



## FlexSecure, Inc.

### Terms & Conditions (14<sup>th</sup> June 2017)

#### **By using the FlexSecure Website/Platform/Service/Dashboard/APPs and Tools, you have agreed to the following Terms and Conditions:**

Please read these terms and conditions (these "Terms") carefully as they form a contract between you ("you" or "Customer") and FlexSecure, Inc., a Delaware corporation ("FlexSecure", "Platform", "we", "us", or "our"). These Terms govern your access and use of the FlexSecure Service/Platform/Dashboard/APPs and Tools software (the "Software").

By using the Software you agree to be bound by these Terms. If you are using the Software on behalf of an organization, you are agreeing to these Terms for that organization and promising to FlexSecure that you have the authority to bind that organization to these Terms (in which event, "you" and "your" will refer to that organization) unless that organization has a separate contract in effect with us, in which event the terms of that contract will govern your use of the Software.

You may use the Software only in compliance with these Terms and only if you have the power to form a contract with FlexSecure and are not barred under any applicable laws from doing so. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST NOT USE THE SOFTWARE. Should you have any questions concerning these Terms, please email us at [support@flexsecure.co](mailto:support@flexsecure.co)

### **1. ACCESS TO THE SOFTWARE**

Should you have questions regarding this privacy policy or about the security practices of FlexSecure, please contact us by email at the following address: [support@flexsecure.co](mailto:support@flexsecure.co)

You may download and use the Software or you may access a version of the Software hosted by FlexSecure, in each case on a non-exclusive basis, solely in strict compliance with these Terms and all applicable laws. The Software is licensed, not sold. Unless we notify you otherwise, the Software license ends when your subscription ends. You must then promptly uninstall any downloaded Software, or we may disable it. You must not work around any technical limitations in the Software.

### **2. YOUR ACCOUNT**

To access or download the Software, you will be required to obtain an account with FlexSecure and you must: (a) provide true, accurate, current and complete Account Data; and (b) maintain and promptly update the Account Data to keep it true, accurate, current and complete by any self-service mechanism if available or by emailing FlexSecure at [support@flexsecure.co](mailto:support@flexsecure.co)

### **3. CONSENT TO ELECTRONIC COMMUNICATIONS AND SOLICITATION**

By using the Software, you understand that we may send you communications or data regarding the Software, including but not limited to: (a) notices about your use of the Software, including any notices concerning violations of use; (b) updates; and (c) promotional information and materials regarding FlexSecure's products and services, via electronic mail. We shall make reasonable efforts to give you the opportunity to opt-out of receiving promotional electronic mail from us by following the opt-out instructions provided in the message.

## 4. USE OF SOFTWARE

You must keep your account information, license keys, and passwords confidential and not authorize any third party to access or use the Software on your behalf, unless we provide explicit approval to share your account with third parties.

You will not: (a) sell, resell, rent or lease the Software without written explicit approval from FlexSecure, (b) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) use the Software to store or transmit Malicious Code, (d) attempt to gain unauthorized access to the Software (e) create derivative works based on the Software, (f) reverse engineer the Software; (g) access the Software in order to build a competitive product, or copy any features, functions or graphics of the Software; (h) hold FlexSecure liable for content, data, or other information that may be a violation of personal privacy, HIPPA rules, PCI compliance, or any other content and data specific laws and regulations. (i) use the Software in a way that violates or infringes upon the Intellectual Property Rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability; or (j) violate any third party regulations, policies or procedures of such servers or networks.

Except for material that we license to you through the Software, we do not claim ownership of any websites, services and/or applications for which you are using the FlexSecure platform.

You agree to use commercially reasonable efforts to prevent unauthorized access to the Software. You must immediately notify FlexSecure in writing of any unauthorized use of the Software that comes to your attention. In the event of any such unauthorized use by any third party that obtained unauthorized access through you, you will take all steps necessary to terminate such unauthorized use. You will provide FlexSecure with such cooperation and assistance related to any such unauthorized use as FlexSecure may reasonably request.

