

Software License Agreement

This Software License Agreement (“**Agreement**”), constitutes a legal agreement between North American Resellers LLC, a company with its mailing address at POB 974, Rancho Santa Fe, CA, 92067, USA, referred hereinafter as “Flexmonster”, and Licensee.

(Flexmonster and Licensee hereinafter are referred to jointly as “**Parties**” and each separately as “**Party**”.)

The purpose of this Agreement is to state terms and conditions governing the use by Licensee of certain software developed by Flexmonster.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1 DEFINITIONS

- 1.1 “**Agreement**” means this Software License Agreement.
- 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 “**Delivery Date**” means the date on which Flexmonster Component is delivered to Licensee.
- 1.5 “**Flexmonster Component**” means the software developed by Flexmonster and made available to Licensee under this Agreement.
- 1.6 “**Flexmonster Website**” means www.flexmonster.com.
- 1.7 “**License Fee**” means the fee payable by Licensee for the right to use Flexmonster Component during the Validity Period under terms and conditions of this Agreement, according to the price specified on Flexmonster Website and/or agreed by Parties.
- 1.8 “**License Model**” means a pre-defined set of specific rights to use Flexmonster Component in a specified manner granted to Licensee under this Agreement.
- 1.9 “**Production Key**” means a license key tied to a specific production domain name where Flexmonster Component will be deployed to be accessed by Licensee’s end-users.
- 1.10 “**Representative**” means, in relation to a Party, directors, officers, employees, civil contractors, agents, advisers, accountants and consultants.
- 1.11 “**Third Party**” means persons, corporations, and entities other than Flexmonster, Licensee, or any of their employees, contractors, or agents.
- 1.12 “**Validity Period**” means the period during which Flexmonster Component shall be available to be used by Licensee, starting from the Delivery Date.

2 SCOPE OF AGREEMENT

- 2.1 This Agreement shall come into force once License Fee is received in full by Flexmonster.
- 2.2 In consideration for the License Fee and subject to terms and conditions of this Agreement, Flexmonster grants to Licensee a limited, non-exclusive and non-transferable license for the use of Flexmonster Component ("**License**"), in executable form only. The License covers Flexmonster Component "as is" on Delivery Date.
- 2.3 Flexmonster Component is licensed, but not sold, to Licensee, to be utilized strictly under the provisions of this Agreement.
- 2.4 The number of Licensee's own employees that can work with Flexmonster Component is not limited.
- 2.5 Licensee is entitled to Flexmonster Component's maintenance in accordance with Clause 5 of this Agreement.
- 2.6 Licensee is responsible for abiding by the provisions set forth in this Agreement and ensuring such abidance from its respective clients. Licensee's clients that may have been provided the right to use Flexmonster Component have the same scope of responsibilities as Licensee has.
- 2.7 In case of a breach of this Agreement involving distribution or use of Flexmonster Component outside the terms of the License, Flexmonster may retrospectively charge Licensee a fee calculated based on the License Model corresponding to the actual use of Flexmonster Component outside the terms of the License using the relevant list prices that Flexmonster charges for use of Flexmonster Component. These charges are in addition to any other right or claim that Flexmonster may have against Licensee and are in addition to any other fees payable by Licensee under this Agreement.
- 2.8 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.
- 2.9 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 GRANT OF LICENSE

- 3.1 The License is granted under one of four License Models (or a combination thereof). Each License Model grants to Licensee a specific set of rights with respect to the use of Flexmonster Component:
 - 3.1.1 SCL (abbreviation of "Single Corporate License") means a License Model intended for internal use of Flexmonster Component by a single company or individual, either Licensee itself or a Licensee's client. A single license under SCL License Model shall not be used both by Licensee and a Licensee's client, unless specifically stated otherwise in this Agreement. A Licensee's client who obtained the right to use Flexmonster Component under SCL License Model is deemed Licensee for purposes of compliance with the respective provisions set forth in this Agreement, and Licensee shall be jointly and severally liable for any excessive or inappropriate use of the Flexmonster Component by such person.

