



Terms and Conditions for Data Sharing

April 2017

Terms and Conditions for the Sharing of Data between Customer and Flexiion

Background:

- A. These Terms and Conditions set out the agreed basis on which *Customer* shares Data with **Flexiion**.
- B. These Terms and Conditions define the principles and procedures that the Parties agree to adhere to and the responsibilities each Party owes in respect of the other.
- C. The various principles and procedures set out in these Terms and Conditions shall apply only to Personal Data.
- D. These Terms and Conditions apply from the date on which relevant services are provided by **Flexiion** to *Customer* and remain in force until the cessation of those services, and acceptance of these Terms and Conditions by *Customer* is an explicit condition of the provision of services by **Flexiion**.

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions are as follows:

“Agreed Purpose” means the storing and/or processing of the Data that *Customer* wishes to carry out by means of the Services provided by **Flexiion**;

“Agreement” means these terms and conditions;

“Flexiion” means Flexiion Limited, Registered Office 152 Bristol Road, Gloucester, England, GL1 5SR, Company No. 06826289;

“Data” means all data shared by *Customer* with **Flexiion** under the terms of this Agreement including Personal Data, Sensitive Personal Data, Non-Personal Data and/or Depersonalised Data;

“Data Protection Principles” means the eight principles set out in Schedule 1 of the DPA;

“Deletion Policy” means *Customer’s* policy for the deletion of Data as communicated to **Flexiion** by *Customer*;

“Depersonalised Data” means information that relates to individuals where it is not possible to identify individuals from that information, whether in isolation or in conjunction with any other information;

“DPA” means the Data Protection Act 1998;

“FOIA” means the Freedom of Information Act 2000;

“Customer” means customers of **Flexiion** for services to store and/or process Data;

“Non-Personal Data” means information that does not relate to people including information about organisations, resources, projects or information about people that has been aggregated to a level that is not about individuals;

“Parties” means **Flexiion** and **Customer**;

“Personal Data” as defined in the DPA, which for the avoidance of doubt includes Sensitive Personal Data;

“Security Policy” means **Customer’s** security policy as may be communicated to **Flexiion** by **Customer**;

“Sensitive Personal Data” as defined in the DPA; and

“Services” means such storage, networking and computing capabilities as have been requested by **Customer** to be supplied to it by **Flexiion**.

“Working Day” means any day (other than a Saturday or Sunday) on which banks are open for domestic business.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;

1.2.2 a reference to a Party shall include that Party's personal representatives, successors or permitted assignees;

1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);

1.2.4 a reference to a Clause is to the relevant clause of this Agreement;

1.2.5 any reference to a statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted by any subsequent statute, order, regulation or instrument;

1.2.6 general words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms; and

1.2.7 headings to clauses are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

2 NOTIFICATION

- 2.1 *Customer* is responsible and hereby agrees to notify **Flexiion** in writing advance if any Data to be supplied by it to **Flexiion** includes Personal Data, Sensitive Personal Data, or any other data that may be regulated by the DPA giving **Flexiion** sufficient notice as it may reasonably require to ensure its compliance with the DPA.
- 2.2 In the event that **Flexiion** does not receive notification from *Customer* according to Clause 2.1 herein, that Data provided by it does include Personal Data, Sensitive Personal Data, or any other data that may be regulated by the DPA, **Flexiion** is entitled to assume that either all Data it receives from *Customer* is not Personal Data or Sensitive Personal Data, or that **Flexiion** has no role or responsibility in respect of the Data beyond that of a Data Processor.
- 2.3 *Customer* is responsible and hereby agrees to provide **Flexiion** with all relevant Deletion and Security Policies as may be applicable before using the Services for any Personal data.