## 5. THIRD-PARTY COMPONENTS

We reserve the right to revise these Terms from time to time. We will date and post the most current version of these Terms on the Site. Any changes will be effective upon posting the revised version of these Terms (or such later effective date as may be indicated at the top of the revised Terms). We may notify you by email to the email address associated with your account or may be provided via the Site or related FlexSecure blogs or social media outlets. Therefore, we encourage you to check the date of these Terms whenever you visit the Site to see if these Terms have been updated. Your continued access or use of any portion of the Software constitutes your acceptance of such changes.

To the extent any Third-Party Components are included and necessary to use the Software, FlexSecure shall make reasonable efforts to secure any and all such licenses for you to use any Third-Party Components during the term of your Software subscription. The licenses granted to you shall not include the right to modify the intellectual property of Third-Party or FlexSecure Components whatsoever.

## 6. TRIAL ACCOUNTS

We may offer you the ability to use the Software for a limited trial period ("Trial Period") or for free ("Free Account"), as we determine in our sole discretion. These Terms apply equally to any Trial Period or any Free Account that you may be using. You understand and acknowledge that the Software provided under a Free Account may be significantly limited in features and functionality and/or have substantial usage limits. If you register for a free trial, the Trial Period will begin upon registration and will expire within the time period specified on the Site or in the platform/application. During such Trial Period, you are restricted to the features, functionality, and usage limits for which you are receiving the free trial. On or before the end of the Trial Period, you must upgrade to a paid account, provide us with your payment information, and pay the applicable fees. If you fail to do so, your account will be downgraded to a Free Account (if such option is available) or terminated. We may suspend, terminate, or discontinue the Trial Period or Free Account at any time and for any reason, in our sole discretion. Free or Trial Accounts will not have official product support, performance, or service level agreements.

## 7. FEES AND PAYMENT FOR PAID ACCOUNTS

You shall pay all subscription fees for our Software as specified on the Site or any other ordering document signed by you and FlexSecure. Except as otherwise specified herein, (i) fees are quoted and payable in United States dollars (ii) fees are based on Software subscription purchased and payment obligations are non-cancelable and fees paid are non-refundable unless you have written confirmation of the fact from our finance department (via a signed email from our COO). Subscription fees are charged in advance (not in arrears) for the applicable Subscription term – you also have the ability to pre-pay funds on your account which will be deducted monthly (see refund policy which is covered later in this document). We reserve the right to charge you for your subscription fees via your credit card or to otherwise seek payment directly from you if that payment method should be invalid. You are responsible for keeping all billing information in your account current, complete and accurate. If invalid, outdated, incomplete or

inaccurate information is listed in your account and the charge for your subscription fees is not successful, rejected or otherwise cannot be processed or completed successfully, you will be responsible for any associated fees, fines, or penalties we may incur as a result of such rejected charge and your account may be terminated or suspended at our sole and absolute discretion. You shall have no right to withhold or reduce fees under these Terms or set off any amount against fees owed for alleged defects in the Software. All fees not paid when due shall accrue interest at the lesser of 5% per month or the maximum rate allowed under applicable law.

We may make changes to the subscription fees for the Software at any time, by posting such notice on our Site, sending it to your email address associated with your account, or such other means as we deem appropriate. Any fee increases will apply and will be charged to your account on the first day of your next subscription term, unless you terminate (as provided in these Terms). If you do not agree with the applicable change in the subscription fees, then your sole and exclusive remedy shall be to terminate your account (as provided in these Terms).

Unless otherwise stated, our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchase of a Software subscription. If we have the legal obligation to pay or collect Taxes for which you are responsible under this paragraph, the appropriate amount shall be paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

## **8. SUBSCRIPTION PERIOD and REFUND POLICY**

The subscription period for a TRIAL ACCOUNT is for a limited time only and may be cancelled by you or us at anytime in accordance with these Terms.

The subscription period for the Pay2Play/Appliance(SaaS monthly) plan will be charged monthly on the 1st of every month (money will be deducted from the balance on your account, accessible via the billing area of the FlexSecure Platform Dashboard or the FlexSecure APP) this payment will entitle you to 1 month's use of the FlexSecure platform up-until the 1st of the following month when then next month's fee will be deducted.

We also provide the ability for all clients to pre-pay funds into their account to be used for payment at the end of each month.

