

# TERMS AND CONDITIONS

Effective Date: April 12th, 2020

We are flipit.pk. We take the friction out of buying and selling online businesses.

This Terms of Use Agreement (“Agreement”) contains important provisions regarding the use of flipit.pk and all other services, including the brokerage services to sell assets related to a website or other online business through flipit.pk. You should review this Agreement carefully before deciding whether to use flipit.pk’s Services, including but not limited to listing assets or purchasing assets through the Services. If you do not agree to the terms contained within this Agreement, you should not use flipit.pk’s Services or Website.

**THIS AGREEMENT IS A LEGALLY BINDING CONTRACT AND YOU HAVE A DUTY TO READ THIS AGREEMENT BEFORE USING THE WEBSITE OR SERVICES. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST IMMEDIATELY CEASE YOUR USE OF THE WEBSITE OR SERVICES. FLIPIT.PK RESERVES THE RIGHT TO MODIFY, AMEND, REPLACE, SUSPEND, OR TERMINATE THIS AGREEMENT AT ANY TIME AND WITHIN ITS SOLE DISCRETION. IN THE EVENT FLIPIT.PK MODIFIES, AMENDS, OR REPLACES THIS AGREEMENT, THE EFFECTIVE DATE, LOCATED ABOVE, WILL CHANGE. YOUR USE OF THE WEBSITE OR SERVICES AFTER A CHANGE IN THE EFFECTIVE DATE CONSTITUTES YOUR ACQUIESCENCE TO AND ACCEPTANCE OF ANY MODIFICATION, AMENDMENT, OR REPLACEMENT.**

## **1. Buying and Selling through flipit.pk**

- a. A “User” is a person or business that wishes to buy or sell online businesses through Flipit.pk’s Services, has registered an account with Flipit.pk, and has consented to this Agreement.
- b. A “Seller” is a User that has submitted a Business for sale through Flipit.pk’s Services.
- c. A “Buyer” is a User that has Unlocked the Confidential Information about a Business.
- d. A “Business” is a reference to the Seller’s overall business function offered under one or more brand names.

2. **Flipit.pk’s Right to Terminate Users.** Flipit.pk retains the discretion to terminate this Agreement and ban Users from Flipit.pk’s Services if a User is in breach of the Agreement, Flipit.pk has grounds to believe a User is a repeat violator of this or previous Agreements, or for other grounds based on Flipit.pk’s discretion that a User will cause damage or injury to other Users or Flipit.pk. Users are expressly prohibited from contacting other Users for purposes unrelated to the purchase of Assets, including, but not limited to soliciting Users for sales of products or services.

## PROCEDURE AND RULES FOR SUBMITTING BUSINESS FOR LISTING AND THE LISTING PRICE

### Process to Submit a Business for Listing with Flipit.pk.

- a. The first step to listing a Business for sale is submitting information regarding the Business to Flipit.pk and paying a non-refundable listing fee (“Listing Fee”). Flipit.pk, in its sole discretion, will approve or reject the Business for listing on the Website and participation in the Services. Flipit.pk reserves the right to reject any submission for any reason or no reason at all.
- b. Users submitting a Business to Flipit.pk understand and agree that Flipit.pk will rely on the facts and representations submitted. User agrees to provide Flipit.pk with all relevant information, as determined in Flipit.pk’s discretion, related to the operation of the Business and Assets, including, but not limited to, any relationship with distributors, affiliates, dropshippers, view-only access to relevant information, or any other material information regarding the Business. This information will be truthful, accurate, current, and complete. Flipit.pk reserves the ability to ask Users for additional information about their Business, including but not limited to the Seller Agreement Form, or other similar set of questions. The User agrees to provide complete and truthful information to all of Flipit.pk’s questions. User agrees Flipit.pk may share any information provided with independent third parties in connection with the vetting process.
- c. Flipit.pk may provide Users with the ability to upload or transmit user-generated content in association with the Business or Assets, including, but not limited to, text, comments, photographs, images, videos, audio files, profile information, name, likeness, advertisements, listings, information, and designs (collectively “User-Generated Content”). Except as otherwise provided herein, Users warrant that they own all rights in and to the User-Generated Content. By submitting User-Generated Content to Flipit.pk, you grant Flipit.pk a non-exclusive, irrevocable, royalty-free, worldwide, and perpetual license to use the User-Generated Content for the customary and intended purposes of the Services. These purposes may include, but are not limited to, providing third parties with the Services and archiving or making backups of the Website. Users agree to waive all moral rights in and to the User-Generated Content across the world, whether or not Users have asserted moral rights in or to the User-Generated Content. By submitting User-Generated Content, Users further agree to waive all rights of publicity or privacy with respect to the User-Generated Content. Users warrant that any User-Generated Content submitted will not violate the rights of third parties, including, but not limited to, trademark rights, copyright rights, and rights of publicity and privacy, or violate any applicable law, statute, ordinance, treaty, or regulation, whether local, state, provincial, national, or international.
- d. Users agree to be cooperative and provide reasonable assistance while the Business is being evaluated, including but not limited to answering inquiries from potential purchasers or Flipit.pk within forty-eight hours, and acting in a professional and courteous manner at all times. Users also agree to provide details about availability for sales calls, to attend those calls, and that those calls may be recorded. User agrees to direct all third-party communication regarding the sale of its Assets or Business to Flipit.pk.

