

# Terms and Conditions

The purpose of these terms and conditions is to set out the rights, responsibilities, liabilities, and other necessary matters governing the use by Licensee of certain software developed by Flexmonster.

## THE PARTIES HEREBY AGREE AS FOLLOWS:

### 1 DEFINITIONS

- 1.1 **"Agreement"** means these terms and conditions.
- 1.2 **"Application"** means a software application developed and/or distributed by Licensee or its clients, which contains all or part(s) of Flexmonster Component.
- 1.3 **"Confidential Information"** means all information provided to Licensee and related to or in connection with the business of Flexmonster, including technical and financial information, pricing and terms, customer and employee information, know-how, trade secrets and all other information containing or reflecting such information.
- 1.4 **"Flexmonster Component"** means the software developed by Flexmonster and made available to Licensee under this Agreement.
- 1.5 **"Flexmonster Website"** means [www.flexmonster.com](http://www.flexmonster.com).
- 1.6 **"Representative"** means, in relation to a Party, directors, officers, employees, civil contractors, agents, advisers, accountants and consultants.
- 1.7 **"Third Party"** means persons, corporations, and entities other than Flexmonster, Licensee, or any of their employees, contractors, or agents.

### 2 TRIAL VERSION LICENSE GRANT

- 2.1 Subject to terms and conditions of this Agreement, Flexmonster grants to Licensee a limited, non-exclusive and non-transferable right to use Flexmonster Component internally for evaluation purposes for a period not exceeding 30 calendar days, in executable form only. This license covers Flexmonster Component "as is". No license fee is charged for this demo/trial license. Flexmonster shall have no obligation whatsoever to provide any maintenance or support hereunder.
- 2.2 The trial license hereunder is granted for purposes of evaluation and demonstration of capabilities of Flexmonster Component. It does not cover any commercial, professional, or other for-profit purposes.
- 2.3 The 30-day trial period starts the day the trial version is requested for download from Flexmonster Website.
- 2.4 This Agreement becomes effective once Licensee opens, installs, uses, accesses, or otherwise manipulates Flexmonster Component.
- 2.5 Notwithstanding anything to the contrary contained herein, Flexmonster may at its sole discretion extend the trial period by sending to the Licensee an e-mail confirmation. The period of trial extension shall be determined at Flexmonster's sole discretion on a case-by-case basis. To request an extension of the trial, the Licensee should contact Flexmonster using Flexmonster

Website or email address [help@flexmonster.com](mailto:help@flexmonster.com). In case Flexmonster decides to grant a trial extension to the Licensee, all relevant provisions of this Agreement shall continue to apply *mutatis mutandis*.

### **3 RESTRICTIONS**

- 3.1 Licensee is responsible for abiding by the provisions set forth in this Agreement and ensuring such abidance from its Representatives.
- 3.2 Commercial, professional or any other for-profit use of the trial version of Flexmonster Component, as well as any kind of distribution of Flexmonster Component, is prohibited.
- 3.3 In case excessive, inappropriate, or otherwise not in accordance with this Agreement, use of the License by Licensee causes direct material damage and/or unavoidable expenses to Flexmonster, Licensee shall compensate such appropriately proven damage and/or refund such expenses to Flexmonster in full.
- 3.4 Flexmonster Component may contain Third Party software which may require notices and/or be subject to additional terms and conditions. By accepting this Agreement, Licensee is also accepting the additional terms and conditions, if any, set forth therein.
- 3.5 Licensee agrees that it shall not itself or indirectly, including through any affiliate, agent, or other person:
  - 3.5.1 decompile, hack, reverse engineer, disassemble, or otherwise determine or attempt to determine any part of source code for the executable code of Flexmonster Component and/or algorithms of its work, and agrees not to permit or authorize anyone else to do so;
  - 3.5.2 change, explore, or otherwise modify Flexmonster Component or its part(s) and agrees not to permit or authorize anyone else to do so without Flexmonster's prior written consent;
  - 3.5.3 publish or otherwise make Flexmonster Component available to any other persons unless otherwise is permitted under this Agreement; rent, lease, or lend Flexmonster Component to any other persons without Flexmonster's prior written consent;
  - 3.5.4 use Flexmonster Component in any way that could harm it or impair the use of it by any other lawful user.