FlexSecure does not and will not issue refunds of any kind to you or your organization under normal monthly pre-payment procedure, in conjunction with a termination or cancellation of any Software subscription. Unless, there is a balance left on your account which is not in the form of FREE credit values given by FlexSecure or its partners, will be refunded - to secure your refund please contact us via email at [support@flexsecure.co](mailto:support@flexsecure.co)

## **9. SUSPENSION AND TERMINATION OF USE OF THE SOFTWARE**

These Terms shall remain in effect until terminated as permitted herein.

We may terminate your use of the Software for cause: (i) upon 10 days written notice to you of a material breach of these Terms if such breach remains uncured at the expiration of such period, or (ii) if you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

We reserve the right to suspend your access to or use of the Software for: (a) the actual or suspected violation of these Terms; or (b) the use of the Software in a manner that may cause FlexSecure to have legal liability.

Upon the expiration or termination of your Software subscription for any reason, all licenses and other rights granted to you under these Terms and your right to use the Software shall immediately terminate.

## **10. UPDATES TO THE SOFTWARE**

FlexSecure will make reasonable efforts to notify you of updates to the Software; however, we reserve the right, in our sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the Software at any time. We may add or remove functionalities or features. You must use the most current version of our Software to remain in compliance with these Terms.

We may automatically check your version of the Software. We may also automatically download to your computer or device new versions of the Software. You will under no circumstance keep an older version of our Software in use if a new version has been made available from FlexSecure.

## **11. PROPRIETARY RIGHTS**

As between FlexSecure and you, FlexSecure or its licensors own and reserve all right, title and interest in and to the Software and FlexSecure IP, other than the rights explicitly granted to you to use the Software in accordance with these Terms. No title or ownership of any proprietary rights related to the Software is transferred to you pursuant to these Terms. All rights not explicitly granted to you are reserved by FlexSecure. In the event that you provide comments, suggestions and recommendations to FlexSecure with respect to the Software (including, without limitation, with respect to modifications, enhancements, improvements and other changes to the Software) (collectively, "Feedback"), you hereby grant to FlexSecure, a world-wide, royalty free, irrevocable, perpetual license to use and otherwise incorporate any Feedback in connection with the Software.

## **12. WARRANTY DISCLAIMER**

FlexSecure PROVIDES THE SOFTWARE AS IS, WITH ALL FAULTS AND AS AVAILABLE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FlexSecure MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS. IN SUCH AN EVENT SUCH EXCLUSION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **13. INDEMNIFICATION**

To the extent permitted by law, you will defend, indemnify and hold FlexSecure harmless against any cost, loss, damage, or other liability arising from any third party demand or claim related to any Customer Application or that your use of the Software, in breach of these Terms: (a) infringes a registered patent, registered trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of FlexSecure's actions); or (b) violates applicable law or these Terms. FlexSecure will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

## **14. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL FlexSecure, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR (A): ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, REVENUE, GOODWILL, USE OR CONTENT) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF FlexSecure HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF FlexSecure AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS, RELATING TO THE SOFTWARE WILL BE LIMITED TO AN AMOUNT EQUAL TO THREE MONTHS OF YOUR SUBSCRIPTION FEE FOR THE SOFTWARE, IF ANY. THE LIMITATIONS AND EXCLUSIONS ALSO APPLY IF THIS REMEDY DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT THIS LIMITATION WILL NOT APPLY TO YOU TO THE EXTENT PROHIBITED BY LAW.

## **15. GOVERNING LAW; LOCATION FOR RESOLVING DISPUTES**

The laws of the State of TEXAS, U.S.A. govern the interpretation of these Terms and apply to claims for breach of these Terms, regardless of conflict of laws principles. The parties specifically exclude from application to these Terms the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will, only to the extent required by applicable law, be subject to the laws of your state of residence in the United States, or, if you live outside the United States, the laws of the country in which you reside. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts for TEXAS, USA, for all disputes arising out of or relating to these Terms.

## 16. NOTICES

We may send you, in electronic form, information about the Software, additional information, and information the law requires us to provide. We may provide required information to you by email at the address you specified when you registered on our Site/platform for the Software. Notices emailed to you will be deemed given and received when the email is sent. If you don't consent to receive notices electronically, you must stop using the Software. You may provide legal notices to us via email to [support@flexsecure.co](mailto:support@flexsecure.co), with a duplicate copy sent via registered mail, return receipt requested, to the following address: FlexSecure Inc., 23501 Cinco Ranch Blvd., SuiteH120-257, Katy, TX 77494. Any such notice, in either case, must specifically reference that it is a notice given under these Terms.

