - Flex provides a checkout button for merchants to include on their ecommerce storefront through which their customers can apply for, and subsequently draw down upon, an LoC to pay for goods and services. Flex charges merchants a fee on each transaction completed through the Flex Pay button. The terms and conditions of the LoC offering may be found in the Commercial Cardholder Agreement. At the time a Customer is approved for an LoC through Flex Pay, the Customer will also be issued a virtual Flex Commercial Card. Customers may also choose to be issued a physical Flex Commercial Card.

3. **Access and Use.**

- (a) **Provision of Access.** Subject to and conditioned on Customer's compliance with all other terms and conditions of this Agreement, Flex hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 13(f)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Flex shall provide Customer with the necessary passwords and network links or connections to allow Customer to access the Services.
- (b) **Documentation License.** Subject to the terms and conditions contained in this Agreement, Flex hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(f)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- (c) **Use Restrictions.** Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other rights of any person, or that violates any applicable law.
- (d) **Reservation of Rights.** Flex reserves all rights not expressly granted to Customer in this agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other rights, title, or interest in or to the Flex IP.
- (e) **Suspension.** Notwithstanding anything to the contrary in this Agreement, Flex may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Flex reasonably believes that: (A) there is a threat or attack on any of the Flex IP; (B) Customer's or any Authorized User's use of the Flex IP disrupts or poses a security risk to the Flex IP or to any other Customer or vendor of Flex; (C) Customer, or any Authorized User, is using the Flex IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Flex's provision of the Services to Customer or any Authorized

User is prohibited by applicable law; or (ii) any vendor of Flex has suspended or terminated Flex's access to or use of any services or products required to enable Customer to access the Services; (any such suspension described in subclause (i) or(ii), a "Service Suspension"). Flex shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Flex shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flex will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

- (f) **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Flex may monitor Customer's use of the Services and collect and compile aggregated statistics. As between Flex and Customer, all rights, title, and interest in aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Flex. Customer acknowledges that Flex may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Flex may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.
- (g) **Consent to Electronic Signature and Communications.** You agree that submitting your application for a Flex account and indicating your agreement to the terms of this Agreement electronically during the application process constitutes your electronic signature to this Agreement. You also agree that your electronic consent has and will have the same legal effect as a physical signature. By agreeing to the terms of the Agreement, you consent to us providing Notices (as defined in Section 13(b) and account statements to you electronically, and understand that this consent has the same legal effect as a physical signature.

4. Customer Responsibilities.

- (a) **General.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

- (b) **Third-Party Products.** Flex may from time to time make products offered by third parties (the “Third Party Products”) available to Customers. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions. If Customer does not agree to abide by the applicable terms for any such third-Party Products, then Customer should not install or use such Third-Party products.

5. **Service Availability.** Flex makes no representation, warranty, or covenant regarding the availability of the Services.

6. **Confidential Information.** Customer understands and agrees that to use the Flex Services the Customer will provide Flex with confidential information (including but not limited to Customer Data) that Flex will retain in its records. Customer further understands and agrees that Flex may use such confidential information to perform the Services and to share such confidential information with other third-party service providers as selected by Customer. Customer understands that the use of such confidential information will be subject to Flex’s Privacy Policy.

7. **Intellectual Property Ownership; Feedback.**

- (a) **Flex IP.** Customer acknowledges that, as between Customer and Flex, Flex owns all right, title, and interest, including all intellectual property rights, in and to the Flex IP and, with respect to Third-Party Products, either Flex or the applicable third-party providers own all rights, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- (b) **Customer Data.** Flex acknowledges that, as between Flex and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data. Customer hereby grants to Flex a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display Customer Data and perform all acts with respect to Customer Data as may be necessary for Flex to provide the Services to Customer, and products, services or promotions that may involve Flex's business partners, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data to the extent incorporated within (but not reasonably discernible from) the Aggregated Statistics. Customer further grants to Flex permission to use Customer’s name and logo on Flex’s website or in Flex’s marketing materials; provided that any such name and logo are used solely in a manner that is not intended to or reasonably likely to harm or disparage Customer or its reputation or goodwill.
- (c) **Feedback.** If Customer or any of its Authorized Users sends or transmits any communications or materials to Flex by mail, email, telephone, or otherwise,

suggesting or recommending changes to the Flex IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Flex is perpetually and irrevocably free to use such Feedback without acknowledgement or compensation, irrespective of any other obligation or limitation between the Parties governing such Feedback.