- e. Some Businesses involve special circumstances, including but not limited to the following:
    - i. If your Business uses paid traffic, the entire ad account must be transferred to the Buyer; and
    - ii. If an Amazon asset is included in the sale, all Amazon accounts linked to the Seller's email address must be included in the sale (excluding Amazon Associates businesses).
  - f. Unless you expressly disclose specific facts indicating otherwise in writing to Flipit.pk in connection with the submission of your Business, by submitting your Business to Flipit.pk, you represent and warrant that:
    - iii. You have clear and unencumbered title to the Assets and any related assets to be sold through Flipit.pk, including all intellectual property rights;
    - iv. You have not placed the Assets to be sold subject to a mortgage, pledge, lien, or encumbrance, except for those taxes which shall be prorated as of the Sale Date;
    - v. You and the Assets are not subject to any voluntary or involuntary petition or proceeding under any bankruptcy, reorganization, insolvency, or similar law relating to the relief of creditors or debtors;
    - vi. The information you have provided to Flipit.pk in connection with the Assets or Business is true, accurate, current, and complete, and you have not omitted any material information regarding the performance or value of the Assets; and,
    - vii. To the best of Your knowledge, there is no lawsuit or pending claim or charge against the Assets.
- 3. The Listing Price is an Offer to Sell and Sellers Have Accepted Offers at the Listing Price; Purchase Price**
- a. By agreeing to the Listing Price and having your Business Listed, Seller is expressly offering to sell the Business and Assets the Listing Price, as updated.
  - b. Seller is deemed to have accepted an offer that is all cash in a single lump sum payment at the Listing Price.
  - c. Flipit.pk will communicate all below Listing Price offers to Seller. If Seller accepts the below Listing Price Offer, Seller's acceptance is incorporated into this Agreement as if fully stated herein.
  - d. The "Purchase Price" is the total consideration paid in connection with the sale of the Assets, not including inventory costs, if any.

### **PROCEDURE AND RULES FOR UNLOCKING AND MAKING OFFERS TO BUY A BUSINESS**

- 4. **Unlocking the Details Related to a Business Listed for Sale; Liquidated Damages**
  - a. Flipit.pk only discloses non-public information relating to a specific Business after a User has "Unlocked" that information by consenting to this Agreement and following the process to Unlock the Business as displayed on the Website, which may be amended from time to time, which generally includes a process to submit a payment to Flipit.pk. A User is required to specifically Unlock each Business it is interested in purchasing. Businesses that a User or Buyer has Unlocked are referred to as the Unlocked Businesses.
- 5. A Buyer will be provided Confidential Information only after the Business has been Unlocked. "Confidential Information" shall mean non-public, proprietary information revealed by

Flipit.pk or Seller of an applicable Business listing (whether in writing, orally or by any other means) including, but not limited to, (a) information expressly marked or disclosed as confidential, (b) all forms and types of financial, traffic, user, and/or other business information, (c) any and all details relating to the Assets, Flipit.pk, or the Seller of an applicable Business listing, including the relevant URL, the Seller's profits and losses or balance statement, Seller's contact information, and any other information related to the Assets or Business. This provision is intended to be broadly construed such that all non-public information obtained by a User or Buyer will be considered Confidential Information.

6. Confidential Information will at all times be, and will at all times remain, the property of the providing party and all applicable rights, including, but not limited to, all intellectual property rights, rights of publicity, or other personal or proprietary rights embodied in the Confidential Information will remain in the providing party. Buyer agrees that it will treat all such Confidential Information as confidential and will not disclose such Confidential Information to any third party; provided, that a Buyer may disclose the Confidential Information to its Representatives (as defined below) who have a need to know such information in connection with the evaluation of the Assets. A Buyer shall use at least the same degree of care to avoid disclosure of such Confidential Information as it would use with respect to its own confidential information of like importance.
7. A Buyer shall not use Confidential Information for any purpose other than to evaluate the Business and Assets for purchase. A Buyer will prohibit all third-parties that come into possession of the Confidential Information as a result of their access to it from using it for any purpose other than to evaluate the Business for purchase, including agents, financial advisors, employees, contractors, officers, and directors (collectively, "Representatives"). Buyer is prohibited from using the Confidential Information to circumvent Flipit.pk or its Services in any manner, including, but not limited to, by making direct offers to purchase the Business or Assets from Seller outside of Flipit.pk's terms, process, or knowledge. Buyer is strictly prohibited from using the Confidential Information to obtain non-public information from a competitor, to form a competing business, to register domain names pertaining or related to the Assets or Business, to obtain keyword lists, user lists, or traffic numbers, or to take any other actions by which Buyer or any other party under Buyer's ownership or control uses the Confidential Information for purposes outside of the evaluation of the Business for purchase.
8. In the event that a Buyer is required by law to disclose any Confidential Information, the Buyer will cooperate with the providing party and, when possible pursuant to statutory or regulatory authority, provide the providing party with prompt, advance written notice so that the providing party may seek a protective order, prevent against the disclosure of Confidential Information, or waive compliance with the provisions of this Agreement.
9. Buyers understand and agrees that Sellers agree to list Businesses for sale through Flipit.pk based on trust that Seller's Confidential Information will not be misappropriated and that the Buyer's actions to breach that trust will cause Flipit.pk damages the precise amount of which may be extremely difficult or impracticable to determine. Accordingly, in the event that Flipit.pk files an action to enforce the restrictions imposed by this Section, it shall be entitled to the entry of an injunction without the necessity of having to post a bond, which injunction shall remain in place pending completion of any action commenced. Notwithstanding Flipit.pk's right to obtain an injunction, Flipit.pk will also be entitled to recover \$25,000 in liquidated damages against the breaching party plus Flipit.pk's costs and attorneys' fees in association with the breach.

#### 10. **Process and Procedure for Making Offers to Purchase a Business**

- a. Buyer agrees that all offers to purchase Business or Assets listed on Flipit.pk's Website or through Flipit.pk's Services are required to be communicated in writing and through Flipit.pk such that Flipit.pk is specifically on notice and aware of any and all pending offers. Buyer and Seller understand and agree that the purpose of this provision is to avoid confusion in the sales process, including but not limited to the avoidance of a Seller agreeing to sell the Assets to multiple parties.
- b. Buyer's offer to purchase and Seller's acceptance to sell a Business is incorporated into this Agreement as if fully stated herein. Buyer and Seller understand and agree they are obligated to fulfill the purchase of the Business if its offer is accepted, including but not limited to the payment of the Purchase Price, completing the Migration Process, and completing all other obligations of this Agreement.
- c. If two or more Buyers offer the full Listing Price for the Business, the Buyer that first completes a wire transfer of the Purchase Price to Flipit.pk is deemed the purchaser of the Business and Assets. The wire transfer is complete when it is received and cleared by Flipit.pk's bank or other financial institution or the bank or other financial institution of Flipit.pk's agent.
- d. If a below Listing Price offer is made on one of the Buyer's Unlocked Businesses, Flipit.pk will notify Buyer and provide Buyer with 24 hours to match that offer in writing.
- e. Flipit.pk does not charge Buyer any wire or transfer fees, however, certain fees and expenses may be charged by Buyer's financial institution and are solely Buyer's responsibility.

11. **Buyer's Responsibility to Investigate and Perform Due Diligence.** Buyer understands and agrees it is solely responsible for investigating all aspects of any purchase of Assets, including but not limited to independently reviewing financial information, market circumstances, operational issues, supplier contacts, and other factors pertaining to the overall functioning of the Business. Buyer is advised to not only rely on information provided by Flipit.pk, but to supplement that information with its own investigation, including asking the Seller specific questions regarding the Business and the information disclosed in the sales process. Flipit.pk makes no representation or guaranty regarding the future performance of any Asset or Business. Users must complete any and all due diligence prior to the Migration Period.

12. **Purchase Agreement.** A Buyer and Seller that have reached terms for the sale of a Business have the option to enter into a more specific purchase agreement ("Custom APA") to govern that transaction. In the event that the Custom APA conflicts with any term of this Agreement, the Custom APA shall control. However, all other terms of this Agreement are not superseded or amended by the Custom APA.

13. **Buy It Now Listings.** Flipit.pk may present certain Listings with the ability to "Buy It Now."
- a. A Seller that agrees to list their Business for sale through a Buy It Now option is deemed to have agreed to sell the Business and Assets for the stated Buy It Now Listing Price.
  - b. A Buyer that choose to purchase a Business through a Buy It Now option must follow the on-screen prompts to complete the process, including providing payment of the full Listing Price to Flipit.pk. A Buyer completing this process is obligated to the fulfill the purchase, including

but not limited to the payment of the Purchase Price, completing the Migration Process, and completing all other obligations of this Agreement.

**14. Sale of Assets; Limitations.**

- a. In consideration of the Purchase Price and subject to the terms of this Agreement, Seller agrees to assign, transfer, convey and deliver to Buyer, and Buyer hereby purchases from Seller right, title and interest in the Assets related to the Business.
- b. This is an asset sale only. The Assets are the only assets that are the subject of this Agreement, and there are no assets that are the subject of the sale and purchase under this Agreement other than the Assets. Without limiting the foregoing, and by way of example and not limitation, this Agreement specifically excludes the following assets: (a) Seller's cash, cash equivalents, and investments; Seller's minute books, stock records, and company seals, and all shares of capital stock held in treasury; (c) all insurance policies and rights thereunder; (d) personnel records and other records that are required by law to be retained by Seller; and (e) other items specifically excluded in the sale as transmitted in writing and conveyed to Buyer. Buyer is not assuming, and shall not be deemed to have assumed, any liabilities or obligations of Seller of any kind or nature whatsoever (whether contractual, statutory or otherwise).

**15. Migration Process.**

- a. After the Sale Date, the process to move the Assets to the Buyer will begin ("Migration Process"). Users understand and agree that the Migration Process typically takes 2 to 8 weeks to complete, but could take substantially longer. Users acknowledge and agree that Flipit.pk cannot guarantee a specific timeframe to complete the Migration Process.
- b. During the Migration Process, the Buyer and Seller shall timely communicate with each other and Flipit.pk to facilitate the transfer of the Assets into Buyer's possession and to operate the Business in the same manner in which was operated prior to the Listing.
- c. During the Migration Process, the Buyer shall not make any material changes to the Business, including but not limited to increasing expenses, without Seller's prior written consent. This includes, but is not limited to, making large price adjustments to products, firing employees or contractors, altering paid advertisement campaigns, failing to pay vendors or suppliers, altering supplier relationships, or changing payment gateways. Breach of this provision causes Buyer to automatically waive the Inspection Period.
- d. The Migration Process is complete when the Buyer or Flipit.pk, in its sole discretion and in good faith, determines that a sufficient portion of the Assets have been transferred to Buyer such that Buyer can fairly assess the associated revenue during the Inspection Period ("Completed Migration"). It is possible that some portion of the Assets will continue to be transferred to Buyer after the Completed Migration.
- e. Flipit.pk may cancel any Migration Process and terminate the sale if either the Seller or Buyer has breached a term of this Agreement. If Flipit.pk determines that such a cancellation is required, Flipit.pk will cancel the sale, the Assets will be returned to Seller, and the Purchase Price will be returned to Buyer. Upon this termination, Seller shall be entitled to the net profit associated with the Business after the Sale Date. The Parties agree to cooperate to complete these actions.

16. A User's failure to complete the Migration Process is a material breach of the Agreement.

17. User agrees to provide Flipit.pk all necessary information upon request to facilitate the Migration Process.

18. If the Buyer's purchase includes any type of delayed payment of the Purchase Price, including but not limited to any type of "earn out" payment, then Seller shall transfer possession of the Domain Name to Flipit.pk and Flipit.pk shall retain possession of the Domain Name until the full Purchase Price is timely paid. During this time, Buyer agrees to indemnify and hold harmless Flipit.pk from any and all use of the Domain Name and all costs, expenses, and attorney fees arising out of or related to this provision. Upon Buyer's timely payment of the Purchase Price, Flipit.pk shall transfer the Domain Name to Buyer. Upon termination of this Agreement or Default, Flipit.pk shall transfer the Domain Name to Seller. In case of a dispute between the Buyer and Seller regarding possession of the Domain Name, Flipit.pk is permitted to (i) transfer the Domain Name to an independent third party or court of proper jurisdiction to hold the Domain Name pending an outcome of the dispute or (ii) continue to hold the Domain Name until Buyer and Seller jointly instruct Flipit.pk to act regarding the release of the Domain Name or until a lawful court order from a court of proper jurisdiction otherwise provides.
19. If the Buyer's purchase includes any type of delayed payment of the Purchase Price, including but not limited to any type of "earn out" payment, Buyer shall not take any actions to circumvent or adversely affect Seller's ability to receive the deferred payment. Buyer shall operate the Business in such a manner as to protect Seller's ability to receive the deferred payments including devoting sufficient resources to permit it to operate with a reasonable likelihood of success. Buyer shall not transfer, assign, or otherwise convey the material aspects of the Business or its Assets without Seller's prior written consent.

## **25 Inspection Period.**

20. Buyer shall have a period of fourteen (14) days from the Completed Migration to inspect the operation of the Assets ("Inspection Period") upon the terms and conditions stated below.
21. During the Inspection Period, Buyer shall operate the Assets in a manner as close as possible to Seller's operation and shall not make any material changes, including addition of new expenses, without Seller's prior written consent. Breach of this provision causes Buyer to automatically waive the Inspection Period.
22. Flipit.pk may cancel any Inspection Period and terminate the sale if either the Seller or Buyer has breached a term of this Agreement. If Flipit.pk determines that such a cancellation is required, Flipit.pk will cancel the sale, the Assets will be returned to Seller, and the Purchase Price will be returned to Buyer. Upon this termination, Seller shall be entitled to the net profit associated with the Business after the Sale Date. The Parties agree to cooperate to complete these actions.
23. Buyer may request termination of this Agreement if, consistent with this Agreement, the Buyer believes a Substantial Deviation exists.
24. A "Substantial Deviation" exists when the Inspection Period Revenue is less than fifty percent (50%) of the prorated Average Monthly Revenue. If the Inspection Period Revenue is fifty percent (50%) or more of the prorated Average Monthly Revenue, Buyer shall have no right to request to terminate this Agreement.
25. "Inspection Period Revenue" is defined as the Assets' revenue during the Inspection Period.

