

**FLEXINET LTD
TERMS AND CONDITIONS FOR CALLS & LINE RENTAL**

Please read these Terms in conjunction with our Privacy Notice

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions (**Terms**) the following words shall have the following meanings:

Agreement	the agreement between you and the Company for the supply of the Services in accordance with the Order and these Terms;
BT	British Telecommunications plc and its associated companies;
Call Charges	the Company's charges for calls made on the System (including reverse charge calls) as set out in the Order or as otherwise notified to the Customer by the Company from time to time;
Call Recording Service	any call recording service offered to the Customer by the Company;
Calls & Lines Services	the services for calls & lines that the Company provides to the Customer (as set out in the Order) by means of the System;
Charges	the charges as notified to the Customer from time to time and payable by the Customer to the Company for the Services;
CLI	the calling line identity of a calling party;
Commencement Date	the date of the Agreement;
Company, We, Us, Our	FlexiNet Ltd (Company Number: 13808372) whose Registered Office is at 4th Floor, Chantry House, Andover, SP10 1RL
Confidential Information	any and all information whether disclosed in written or oral or machine-readable form or otherwise including without limitation information relating to the Company's services, equipment, operations, know-how, trade secrets and information of commercial value;
Connection Charge	the non-refundable charge (if any) payable by the Customer for installation and connection to the System as set out in the Order or as otherwise notified by the Company;
Connection Point	includes a terminal block, a socket for a removable plug, a distribution frame, or any other device which the Company fixes at any of the Sites to connect the Customer's equipment to an Exchange Line;
Customer, you	the individual, company, entity, organisation or business that purchases the Services from the Company;
DPA 2018	Means Data Protection Act 2018 and equivalent legislation amending or replacing the DPA 2018
UK GDPR	Means (a) EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of Section 3 of the European Union(withdrawal) Act 2018 and (b) any equivalent legislation amending or replacing EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Early Termination Fee	<p>means:</p> <ul style="list-style-type: none"> (i) all Charges that are accrued up to and including the date of termination; plus (ii) an average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus (iii) the total amounts of all Exchange Line Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);
Equipment	includes any equipment owned by the Company or its licensors that We use to provide the Services;
ESTN	Ethernet Services Telephone Network;
Exchange Line	any apparatus forming part of the System used by the Company to connect the Site to a telephone exchange to provide the Services;
GDPR	General Data Protection Regulation ((EU) 2016/679).
IPR	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
ISDN Services	the telephone services that the Company provides to the Customer (as specified in the Order) by means of the System;
Line Safe Service	the services as set out in Clauses 4.16 to 4.18 (inclusive) that We may agree in writing to provide to the Customer;
Minimum Term	means twelve (12) months (or such other minimum period as is set out in the Order) from the date the Order is signed by the Customer;
Network	the fixed line telecommunications network operated by a Network Operator;
Network Operator	a network operator who operates a Network to which a line is connected in accordance with an agreement between the Network Operator and the Company;
OFCOM	the Office of Communications or other replacement authority;
Openreach	means BT Openreach a BT Group business;
Order	the Customer's order for the Services;
Recording	any recording of the Customer's calls resulting from the Call Recording Services;
Renewed Term	the renewed term agreed with the Company in writing in accordance with Clause 3.3;

Rental	the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Services, as set out in the Order or as otherwise notified by the Company;
Services	the ISDN Services and/or the Calls & Lines Services, Voice Safe Services, ESTN and other call services as set out in the Order that the Company agrees to supply to the Customer;
SIP	means Session Initiation Protocol.
SIP Trunk	a voice over IP (VoIP) subscription and streaming media service based on the SIP by which We will deliver the Calls & Lines Services to the Customer.
Site	the site(s) at which We shall provide the Services;
Subsequent Term	a minimum of twelve (12) months (or such other period set out in the Order);
System	the Network that We use to provide the Services;
Voice Service	Safe the services as set out in Clause 4.12 that We may agree in writing to provide to the Customer;
Working Day	09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom.

1.2. **Construction.** In these Terms, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. a reference to **writing** or **written** includes faxes and e-mails.
- 1.2.3. a reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2.4. headings in the Agreement shall not affect interpretation.

2. **ORDERS**

- 2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms.
- 2.2. No order placed by the Customer shall be accepted by the Company until the Order is accepted by the Company or (if earlier) the Company provides the Services to the Customer.
- 2.3. Once an Order has been accepted by the Company, the Customer may not cancel an Order.
- 2.4. We may accept or reject an Order at Our sole discretion.
- 2.5. The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Agreement.
- 2.6. These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. **MINIMUM TERM, SUBSEQUENT TERM, RENEWED TERM AND EARLY TERMINATION FEE**

- 3.1. The Agreement shall commence on the Commencement Date and will continue for the Minimum Term and any Renewed Term or Subsequent Term.
- 3.2. The Customer acknowledges that it has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 10.1.
- 3.3. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not;
 - 3.3.1. agreed a Renewed Term; or
 - 3.3.2. given notice to the Company in accordance with Clause 10.1

We will continue to supply the Services to the Customer for the Subsequent Term unless the Customer terminates the Agreement as set out in Clause 10.1.

- 3.4. If a Renewed Term has been agreed We will continue to supply the Services to the Customer for the Renewed Term unless the Customer terminates the Agreement as set out in Clause 10.1.
- 3.5. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay the Early Termination Fee.