3 DATA CONTROLLER

- 3.1 A data controller is a person or organisation that either alone or jointly with another controller, determines the purposes for which and the manner in which any Personal Data are processed.
- 3.2 It is hereby agreed by the Parties that *Customer* is the sole data controller in respect of any Data it provides to **Flexiion** and remains so, and that *Customer* is responsible for the Data it provides.
- 3.3 At no time upon providing **Flexiion** with Data does *Customer* cease to be a controller of that Data.
- 3.4 It is possible in law, that circumstances may arise such that *Customer* and **Flexiion** would become joint data controllers and/or data controllers in common, and *Customer* accepts and acknowledges its responsibility to identify to **Flexiion** in advance of all occasions when this is the case and warrants to **Flexiion** that it will act in whatever manner is required to prevent **Flexiion** becoming a data controller or joint data controller and indemnifies **Flexiion** from any and all claims and damages that may arise should it fail to do so.

4 DATA PROCESSOR

- 4.1 A data processor is any person or organisation that processes Personal Data on behalf of a data controller. A data processor can only act on the instructions of the relevant data controller or controllers.
- 4.2 It is hereby agreed that should *Customer* require the Services to be involved in either collection or supply of data in a manner that is governed by the DPA, the scope, manner, means and duration of that collection or supply is controlled and

defined by *Customer* and not **Flexiion** and *Customer* bears the entire responsibility for determining the compliance of such processes and informing **Flexiion** of any actions or procedures that may be required of it.

- 4.3 Additionally any third parties collecting, storing or processing Data on behalf of **Flexiion**, for purposes determined by *Customer* under a contract between *Customer* and **Flexiion**, will only be in the role of data processor in relation to the Data shared by *Customer* with **Flexiion**. This includes any external contractor or supplier engaged by **Flexiion**.
- 4.4 **Flexiion** shall not, without obtaining *Customer's* prior written consent (such consent not to be unreasonably withheld or delayed), share Data with third parties other than to enable third parties to assist **Flexiion** in using the Data for the Agreed Purpose.
- 4.5 Subject to Clause 4.4 Data will not be shared by **Flexiion** with any other organisations or individuals without the prior written agreement of *Customer* save as may be required by Law.

5 ANNUAL REVIEW AND RETENTION OF PERSONAL DATA

- 5.1 Personal Data should only be processed for as long as is necessary. The sharing by *Customer* of Personal Data with **Flexiion** should be limited accordingly and it is explicitly acknowledged by *Customer* that *Customer* bears all responsibilities for determining and communicating to **Flexiion** the deletion or retention of any and all Personal data that has been shared with **Flexiion** annually and otherwise.

6 PROCESSING ONLY FOR AGREED PURPOSES

- 6.1 In accordance with the fifth Data Protection Principle, Personal Data shall only be processed (including stored) for the Agreed Purpose, and must be deleted once the Agreed Purpose has been fulfilled.
- 6.2 *Customer* acknowledges that it bears the sole responsibility on behalf of *Customer* and **Flexiion** for determining when Personal Data must be deleted and instructing **Flexiion** accordingly of any act as may be required of **Flexiion**.
- 6.3 Other than has been specifically agreed otherwise in writing in advance, it is hereby agreed between *Customer* and **Flexiion** that **Flexiion** is not permitted to use Data for its own purposes and shall have no scope to do so, neither shall **Flexiion** have any influence over or control of the collection or content of Data, nor the purposes to which Data are put.

7 DATA PROTECTION REGISTRATION

- 7.1 The Register of Data Controllers is managed by the UK Information Commissioner's Office (ICO), and it is mandatory for most organisations handling Personal Data as a data controller to maintain a valid registration.

7.2 **Flexiion** is registered with the ICO and **Customer** accepts all responsibility for any other registration that may be required in respect of the Data on behalf of itself and **Flexiion**.

8 DATA SECURITY

8.1 **Flexiion** shall be responsible for ensuring that all Data supplied to it by **Customer** are stored securely for the duration of and to the degree to which Data are under its control. **Flexiion** shall take appropriate measures to ensure the security of Data and guard against unauthorised access thereto or disclosure thereof or loss or destruction while in its custody insofar as this is within the scope of the Services.

8.2 **Flexiion**, acting as data processor, warrants to **Customer** that it has:

8.2.1 put in place appropriate technical and organisational measures for the processing of any Personal Data and against unauthorised, accidental or unlawful access to such (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the data processing equipment to be used to process such Personal Data, and that any persons whom it authorises to have access to such Personal Data shall respect and maintain all due confidentiality;

8.2.2 a level of security programmes and procedures which reflect and specifically address the nature of the Personal Data.

8.3 **Flexiion** shall comply with the Security Policy where this has been provided to **Flexiion** by **Customer** and shall ensure that responsibility for compliance shall be clearly placed on a particular person or department within **Flexiion's** organisation. Further, should **Flexiion** determine that it is unable to comply with the Security Policy for whatever reason, it will notify **Customer** promptly of same.

8.4 **Flexiion** shall not keep any Personal Data for longer than is required as notified to it by **Customer**.

8.5 **Flexiion** agrees that its staff, sub-contractors, servants, contractors, agents or any other person in the control of **Flexiion** shall store or process the Personal Data in accordance with the Data Protection Principles, and in particular in accordance with the seventh Data Protection Principle.

8.6 Other than at **Customer's** specific written request **Flexiion** shall not disclose or allow access to any Data other than to a person placed by **Flexiion** under the same obligations as those set out in this Agreement who is variously employed or engaged by **Flexiion** or any sub-contractor, contractor, servant, agent or other person within the control of **Flexiion**.

- 8.7 *Customer* agrees that it is solely responsible for the security of any unencrypted Data in transit between *Customer* and **Flexiion**.
- 8.8 **Flexiion** shall ensure that disciplinary rules and procedures take account of the requirements of the DPA. In the case of an employee of **Flexiion** being found to be unreliable or unsuitable for access to Personal Data, **Flexiion** shall ensure that his or her access to Personal Data are withdrawn immediately
- 8.9 **Flexiion** shall ensure that its staff are aware that Personal Data should only be accessed for the Agreed Purpose and not for their own private purposes.
- 8.10 **Flexiion** shall ensure that audit trails are kept so that access to Personal Data are logged and can be attributed to a particular person.

9 SECURITY INCIDENTS

- 9.1 **Flexiion** shall ensure that any breaches of security are properly investigated and remedied as soon as possible, particularly when damage or distress could be caused to an individual. **Flexiion** shall notify *Customer* immediately should such a breach occur.
- 9.2 **Flexiion** will advise *Customer* of any potential or actual losses of the Data as soon as possible and, in any event, within three Working Days of identification of any potential or actual loss, whether in relation to its own processing of the Data or in relation to Data processed on its behalf, in order that *Customer* can consider what further action is required in relation to such an incident and the continued and future sharing of Data.

10 DESTRUCTION OF DATA

- 10.1 Once the Data has been used for the Agreed Purpose, **Flexiion** warrants that the Data will be deleted in accordance with the Deletion Policy when so instructed by *Customer*.
- 10.2 Following the deletion of the Data in accordance with Clause 10.1 **Flexiion** will notify *Customer* in writing that the Data has been deleted in accordance with the Deletion Policy.

11 RIGHTS TO INSPECTION

- 11.1 If *Customer* shares Personal Data with **Flexiion** for the purposes of **Flexiion** processing Personal Data on behalf of *Customer*, *Customer* may request to inspect arrangements for the processing of the shared Personal Data by **Flexiion**, such requests must be reasonable and proportionate and agreement to them by **Flexiion** is not to be unreasonably withheld.

12 DATA SUBJECT ACCESS RIGHTS

- 12.1 Individuals have a right to see what Personal Data are held about them, and to know why and how it is processed.

12.2 *Customer* as a data controller has an obligation to respond to these requests, however should requests made directly to **Flexiion**, such requests will be referred by **Flexiion** to *Customer* and it is agreed that *Customer* will bear the responsibility for responding to them.

13 TRANSFER OF DATA OUTSIDE THE EEA

13.1 The eighth Data Protection Principle bans the transfer of Personal Data to a country or a territory outside of the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of the data subjects in relation to the processing of their Personal Data.

13.2 **Flexiion** will not transfer Personal Data outside of the European Economic Area unless explicitly requested and agreed by *Customer*.

14 FREEDOM OF INFORMATION

14.1 *Customer* and/or the project to which the use of the Data relate may be subject to the FOIA. In such cases the Data will also be subject to the FOIA and may be deemed to be held by **Flexiion** on behalf of *Customer*. **Flexiion** will promptly supply to *Customer*, on written request, such information to enable *Customer* to respond to requests for information made under the FOIA. **Flexiion** will provide all reasonable cooperation to *Customer* to enable it to comply with its obligations under the FOIA.