26. "Average Monthly Revenue" is defined as the most current information regarding the Assets' average monthly revenue made available on Flipit.pk's Website.
27. A "Successful Inspection Period" is an Inspection Period in which there is no Substantial Deviation.
28. To request termination of this Agreement based on a Substantial Deviation, Buyer must, within the Inspection Period: 1) notify Flipit.pk in writing of the request to terminate this Agreement within the Inspection Period at support@flipit.pkflippers.com or the Zendesk ticket already being used; and 2) provide evidence of the Substantial Deviation and Inspection Period Revenue through verifiable screenshots and/or by providing Flipit.pk access to the Assets' raw financial data in a form acceptable to Flipit.pk.
29. If Buyer requests termination of this Agreement consistent with the provisions above, Flipit.pk will investigate the matter. The Seller and Buyer agree and understand this investigation could take 2 to 8 weeks to complete or longer depending on the circumstances ("Investigation Period"). Flipit.pk may require additional information from the Buyer or Seller to conduct its investigation and the Buyer and Seller agree to comply with such requests. Flipit.pk retains the sole and absolute discretion to determine the presence or absence of a Substantial Deviation.
30. If Flipit.pk confirms the presence of a Substantial Deviation, Flipit.pk will cancel the sale, the Assets will be returned to Seller, and the Purchase Price will be returned to Buyer. Upon this termination, Seller shall be entitled to all revenue associated with the Business, including revenue after the Sale Date. The Buyer and Seller agree to cooperate to complete these actions.
31. If Flipit.pk confirms the absence of a Substantial Deviation, the sale will continue and the Inspection Period will be deemed to have expired.
32. If Buyer fails to provide timely written notification of its request to terminate this Agreement, Buyer is deemed to have freely and voluntarily waived any and all contingencies in connection with the purchase of the Assets, including any discrepancies, fluctuations, or changes in the performance of the Assets and specifically its gross revenue, net revenue, expenses, traffic, and other metrics of performance, including any discrepancies, fluctuations, or changes in the performance of the Assets during the Migration Process and/or during the Inspection Period.
33. Buyer may waive the Inspection Period by notifying Flipit.pk of its intent to waive the Inspection Period and authorization to release the Purchase Price to Seller in writing.

#### **Release of the Purchase Price to Seller.**

34. Provided Seller has complied with this Agreement, including the Verification Process below, within a reasonable time after a Successful Inspection Period, Flipit.pk will release the Purchase Price, or the applicable portion thereof, paid by Buyer to the Seller, less Flipit.pk's Commission.
35. Prior to the release of any portion of the Purchase Price, Seller is required to present verifiable photo identification through pictures and/or videos direct to Flipit.pk, intended to confirm Seller's identity ("Verification Process"). This identification must be government issued, including but not limited to a driver's license or passport. This identification is subject to Flipit.pk's review in their sole and absolute discretion. Flipit.pk

reserves the right to withhold payment of the Purchase Price to any Seller that fails to adhere to this provision, determined in Flipit.pk's sole discretion.

36. **Assumption of Risk.** The Buyer and Seller agree that, prior to the Sale Date, Seller assumes all risks of destruction, loss, or damage to the Assets or the risk of any casualty, including any liability arising out of ownership of the Assets, excluding any of the foregoing caused by Buyer's negligence. Buyer assumes all risk on and after the Sale Date.
37. **Non-Compete Agreement.** Unless otherwise agreed, Seller will not directly or indirectly:
- a. engage in or in any manner become interested in, directly or indirectly, as an owner, partner, joint venturer, investor, shareholder, member, or otherwise, in any business, trade, or operation that competes with the Business for a period of three (3) years of the Sale Date, anywhere in the world, except that Seller may invest in a publicly owned company, provided the investment does not constitute more than one percent (1%) of the voting securities of any public company; or
  - b. For a period of three (3) years, accept employment with or render services to a third party in a competing business as a director, officer, agent, employee, or consultant (with or without compensation).
38. **Confidentiality.** From and after the Sale Date, Seller shall not disclose any and all information concerning the Business, except to the extent the Seller can show that such information (a) is generally available to and known by the public through no fault of Seller (b) is lawfully acquired by Seller after the Sale Date from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation.
39. **Indemnification.**
- a. Buyer agrees to indemnify Seller from all liabilities arising out of Buyer's operation of the Assets on and after the Sale Date.
  - b. Seller agrees to indemnify Buyer from all liabilities arising out of Seller's operation of the Assets prior to the Sale Date.
40. **Indemnification of Flipit.pk.** All Users agree to hold harmless, defend, and indemnify Flipit.pk from and against any and all claims, demands, judgments, liabilities, costs, and fees, including attorneys' fees, arising out of or related to: (1) the use of the Flipit.pk' Website; (2) the use of Flipit.pk's Services; (3) the review and listing of any Assets or Business for sale; (4) the transfer and migration of the Assets, including, but not limited to, access to accounts associated with the transfer and migration of the Assets; (5) the violation of any term or condition of this Agreement; (6) the violation of the rights of third parties, including rights of privacy or publicity or intellectual property rights; and (7) the violation of any law, statute, regulation, ordinance, or treaty, whether local, state, provincial, national, or international. The obligation to defend and indemnify Flipit.pk will not provide you with the ability or right to control Flipit.pk's defense, and Flipit.pk reserves the right to control its defense, including, but not limited to, the choice to litigate or settle and the choice of counsel.
41. **Limitation of Liability.**