- 3.1.2 SaaS (abbreviation of "Software as a Service") means a License Model intended for the use of Flexmonster Component as a component of Licensee's off-premises Application, designed to be used by multiple clients and/or end-users. Licensee's clients and end-users shall not use Licensee's SaaS License Model to deploy their own application(s).
- 3.1.3 OEM (abbreviation of "Original Equipment Manufacturer") means a License Model intended for the use of Flexmonster Component as a component of Licensee's on-premises Application, developed for distribution of its copies to one or more of Licensee's clients (companies or individuals). Licensee's clients who obtained the right to use Flexmonster Component under OEM License Model are deemed Licensees for purposes of compliance with the respective provisions set forth in this Agreement, and Licensee shall be jointly and severally liable for any excessive or inappropriate use of the Flexmonster Component by such persons. Under OEM License Model, Licensee may obtain multiple licenses, each of which allows internal use of Flexmonster Component by a single client only. Licensee's clients who obtained the right to use Flexmonster Component under OEM License Model shall not use this right to deploy their own application(s). SaaS deployment of OEM licenses is strictly prohibited.
- 3.1.4 Unlimited Perpetual Distribution means a License Model intended for the use of Flexmonster Component as a component of Licensee's Application, developed for distribution of its copies within both on-premises and off-premises deployments. Unlimited Perpetual Distribution grants Licensee an unlimited number of perpetual licenses for an unlimited number of its clients and end-users. Licensee's clients who obtained the right to use Flexmonster Component under Unlimited Perpetual Distribution are deemed Licensees for purposes of compliance with the respective provisions set forth in this Agreement, and Licensee shall be jointly and severally liable for any excessive or inappropriate use of the Flexmonster Component by such persons. Licensee's clients who obtained the right use Flexmonster Component under Unlimited Perpetual Distribution shall not use this right to deploy their own application(s).
- 3.2 Depending on the type of License Model purchased by Licensee and granted by Flexmonster, Clause 3.1.1, 3.1.2, 3.1.3, or 3.1.4 shall apply accordingly. Other provisions of this Clause 3 are applicable to all License Models and shall hence apply regardless of the License Model selected.
- 3.3 Licensee may manage and deploy Flexmonster Component independently without referring to Flexmonster in case it is specifically allowed by License Model purchased by Licensee. In this case, the right to use Flexmonster Component may be provided to Licensee's clients (companies or individuals) that use Licensee's Application only, but not to any other parties.
- 3.4 Licensee's clients that were provided the right to use Flexmonster Component according to one of the License Models shall strictly follow the respective grants and restrictions of this License Model.
- 3.5 One License Model grants to Licensee the right to use Flexmonster Component in a single specific Licensee's Application. License Model intended to be used in a specific Application may not be transferred to or used in any other application(s).
- 3.6 Depending on Validity Period, the licenses granted by Flexmonster are either (1) Annual (valid for one year starting from the Delivery Date) or (2) Perpetual (without validity limitation).
- 3.7 Validity Period of Annual license may be renewed by Flexmonster at its sole discretion upon the request of Licensee, subject to a License Fee for the new period.

- 3.8 Maintenance period of Perpetual license may be renewed by Flexmonster at its sole discretion upon the request of Licensee.
- 3.9 Flexmonster is entitled to amend the amount of License Fee or the maintenance renewal price at its sole discretion at any time. The amended License Fee or maintenance renewal price shall not be applied to a valid license until the next renewal of the Validity Period or the maintenance period, respectively.
- 3.10 In case License Fee or the maintenance renewal price changes, Flexmonster shall update Licensee with a valid price not less than twenty one calendar days prior to the date of the license or maintenance period expiration.

4 RESTRICTIONS

- 4.1 Licensee agrees that it shall not itself or indirectly, including through any affiliate, agent, or other person:
 - 4.1.1 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;
 - 4.1.2 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;
 - 4.1.3 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;
 - 4.1.4 use Flexmonster Component in any way that could harm it or impair the use of it by any other lawful user.

5 MAINTENANCE

- 5.1 Licensee is entitled to Flexmonster Component's maintenance. Duration of the maintenance period for all licenses is one year starting from Delivery Date.
- 5.2 Depending on the License Model, type and edition, annual maintenance may include either updates and support, or updates only.
- 5.3 Support includes (1) provision of technical expertise and/or assistance by Flexmonster to Licensee for the questions directly related to Flexmonster Component; and (2) fixing the bugs in Flexmonster Component, reported by Licensee. Detailed description of Support is provided on Flexmonster Website.
- 5.4 A "bug" means a serious malfunctioning in Flexmonster Component that causes it to crash or produce invalid output, and which is a direct result of a coding or design error by Flexmonster. Flexmonster retains the final discretion to determine whether an issue in Flexmonster Component shall be considered a bug.
- 5.5 Support is available in two options: (1) Standard and (2) Premium. The difference between the support options is specified on Flexmonster Website.