8. Warranty Disclaimer. THE SERVICES AND THE FLEX IP ARE PROVIDED "AS IS" AND FLEX HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. FLEX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM THE COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FLEX MAKES NO WARRANTY OF ANY KIND THAT THE FLEX IP, OR ANY RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Indemnification. Customer shall indemnify, hold harmless, and, at Flex's option, defend Flex from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees)("Losses") resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that Customer Data, or any use of Customer Data in accordance with this Agreement, infringes or misappropriates such third-party's intellectual property or other proprietary rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Flex or authorized by Flex in writing; or (iv) modifications to the Services not made by Flex, provided that Customer may not settle any Third-Party Claim against Flex unless Flex consents to such settlement, and further provided that Flex will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

10. Limitations of Liability. IN NO EVENT WILL FLEX BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER FLEX WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR

DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL FLEX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO FLEX UNDER THIS AGREEMENT IN THE 6-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$10,000, WHICHEVER IS LESS.

11. **Term and Termination.**

- (a) **Term.** this Agreement begins on the Effective Date and can be terminated by Flex upon prior written notice to Customer. The Agreement shall automatically terminate by Customer upon closing Customer's Flex account. The period during which the agreement is effective is referred to herein as the "Term".
- (b) **Effect of Termination.** Upon termination of this Agreement, Customer shall immediately discontinue use of the Flex IP and the Services and, Customer shall delete, destroy, or return all copies of the Flex IP and, upon request, certify in writing to Flex that the Flex IP has been deleted or destroyed.
- (c) **Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation indemnities, warranty disclaimers, and limitations of liability.

12. **Arbitration.**

- (a) In order to expedite and control the cost of disputes, Flex and Customer agree that any legal or equitable claim, dispute, action, or proceeding arising from or related to the Services or this Agreement ("Dispute") will be resolved by arbitration if the Parties are unable to reach an agreement through negotiation of the dispute. This applies to all Disputes, whether based on contract, tort, statute, fraud, misrepresentation, or any other legal theory, even if the Dispute arises after the termination of this Agreement.
- (b) **Exceptions to Arbitration Agreement.** Despite this arbitration agreement, both Customer and Flex will still be able to: (a) bring an individual action in small claims court; (b) bring an individual action seeking injunctive relief in a court of law; (c) bring suit regarding intellectual property infringement, and (d) bring issues to the attention of federal, state, or local agencies, which may result in legal action.
- (c) **Binding Arbitration.** To the fullest extent permitted under law, any arbitration between Customer and Flex will be settled under the Federal Arbitration Act, and will be administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules in effect at the time the Dispute is filed (the

“AAA Rules”), as modified by this Agreement. Information about AAA and the AAA Rules and filing process is available at <http://www.adr.org/>. ALL DISPUTES WILL BE RESOLVED BEFORE A NEUTRAL ARBITRATOR, WHOSE DECISION WILL BE FINAL EXCEPT FOR THE LIMITED RIGHT OF APPEAL UNDER THE FEDERAL ARBITRATION ACT. The arbitration will take place in Miami Florida, and be conducted in English by one arbitrator.

- (d) **Filing Period.** TO THE FULLEST EXTENT PERMITTED BY LAW, ANY DISPUTE UNDER THESE TERMS MUST BE FILED WITHIN ONE (1) YEAR IN AN ARBITRATION PROCEEDING. The one-year period begins when the events giving rise to the Dispute first occur. If a claim is not submitted within one year, it is permanently barred. This period can only be extended with the written consent of both Parties. No statutes or provisions of law that would toll or otherwise affect the time in which a party may bring a claim shall operate to extend the period limited in this Section, and any such statutes and provisions are hereby waived, to the fullest extent permitted by law.

13. Miscellaneous.

- (a) **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in this Agreement and any terms of Third Party Products, the following order of precedence governs: (i) first, this Agreement, (ii) second, the terms of the Third Party Product.
- (b) **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) must be in writing and delivered by email. Customer shall send Notices for Flex to **legal@flex.one**. Flex shall send Notices for Customer to the email address for Customer associated with Customer's account profile on the Services.
- (c) **Force Majeure.** In no event shall Flex be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Flex's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of a law or any action taken by a governmental or public authority, including imposing an embargo.

- (d) **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to affect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- (e) **Governing Law; Submission to Jurisdiction.** This Agreement is governed by and will be construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware.
- (f) **Assignment.** Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Flex. Flex may assign its rights upon written notice to Customer. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- (g) **Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 3(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.