EXCEPT FOR FLIPIT.PK'S OBLIGATION TO RELEASE THE PURCHASE PRICE OR ITS GROSS NEGLIGENCE, USERS AGREE THAT THE SERVICES ARE PROVIDED ON AN AS-IS BASIS AND WITHOUT WARRANTY OF ANY KIND, INCLUDING, BUT NOT

LIMITED TO, WARRANTIES OF QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, NON-INFRINGEMENT, AND TITLE. YOU AGREE THAT FLIPIT.PK WILL NOT BE HELD RESPONSIBLE OR LIABLE FOR ANY CLAIMS, DAMAGES, JUDGMENTS, CHARGES, OR FEES ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPENSATORY DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INCIDENTAL DAMAGES, PUNITIVE DAMAGES, EXEMPLARY DAMAGES, COSTS AND ATTORNEYS' FEES, DAMAGES ARISING OUT OF ERRORS OR OMISSIONS, AND DAMAGES ARISING OUT OF THE UNAVAILABILITY OF THE FLIPIT.PK' WEBSITE OR SERVICES OR OTHER DOWNTIME. YOU ACKNOWLEDGE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT FLIPIT.PK'S LIABILITY IS LIMITED TO THE AMOUNT THAT YOU PAID TO USE THE WEBSITE OR SERVICES OR \$1,000, WHICHEVER IS LESS.

#### 42. **General Provisions.**

- a. Opportunity to Retain Counsel and Enter Into Custom Agreement. Buyer and Seller understand and agree that they have the option to retain legal counsel and draft and negotiate their own agreement to consummate the sale of the Business.
- b. Fair Market Value. The Buyer and Seller each acknowledge the Purchase Price represents fair market value.
- c. Costs. All Users agree to pay their own costs and expenses incurred with respect to this Agreement.
- d. Valid and Binding Agreement. This Agreement represents a binding legal obligation and is enforceable in accordance with its terms and is binding and shall inure to the benefit of each User's respective heirs, legal representatives, successors, and assigns.
- e. Confidentiality. The Buyer and Seller agree to maintain complete confidentiality regarding this Agreement as it pertains to the purchase of a Business.
- f. Waivers. A waiver by either Buyer or Seller to any provision of this Agreement does not constitute a waiver of any other provision of this Agreement.
- g. No Third-Party Beneficiaries. Except as otherwise provided, nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy, or right of any kind. However, the provisions regarding Confidential Information and Buyer's obligations are intended to benefit Seller.
- h. Sections and Headings. The sections and headings in this Agreement are for organization and clarification purposes only and should not be interpreted as part of this Agreement.
- i. Choice of Laws and Venue. User agrees that any and all claims or disputes that may be brought by or against Flipit.pk arising out of or related to this Agreement, including any claims or disputes involving its validity, interpretation, breach, violation, or termination, or any claims or disputes in which Flipit.pk has an interest in the resolution of the claim or dispute, shall be exclusively brought in the state or federal courts located in Kalamazoo County, Michigan and will be interpreted and enforced pursuant to Michigan law without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any other jurisdiction other than the State of Michigan. User expressly consents to the exclusive

personal jurisdiction of such courts and expressly waives any jurisdictional or venue defenses otherwise available. The prevailing party is entitled to payment of its costs, expenses, and attorney fees by the non-prevailing party for any actions, disputes, or litigation arising out of or related to this Agreement. This Agreement is deemed to have been negotiated, executed, and performed exclusively within Kalamazoo County, Michigan.

YOU UNDERSTAND AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT BROUGHT AGAINST FLIPIT.PK MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE DATE ON WHICH THE DISPUTE AROSE.

- j. Entire Agreement. Except as otherwise provided, this Agreement is the entire agreement between the User and Flipit.pk as to the subject matter stated herein.
- k. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- l. Other Material Changes. Flipit.pk reserves the right (but not the obligation) to cancel a sale if there has been material changes outside the reasonable control of the Buyer or Seller, including but not limited to changes in commission structure or marketplace rules or regulations.