### **4 COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

- 4.1 Licensee's rights to use Flexmonster Component are strictly limited to rights expressly provided by this Agreement.
- 4.2 All intellectual property rights in and related to Flexmonster Component, and the goodwill connected with that, are and shall remain owned solely, exclusively, and in its entirety by Flexmonster. Licensee hereby expressly acknowledges that it shall acquire no title to Flexmonster Component and that nothing in this Agreement shall be held or interpreted as transferring any such rights to Licensee.
- 4.3 All changes, modifications, upgrades, updates or otherwise of Flexmonster Component performed by Flexmonster shall remain the sole and exclusive property of Flexmonster.

- 4.4 Any pre-existing intellectual property and other content and data which Licensee processes using Flexmonster Component under this Agreement shall remain Licensee's property.

## **5 CONFIDENTIALITY**

- 5.1 Each Party shall (and shall ensure that each of its Representatives shall) maintain Confidential Information in confidence and not disclose that Confidential Information to any person or its use for purposes not related to execution or performance of this Agreement. Each Party shall treat the Confidential Information with at least the same level of care and confidence as its own.
- 5.2 Licensee shall be liable to Flexmonster for any unauthorized use, transfer or disclosure of the Confidential Information by Licensee.

## **6 APPLICABLE LAW**

- 6.1 This Agreement is governed by the laws of the United States of America, and in respect of any dispute which may arise hereunder Licensee consents to the jurisdiction of the state and provincial courts sitting in Florida, the United States of America.

## **7 WARRANTY**

- 7.1 FLEXMONSTER AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO FLEXMONSTER COMPONENT, AS WELL AS ANY AND ALL CHANGES, MODIFICATIONS, UPGRADES, UPDATES OR OTHERWISE THEREOF. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. FLEXMONSTER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS CONCERNING THE ACCURACY, LIKELY RESULTS, OR RELIABILITY OF THE USE OF FLEXMONSTER COMPONENT, AS WELL AS ANY AND ALL CHANGES, MODIFICATIONS, UPGRADES, UPDATES OR OTHERWISE THEREOF.
- 7.2 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FLEXMONSTER, ITS DEALERS, RESELLERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

## **8 LIMITATIONS OF LIABILITY**

- 8.1 FLEXMONSTER COMPONENT AND MAINTENANCE SUPPLIED BY FLEXMONSTER ARE PROVIDED 'AS IS' AND MAY HAVE ERRORS AND OMISSIONS.
- 8.2 NEITHER FLEXMONSTER NOR ITS SUPPLIERS SHALL BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS OR SAVINGS, LOSS OF DATA, LOSS OF REVENUE, LOSS OF USE OR MONEY, LOSS OF OPPORTUNITY, BUSINESS INTERRUPTION OR THE LIKE) ARISING OUT OF THE USE OF, OR INABILITY TO USE, FLEXMONSTER COMPONENT AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF FLEXMONSTER OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **9 TERMINATION**

- 9.1 This Agreement is effective until terminated. The license to use Flexmonster Component terminates automatically in 30 calendar days after the start of use of Flexmonster Component unless a trial extension is granted to the Licensee by Flexmonster pursuant to clause 2.5 hereof, in which case the license to use Flexmonster Component terminates automatically at the end of such trial extension.
- 9.2 Licensee may terminate this Agreement at any time by destroying the Flexmonster Component and documentation together with all copies and merged portions in any form.
- 9.3 Flexmonster may revoke the License to use Flexmonster Component at any time at its sole discretion, and Licensee may not claim any damages in relation to such revocation.
- 9.4 Notwithstanding anything to the contrary herein, this Agreement, and the associated License for Flexmonster Component, and maintenance services will terminate automatically and without previous notice by Flexmonster if Licensee fails to comply with any of the terms or conditions of this Agreement.
- 9.5 Upon termination of this Agreement for any reason, Licensee agrees and undertakes to, without any delay, destroy all copies of Flexmonster Component.

## **10 MISCELLANEOUS**

- 10.1 Neither Party may assign, transfer, charge or deal in any other manner with this Agreement nor purport to do so without the prior written consent of the other Party.
- 10.2 The Parties do not intend that any term of this Agreement shall be enforceable by any person who is not a party to this Agreement.
- 10.3 The Agreement shall not be construed as creating a joint venture, partnership or the like. Neither Party shall act or be deemed to act on behalf of the other Party, or have the right to bind the other Party.
- 10.4 If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement.