



Flexischools Terms and Conditions of Use for End-users and Administrative Account Holders

The following Terms and Conditions are provided by Flexischools and apply to the ongoing use of the Application and related services by you as an End-user or Account Holder of the Services.

Please scroll down and read all of the following terms and conditions (Agreement) carefully before installing the App and using the related services.

This Agreement is a legally binding contract between you and Flexischools. By installing and/or using the Application, you agree to abide by all of the terms and conditions stated or referenced herein. If you do not agree to abide by these Terms and Conditions, do not install, use, or continue to use the Application or Services.

RECITALS:

- A. Flexischools owns an integrated suite of smartphone apps, computer software, and website portals and services marketed as "Flexischools".
- B. The Services include an information communication service (Communications Services) and may include school online ordering services (Flexischools Ordering Services).
- C. Flexischools has agreed to grant to you a non-exclusive licence to the Communications Services and software and its associated documentation on the terms and conditions set out below.
- D. Flexischools may separately provide you with Flexischools Ordering Services.

SECTION 1

LICENCE TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context indicates the contrary:

Account Holder means an organisation or person that holds a Communications Services account;

Administrator means an organisation or person that is an Account Holder and has been provided with Administration Rights;

Administration Rights means authority provided by Flexischools to manage the administration area of the Application, including the ability to create and delete boxes, in order to send Content to, receive Content from, and manage Content of End-users;

Application or App means the Services offered by Flexischools through and in accordance with this Agreement;

App Store means an online store for purchasing and downloading software applications and mobile apps for computers and other devices

App Store Provider means a company that provides or makes available an App Store and related services and products, and which may include Apple or Google as appropriate

Commencement Date means the date that you first install or download the Application;

Communication Services means the communication services available through this Application that include your receipt of notifications from schools, Flexischools-approved third parties, and/or Flexischools;

Confidential Information means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought to reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

(a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement;

(b) information developed independently by a party; and

(c) information required for by a party on a need to know basis to employees, contractors, third party service providers and/or professional legal or accounting advisers;

Content means any information, text, files, graphics, photos or other materials uploaded, downloaded, posted, provided to, or appearing in the Application;

Documentation means any and all proprietary documentation made available to you by Flexischools for use with the Application, including any documentation available online;

Editor means an End-user that has been granted limited rights by an Administrator to manage the Content, but not the creation or deletion of boxes that may be allocated by an Administrator;

End-user means an organisation or person other than an Administrator or Editor that has activated the Application by providing a username (first name and surname) and password;

Flexischools means InLoop Pty Ltd ABN 27 114 508 771, trading as Flexischools;

Flexischools Ordering Services means the online electronic ordering services or cashless card services including for canteen, uniforms and school event ordering, which is available through the "Order Now" section of the Application, and which comprises of separate terms and conditions applicable to you and available at www.flexischools.com.au/legal;

Flexischools Privacy Statement means the Privacy Statement issued by Flexischools made available on the Website and Application;

Force Majeure Event means any event beyond the control of the relevant party;

GST has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other similar tax;

Intellectual Property Rights means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, source code, knowhow and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;

Moral Rights has the meaning given under the Copyright Act 1968 (Cth) and includes any similar rights existing in other countries;

Personally Identifiable Information means information about persons, as defined by the Privacy Act 1988 (Cth) (as amended) which is stored by the Application for its Purpose;

Purpose means the use of the Communications Services which include one or two way communications from or to (a) Flexischools, (b) Flexischools-approved third parties, (c) an Administrator or Editor to groups of End-users, and (d) an Administrator or Editor to individual End-users;

Services means the services offered in or through this Application, including the Communication Services and separately Flexischools Ordering Services;

Term means the time from the Commencement Date until termination in accordance with clause 10;

US Department of Commerce's Denied Persons List or Entity List is a list of certain persons and/or entities (as relevant) that are subject to specific license requirements for the export, reexport and/or transfer of specified items, as further explained at www.bis.doc.gov; and

US Treasury Department's Specially Designated Nationals List is the list of individuals and companies owned or controlled by or acting for or on behalf of targeted countries as further explained at www.treasury.gov ;

Website means www.Flexischools.com.au; and

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) the term "includes" (or any similar term) means "includes without limitation"; and
- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. GRANT OF LICENCE

2.1 Flexischools grants to you a non-exclusive, non-transferable licence to use the Application and the Documentation (as appropriate):

- (a) in Australia, for the Purpose, during the Term, and subject to and in accordance with this Agreement; and
- (b) on any devices or other hardware products that you own or control, as permitted by any usage rules for such products or set forth in the applicable App Store.

2.2 Unless otherwise set out in this Agreement and to the extent permitted by law, you must not:

- (a) use the Application for any purpose or in any manner other than as set out in clause 2.1;
- (b) use the Application in any way that could damage the reputation of Flexischools or the goodwill or other rights associated with the Application;
- (c) permit any other person or third party to access or use the Application without the authorisation of Flexischools;
- (d) permit any person to change, amend or customise any part of the Application unless agreed by Flexischools;

- (e) do yourself nor prevent Flexischools' restraint of you doing the following:
 - (i) reproduce, distribute, make error corrections to or otherwise modify or adapt the Application or the Documentation or create any derivative works based upon the Application or the Documentation; or
 - (ii) de-compile, disassemble or otherwise reverse engineer the Application or permit any third party to do so; and/or
- (f) modify or remove any copyright or proprietary notices on the Application or the Documentation.

3. DELIVERY AND INSTALLATION

- 3.1 Flexischools shall make the Application available for download from the site from which you are accessing the Application or other appropriate application download sites in accordance with the terms of use of those individual sites.
- 3.2 Flexischools is under no obligation to provide technical support to aid the installation of the Application on your device.
- 3.3 You shall ensure that the device on which the Application is to be installed is in good, up to date working order and operating condition, and Flexischools takes no responsibility for your device's inability to access the Services due to issues with your device.

4. FLEXISCHOOLS'S OBLIGATIONS AND ACKNOWLEDGEMENTS

- 4.1 Flexischools has the following obligations under this Agreement:
 - (a) to provide access to the Application to you for the Term;
 - (b) to manage your Personally Identifiable Information in accordance with Flexischool's Privacy Statement as updated from time to time and available on the Website and through the Application; and
 - (c) to keep your password and account details confidential.
- 4.2 Neither Flexischools nor, to avoid doubt, any App Store Provider, is under any obligation to provide technical support to you, including support related to the installation of the Application.
- 4.3 Flexischools acknowledges that Flexischools have the right and/or licence to provide any Content that Flexischools includes on the Application.
- 4.4 Flexischools will investigate complaints made regarding inappropriate Content, or make its own enquiries, and remove the Content, at Flexischools's absolute discretion.
- 4.5 Flexischools does not endorse, support, represent, or guarantee the completeness, truthfulness, tact, accuracy, or reliability of any Content or endorse any opinions expressed in the Content.
- 4.6 Flexischools is not liable for any Content, including, but not limited to, any promises, errors or omissions, or any loss or damage incurred as a result of use of or reliance on any Content that Flexischools has not directly included on the Application.
- 4.7 Flexischools will not honour any deals, promotions or promises made in the Content (other than those made directly by Flexischools).

4.8 Flexischools may terminate your use of the Application if there has been no access to the Application for a period of one year.

5. YOUR OBLIGATIONS AND ACKNOWLEDGMENT

5.1 You have the following obligations and make the following acknowledgments under this Agreement:

- (a) to provide accurate identification information requested by Flexischools including name, email address, country of residence or any other information reasonably requested;
- (b) to keep your password and email address secure;
- (c) to have all rights and/or licences to any Content that you upload to or include on the Application, including any third party Content;
- (d) to ensure you comply with any third party terms of agreement that are required for you to use the Application (which for example may include any applicable wireless data services agreements); and
- (e) during the Term:
 - (i) Flexischools may update, alter or change the Application or the terms and conditions of this Agreement at any time. Such updates, alterations or changes shall be effective immediately and incorporated into this Agreement. The changes will be advised through the Website;
 - (ii) Flexischools may assign or sell its rights to the Application without notice to you;
 - (iii) Flexischools may delete Content in the Application after a minimum of one year during the Term and after a minimum of one month after termination;
 - (iv) Flexischools cannot guarantee availability of the Application at all times. Events such as maintenance, capacity restraints, security requirements and disruptions beyond the control of Flexischools, such as power failures, and network disruptions may result in disruptions or malfunctions;
 - (v) the Application relies for part of its operation on push notification services including as provided by third parties. As such, delivery of Content is not guaranteed and is subject to the data delivery policies of these third parties;
 - (vi) Flexischools, in performing the required technical steps to provide the Communications Services, may (a) transmit or distribute any information about your Content over various public networks and in various media; and (b) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media, and you agree that this Agreement shall permit Flexischools to take these actions; and
 - (vii) Flexischools may, itself or through third party service providers, collect and use information about your use of the Communications Services, including information you provide directly or through automated means, such as geolocation (only if you choose to share it), Application usage, time stamps, device identification, and other information as outlined our Privacy

Statement available at our Website and on the Application. To avoid doubt, the Privacy Statement explains how we will collect this information, and the way in which you can access and seek correction of your personal information or raise issues about a breach of the Australian Privacy Act. To obtain further information about this use of information or our Privacy Statement, you may contact us through the contact details available on the Website.

- 5.2 You must not provide Content to the Application that is subject to copyright or other lawful restrictions without written permission of the copyright owner.
- 5.3 You must not publish images of a child under the age of 18 years without the express consent of the parent or guardian of such child.
- 5.4 You must not publish or provide the Application with Content that is misleading, discriminatory, fraudulent, objectionable, pornographic, violent, hateful, vilifying, inciteful, illegal or in poor taste.
- 5.5 You acknowledge that Flexischools may, at its absolute discretion, investigate and remove any Content.
- 5.6 You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or organisations.
- 5.7 You must not publish or provide private or Confidential Information to the Application except:
 - (a) where you are an End User, by direct message to an Administrator or Editor, who shall remain bound by privacy and confidentiality under this Agreement and at law; or
 - (b) where you are an Administrator or Editor, by message to an End-user only and who shall remain bound by privacy and confidentiality under this Agreement.
- 5.8 You must not use the Application for any illegal purpose and Flexischools shall adhere to mandatory standards of reporting where illegal use is discovered or where Flexischools becomes aware of any illegal use.
- 5.9 You agree to comply with all laws, rules, and regulations applicable to the use of the Application, including the applicable Australian state or territory laws.
- 5.10 Any use or reliance on any Content or materials viewed in the Application is at your own risk.
- 5.11 You may be provided with internet links in the Content which link to third party websites. If you click on or otherwise connect to such third-party website, Flexischools takes no responsibility for links to third party sites, which are outside the control of Flexischools.
- 5.12 You must not do any of the following while accessing or using the Application:
 - (a) access, tamper with, or use non-public areas or non-indexed areas of the Application, or the technical delivery systems of the Application's third party providers;
 - (b) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures;

- (c) access or search or attempt to access or search the Application by any means (automated or otherwise) other than through published interfaces that are provided by Flexischools;
 - (d) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Application to send altered, deceptive or false source-identifying information;
 - (e) interfere with, or disrupt, or attempt to disrupt, the access of any user, host or network, including, without limitation, by sending a virus, overloading, flooding, spamming, mail-bombing the Application, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Application in attempt to gain access to a locked box or purpose built secured area in an Administration area, unless express permission has been granted by Flexischools or the Administrator if appropriate.
- 5.13 You cannot opt out of communications from Flexischools that are necessary for the ongoing operation of the Application.
- 5.14 The Application is primarily intended for to the use of End-users in excess of 14 years of age and Administrators in excess of 18 years of age.
- 5.15 In the event of a breach of this clause 5, Flexischools reserves the right to seek injunctive relief without notice to you in a court of competent jurisdiction along with damages and legal costs and fees incurred in seeking such relief.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.
- 6.2 You:
- (a) acknowledges that Flexischools owns all Intellectual Property Rights in the Application; and
 - (b) will not directly or indirectly do anything that would or might invalidate or put in dispute Flexischools's rights and title in the Application.
- 6.3 If any person makes any claim alleging that any of the Application (or use of the Application) infringes any Intellectual Property Rights or Moral Rights of any person, you must:
- (a) promptly notify Flexischools in writing;
 - (b) not make any admissions or take any action in relation to the claim without Flexischools's written consent;
 - (c) permit Flexischools (and not, to avoid doubt, any App Store Provider) to take responsibility and control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
 - (d) cooperate with, assist and act at all times in accordance with the reasonable instructions of Flexischools, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

7. WARRANTIES

- 7.1 Flexischools does not warrant to you that the Application will meet your individual requirements and you are responsible for undertaking and satisfying yourself as to the appropriateness of the Application for its use.
- 7.2 Each party warrants that it has the right and ability to enter into this Agreement, and that this Agreement will be legally binding on it.
- 7.3 You warrant that you (a) are not located in a country that is subject to a US government embargo, or that has been designated by a USA government agency or department as a “terrorist supporting” country (including under the US Treasury Department’s Specially Designated Nationals List); and (b) you are not listed on any USA government agency or department list of prohibited or restricted parties (including under the US Department of Commerce’s Denied Persons List or Entity List).

8. INDEMNITY

- 8.1 You are responsible for any civil or criminal liability that is incurred as a result of your use of the Application or Documentation. You indemnify Flexischools against all liabilities, expenses, legal costs and fees on a full indemnity basis and for damages arising out of claims based upon your use of the Application or Documentation.
- 8.2 You fully indemnify Flexischools in relation to any and all Content uploaded or provided to the Application by you.

9. LIABILITY

- 9.1 To the full extent permitted by law, Flexischools excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages suffered by you.
- 9.2 To the full extent permitted by law, Flexischools excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- 9.3 Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- 9.4 This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, Flexischools limits its liability in respect of any claim to the supply of the services again.
- 9.5 You acknowledge that Flexischools, not any App Store Provider, is responsible for addressing any claims you or a third party may have that relates to the Application or your possession and/or use of the Application.

10. TERMINATION

- 10.1 A party may terminate this Agreement and your use of the Application:
 - (a) by deleting the Application (for an End-user or Account Holder); and
 - (b) at any time and for any reason (for Flexischools).

11. CONSEQUENCES OF TERMINATION

- 11.1 If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:
- (a) the parties are immediately released from their obligations under the Agreement except those obligations in clauses 5, 6, 7, 8, 9, 11 and 12 and any other obligations that, by their nature, survive termination;
 - (b) your right to use the Application immediately ceases and the rights and licences granted under this Agreement terminate; and
 - (c) you must immediately remove the Application from all devices.

12. CONFIDENTIALITY

- 12.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- 12.2 A party may: (a) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights in accordance with this Agreement; and (b) disclose the Confidential Information to its personnel, contractors, third party service providers or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- 12.3 Each party will take reasonable steps to implement and maintain security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- 12.4 Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Flexischools' request or on termination of this Agreement for any reason.

13. NOTICES

- 13.1 The parties' contact details for legal notices under this Agreement are as follows, or as otherwise notified by one party to the other from time to time:

Flexischools: InLoop Pty Ltd (ACN 114 508 771) of Ground Floor, Watermark Building, 5 Victoria Parade, Manly, NSW, 2095. Email: support@Flexischools.com; and

You: Name and email address provided by the Account Holder or End-user.

- 13.2 All notices must be in writing and can be given by:
- (a) registered post; and
 - (b) email followed within 2 business days by one of the means listed above.
- 13.3 A notice is deemed to be given and received:

- (a) if delivered in accordance with clause 13.2(a), on the next business day after the day of delivery; and
- (b) if sent in accordance with clause 13.2(b), within 5 clear business days after the day of posting.

14. AMENDMENTS

14.1 Flexischools may amend the terms and conditions of this Agreement from time to time by posting a revised version of this Agreement to the Application or Website and sending you an email notification. By continuing to use the Application after any amendments to the Agreement, you agree to abide and be bound by any such changes. If you do not agree with any changes made to the Agreement, you must terminate the Agreement by deleting the Application.

15. GENERAL

- 15.1 You must not assign, sublicense or otherwise deal in any other way with any of your rights under this Agreement without the prior written consent of Flexischools.
 - 15.2 Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.
 - 15.3 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
 - 15.4 Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
 - 15.5 This Agreement (and any documents executed in connection with it) is the entire Agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.
 - 15.6 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
 - 15.7 A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
 - 15.8 This Agreement is governed by the laws of New South Wales, Australia, and each party submits to the jurisdiction of the courts of New South Wales.
 - 15.9 You and Flexischools acknowledge and agree that, where applicable, an App Store Provider and its subsidiaries are third party beneficiaries of these Terms and Conditions, and that, upon your acceptance of these Terms and Conditions, the applicable App Store Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms and Conditions against you as a third-party beneficiary thereof.
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SECTION 2

END USER ONLY TERMS

Where you are an End User of the Application, the following additional terms apply to you as End User. Capitalised terms in this section will have the meaning set out in the definitions section above in Section 1, Clause 1 of the Agreement.

1. YOUR OBLIGATIONS AND ACKNOWLEDGEMENTS

- 1.1 You acknowledge that, having added yourself to an Administrator's account in the Application:
- (a) that Administrator or Editor will be able to view your name (but not your password or email address);
 - (b) Content provided to the Application by you will be visible to that Administrator;
 - (c) you may be exposed to objectionable Content provided by that Administrator or Editor; and
 - (d) you may be exposed to advertising or promotional material provided by Flexischools, an approved third party, and/or that Administrator or Editor.
- 1.2 You acknowledge that management of your Content by an Administrator or Editor is the responsibility of the Administrator or Editor and not Flexischools, except where Flexischools created and uploaded or published the Content directly.
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SECTION 3

ACCOUNT HOLDER ONLY TERMS

Where you are an Account Holder, the following additional terms apply only to you as an Account Holder. Capitalised terms in this section will have the meaning set out in the definitions section above in Section 1, Clause 1 of the Agreement.

1. RESTRICTIONS

- 1.1 You must not permit any third party other than a designated Editor, to use the Application without the Authorisations of you

2. OBLIGATIONS AND ACKNOWLEDGEMENTS

- 2.1 Flexischools acknowledges that Content provided to the Application by you and Editors in the course of the Purpose is owned by you and Editors respectively. Notwithstanding, you grant Flexischools a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, copy and display your Content.
- 2.2 You must not provide Confidential Information to the Application except by direct message to an End-user only and who shall remain bound by privacy and confidentiality under the Agreement.
- 2.3 You acknowledge that an End-user, having added itself to the Administrator's or Editor's box in the Application: (a) that the Administrator will be able to view the name (but not the password or email address) of the End-user; (b) Content provided to the Application by you will be visible to that End-user; (c) You may be exposed to objectionable Content provided by that End-user; and (d) You may be exposed to advertising or promotional material provided by Flexischools or that End-user.

- 2.4 You must not while accessing or using the Application, attempt to gain access to a locked box or a purpose-built secured area in another account that has been licensed by Flexischools unless express permission has been granted by Flexischools.