## 17. INTELLECTUAL PROPERTY & REGISTERED TRADEMARK NOTICES

All contents of the Site and Software including but not limited to design, text, software, technical drawings, configurations, graphics, other files, and their selection and arrangement are: Copyright © FlexSecure, Inc. and/or the proprietary property of its suppliers, affiliates, or licensors. All Rights Reserved.

The term FlexSecure and the FlexSecure logo are including without limitation, either trademarks, service marks or registered trademarks of FlexSecure, Inc., and may not be copied, imitated, or used, in whole or in part, without FlexSecure's prior written permission or that of our suppliers or licensors. Other product and company names may be trade or service marks of their respective owners.

FlexSecure may have patents, patent applications, trademarks, copyrights, or other Intellectual Property Rights covering subject matter that is part of the Software. Any rights not expressly granted herein are reserved.

## 18. SEVERABILITY; ENTIRE AGREEMENT

These Terms apply to the maximum extent permitted by relevant law. If a court holds that we cannot enforce a part of these Terms as written, you and we will replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of these Terms will remain in effect. This is the entire contract between you and us regarding the Software. It supersedes any prior contract or oral or written statements regarding your use of the Software.

## 19. CHANGES

We reserve the right to revise these Terms from time to time. We will date and post the most current version of these Terms on the Site. Any changes will be effective upon posting the revised version of these Terms (or such later effective date as may be indicated at the top of the revised Terms). We may notify you via by email to the email address associated with your account or may be provided via the Site or related FlexSecure blogs or social media outlets. Therefore, we encourage you to check the date of these Terms whenever you visit the Site, to see if these Terms have been updated. Your continued access or use of any portion of the Software constitutes your acceptance of such changes.

## 20. ASSIGNMENT AND TRANSFER

We may assign, transfer, or otherwise dispose our rights and obligations under these Terms, in whole or in part, at any time without notice. You may not assign these Terms or transfer any rights to use the Software.

## 21. INDEPENDENT CONTRACTORS; NO THIRD-PARTY BENEFICIARIES

To the extent permitted by law, you will defend, indemnify and hold FlexSecure harmless against any cost, loss, damage, or other liability arising from any third party demand or claim related to any Customer Application or that your use of the Software, in breach of these Terms: (a) infringes a registered patent, registered trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of FlexSecure 's actions); or (b) violates applicable law or these Terms. FlexSecure will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

FlexSecure and you are not legal partners or agents; instead, our relationship is that of independent contractors. These Terms are solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors.

## 22. CLAIMS

You must bring any claim related to these Terms or the Software within six months of the date you could first bring the claim, unless your local law requires a longer time to file claims. If it isn't filed in time, the claim is permanently barred.

## 23. WAIVER

The failure of either party to insist upon or enforce strict performance of any of the provisions of these Terms or to exercise any rights or remedies under these Terms will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

## 24. DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein shall have the following meaning:

"Account Data" means information about yourself, your company, or your organization as requested during the registration process.

"FlexSecure IP" means the Software, and any other FlexSecure proprietary software, information, document templates, and project tools, including, without limitation, the look, feel, and user interface designs, architecture, class libraries, and documentation and any and all updates, upgrades, improvements, derivative works or modification thereof.

"API" means application programming interface in all forms including but not limited to REST/XML/Webservice/SDK and Bot.

"Customer Application" means any and all Authentication built through use of the Software.

"Intellectual Property Rights" means any and all rights existing from time to time under patent, copyright, trademark, trade secret, unfair competition, moral rights, publicity rights, or privacy rights laws, and any and all other proprietary rights.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Site" means <http://www.flexsecure.co/>

"Third-Party Components" means any third party software necessary for use of the Software, and shall include open source software and third party proprietary software licenses as identified by FlexSecure from time to time.

## Contact Us:

Should you have questions regarding the terms and conditions of FlexSecure, please contact us by email at the following address: [support@flexsecure.co](mailto:support@flexsecure.co)

## Last updated:

These terms and conditions were last updated on: 14 June 2017.