6 PAYMENTS

- 6.1 All payments shall be made by Licensee to Flexmonster within thirty calendar days after receiving an invoice issued by Flexmonster and in accordance with it.
- 6.2 Flexmonster Component shall be delivered to Licensee only after the License Fee is received by Flexmonster. Maintenance services shall be provided to Licensee only after the corresponding License Fee or maintenance renewal price, as the case may be, is received by Flexmonster. Any payment shall be considered received after it is successfully credited to the Flexmonster's bank account in full.
- 6.3 All expenses in connection with any payments under this Agreement, e.g., transaction commissions, conversion fees, fixed cost of transaction related services, shall be borne by Licensee.
- 6.4 If the payment of any overdue invoice or penalty claim is not paid in full to Flexmonster, together with any interest accrued thereon, within sixty calendar days of Flexmonster having notified Licensee in writing that the invoice or penalty claim is overdue for payment, Flexmonster is entitled to terminate this Agreement upon fifteen calendar days after the written notice to Licensee, and Licensee shall cease the use of Flexmonster Component immediately after this Agreement is terminated.
- 6.5 All payments made by Licensee to Flexmonster are non-refundable 10 days after the payment has been received or once a corresponding Production Key has been issued to Licensee (whichever comes first).

7 COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 Licensee's rights to use Flexmonster Component are strictly limited to rights expressly provided by this Agreement.
- 7.2 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.
- 7.3 All changes, modifications, upgrades, updates or otherwise of Flexmonster Component performed by Flexmonster shall remain the sole and exclusive property of Flexmonster.
- 7.4 Any pre-existing intellectual property and other content and data which Licensee processes using Flexmonster Component under this Agreement shall remain Licensee's property.

8 CONFIDENTIALITY

- 8.1 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.
- 8.2 Licensee shall be liable to Flexmonster for any unauthorized use, transfer or disclosure of the Confidential Information by Licensee.

9 APPLICABLE LAW

- 9.1 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.

10 WARRANTY

- 10.1 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.
- 10.2 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.

11 LIMITATIONS OF LIABILITY

- 11.1 FLEXMONSTER COMPONENT AND MAINTENANCE SUPPLIED BY FLEXMONSTER ARE PROVIDED 'AS IS' AND MAY HAVE ERRORS AND OMISSIONS.
- 11.2 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.
- 11.3 IN ANY EVENT, FLEXMONSTER'S TOTAL LIABILITY TO LICENSEE FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO LICENSE FEES ACTUALLY PAID BY LICENSEE IN THE CALENDAR YEAR DURING WHICH SUCH DAMAGE OCCURRED.

12 SUSPENSION AND TERMINATION OF SERVICES

- 12.1 Flexmonster may suspend the License to use Flexmonster Component, as well as provision of any services to Licensee, and Licensee may not claim any damages in relation to such suspension if there are reasonable grounds to believe that the circumstances at the delivery destination may endanger security and confidentiality of Flexmonster Component or any updates or modifications thereof.

- 12.2 Either Party may terminate this Agreement in case of material breach of its provisions by another Party, including but not limited to breach of any provisions of Clauses 3 and/or 4 hereof, subject to a thirty calendar days' prior written notice, if the said breach is not remedied by the other Party within such a period.
- 12.3 Notwithstanding anything to the contrary herein, this Agreement, 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.
- 12.4 Upon termination of this Agreement for any reason, Licensee agrees and undertakes to, without any delay, destroy all copies of Flexmonster Component.

13 NOTICES

- 13.1 All notices to Flexmonster to be given under this Agreement shall be in writing and shall be delivered by electronic mail to help@flexmonster.com.

14 ASSIGNMENT

- 14.1 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.

15 MISCELLANEOUS

- 15.1 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.
- 15.2 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.
- 15.3 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.