14.2 *Customer* acknowledges that, where a request for information made under the FOIA is made to *Customer* or **Flexiion**, *Customer* will make the final decision on disclosure of information under the FOIA;

14.3 When disclosure of information under the FOIA is required of **Flexiion**, all costs of the work necessary for compliance carried out by **Flexiion** will be borne by *Customer*;

14.4 **Flexiion** shall provide all reasonable cooperation to *Customer* to enable it to comply with its obligations under or in relation to the FOIA.

15 RESEARCH

15.1 Section 33 of the DPA contains various exemptions and relaxations in relation to the processing of Personal Data only for research purposes in compliance with the relevant conditions (as such terms are defined in the DPA), including in relation to the second Data Protection Principle, the keeping of Personal Data indefinitely and the right of access to Personal Data.

15.2 If *Customer* intends to claim its use of any Personal Data are covered by Section 33 of the DPA, *Customer* warrants to **Flexiion** that it will inform **Flexiion** of this in advance and further warrants that the use of Personal Data will conform with the required conditions of Section 33 of the DPA.

16 DISPUTE RESOLUTION

- 16.1 The Parties shall attempt to resolve any disagreement arising from this Agreement informally and promptly by officers who have day-to-day responsibility for the operation of this Agreement.
- 16.2 If the disagreement cannot be resolved further to Clause 16.1 within fourteen (14) days of it arising, the matter shall be referred to the Chief Executives (or the corresponding individuals) of the Parties.

17 INDEMNITY AND LIABILITY

- 17.1 **Customer** indemnifies, and shall keep indemnified, **Flexiion** against any liability, costs, expenses, losses, claims or proceedings whatsoever arising under any statute or at common law or for breach of contract in respect of:

17.1.1 damage to property, real or personal, including any infringement of third party intellectual property rights; and

17.1.2 injury to persons, including injury resulting in death; and

17.1.3 any direct economic or financial loss

arising out of, in connection with any act, omission or default of the Applicant, its staff, agents or sub-contractors in relation to the Data, except in so far as such damages or injury shall be due to any negligence of **Flexiion**.

- 17.2 **Flexiion** takes no responsibility for the accuracy, currency, reliability and correctness of the Data, nor for the accuracy, currency, reliability and correctness of links or references to other information sources and disclaims all warranties in relation to such data, links and references to the maximum extent permitted by legislation. **Customer** uses or relies on the Data at its own risk.

18 WAIVER

- 18.1 The failure of either Party to insist on strict performance of any provision of this Agreement or the failure of either Party to exercise any right or remedy to which it is entitled shall not constitute a waiver thereof and shall not affect either Party's obligations under this Agreement. No waiver of any default shall constitute a waiver of any subsequent default.

19 CONFIDENTIALITY

- 19.1 Both Parties shall not, and shall ensure that their employees, agents and subcontractors shall not, divulge or dispose of or part with possession custody or control of any confidential material or information provided by the other Party pursuant to this Agreement, or prepared or obtained by a Party pursuant to this Agreement, other than in accordance with the express written instructions of the other Party or in compliance with statutory requirements.

20 NOTICES

20.1 Any demand, notice, or other communication required to be given under this Agreement shall be in writing and shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post, electronic mail or facsimile transmission to the registered office or last known address of the Party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting or on successful transmission, as the case may be.

21 SEVERANCE

21.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

22 PARTNERSHIPS

22.1 Nothing in this Agreement shall be construed as establishing or implying any legal partnership between the Parties and nothing in this Agreement shall be deemed to make **Flexiion** the agent of *Customer*.

23 RIGHTS OF THIRD PARTIES

23.1 No express third party right and no purported third party right is conferred by this Agreement or any contract deed or instrument entered into under or in connection herewith pursuant to the Contracts (Rights of Third Parties) Act 1999.

24 LAW

24.1 The Parties accept the exclusive jurisdiction of the English courts and agree that this Agreement is to be governed and construed according to English law.