4. CONNECTION OF THE CUSTOMER'S EQUIPMENT CALLS AND LINES SERVICES ONLY

- 4.1. The Calls & Lines Services are available only if the Customer has a valid contract for the use of an analogue Exchange Line (in the case of the wholesale access Service) or digital Exchange Line capable of supporting an existing ISDN30 service (in the case of wholesale ISDN30 Service) direct Exchange Line (for each Exchange Line being ordered) which terminates on a Connection Point or SIP Trunk based exchange on any type of data circuit. If such contract does not exist, the Customer must request the Company to have an Exchange Line, Connection Point and/or ISDN30 bearer installed, as appropriate.
- 4.2. The Customer acknowledges that certain technical constraints relate to the Services or that certain services are incompatible with the Calls & Lines Services available from BT or other Network Provider, and such incompatible services are excluded from the Services. The Customer also acknowledges that some technical limitations within the System may not become apparent until after the Services have been working for some time. In such circumstances, with the agreement of the Customer, the Services may need to be withdrawn in which case the Customer shall be entitled to a pro rata rebate of any relevant Charges paid in advance by the Customer. Where the Customer insists the Service is to remain We shall have no liability in relation to such Service.
- 4.3. There may be geographical and technical limitations that may affect or prevent installation of a specific Service. Accordingly, the Customer accepts that the provision of a Service is subject to a Site survey. Where the Company is aware of any limitations following the survey that may impact provisioning or where the Service cannot be provided We will contact the Customer within two Working Days and cancel the impacted Service without charge.
- 4.4. The Customer agrees to route all of their calls to the Company for the duration of the Agreement. Should the customer fail to comply with this Clause 4.4, the charges as stated in Clause 8.5 will be applicable.

CALLS & LINES SERVICE AND ISDN SERVICE

- 4.5. The Customer understands and accepts that the We may rely upon BT's or other Network Operator's co-operation in providing the Services or that the provision of the Services are governed by BT or other Network Operator and the Company relies upon such Network Operator's co-operation. Accordingly:
 - 4.5.1. the Company gives no warranty, representation or undertaking as to the speed, quality or validity of the Services. No liability shall accrue to or be incurred by the Company arising from any failure of or delay suffered by the Customer; and
 - 4.5.2. the provision of the Services requires that BT or other Network Operator undertakes programming at exchange level. Accordingly, it is agreed that any act, default or delay by BT or other Network Operator in carrying out such programming or otherwise relating to or affecting the Services shall not be the responsibility of the Company.
- 4.6. The Customer hereby agrees to the termination of its existing contract for equivalent services with the applicable communications service provider. The Customer shall provide the Company with any relevant account and calling line identification numbers that may be required by BT or other Network Operator. The Customer acknowledges that the Company cannot process the provisions of the Services until such information is provided by the Customer.
- 4.7. The Customer's equipment to be connected with the Services shall be connected by means of Connection Points and ancillary wiring both as installed and maintained by the Company. If the Customer wishes a Connection Point to be moved to another place within the Site, We may agree, subject to payment of the Company's applicable charges. Unless otherwise agreed in an Order, the Customer will be responsible for the supply, maintenance and upgrade of necessary telephony equipment.

4.8. Call Recording Provisioning

- 4.8.1. In order to provide any Call Recording Service, each call to be recorded must be routed over the Network.
- 4.8.2. The Customer warrants to the Company that it has authorised the Company to act on their behalf in respect of their Recordings.
- 4.8.3. Subject to any applicable legislation (for example any data protection legislation) the Recordings and any data contained within the Recordings are the property of the Customer.
- 4.8.4. The Customer acknowledges and is aware, that the Customer is responsible for all content within each Recording and shall ensure that all necessary steps are taken to ensure such content complies with the requirements of any legislation.
- 4.8.5. The Customer shall notify the Company of all numbers that it requires to be recorded by any Call Recording Service and the Customer is solely responsible for notifying the Company of any changes, deletions or amendments to any such numbers.
- 4.8.6. Unless otherwise agreed in writing by the Company, We shall commence recording of calls automatically on call answer and shall terminate recording on call release.
- 4.8.7. Subject to Clause 4.8.12, the Customer acknowledges that save with the Customer's prior written consent, We shall not, and has no obligation to, review or edit any of the Recordings and that the extent to which the Customer reviews, edits or deletes Recordings is entirely the responsibility of the Customer.
- 4.8.8. We shall only allow access to the Recordings to a party who has the correct access details.
- 4.8.9. Without prejudice to the obligations placed upon the Customer pursuant to this Clause 4.8 the Company reserves the right to refuse access to any Recordings subject to being provided with such evidence as it may require that the relevant requestee has authority to access such Recordings.
- 4.8.10. We will store two copies of all Recordings for the number of days set out in the Order after the date the Recording was made and will charge the Customer for such storage at the Company's then current rate for Call Recording Services after which time they will be automatically deleted.
- 4.8.11. Immediately following termination of any Call Recording Service the Company reserves the right to delete all Recordings relating to such Call Recording Service unless expressly agreed otherwise in writing with the Customer in advance.
- 4.8.12. the Company reserves the right to access, retain and disclose the Recordings or copies of them for the purposes of:
 - 4.8.12.1. complying with its obligations under any agreement between the Company and a Network Operator;
 - 4.8.12.2. observing the performance of any Call Recording Service including for service level monitoring;
 - 4.8.12.3. retaining a record of activity on the Company's equipment or systems;
 - 4.8.12.4. performing emergency maintenance or resolving any faults within any Recording;
 - 4.8.12.5. compliance with legislation or with any instruction from a court of competent jurisdiction or other regulatory authority; or
 - 4.8.12.6. complying with a written request from the Customer for information about or disclosure of its Recordings.
- 4.8.13. Due to the nature of the Services, it is technically impossible to provide the Services fault free and the Company does not undertake to do so. Accordingly:
 - 4.8.13.1. it is the Customer's responsibility to report to the Company as soon as reasonably practicable any faults or suspected faults with the Call Recording Service;
 - 4.8.13.2. subject to the provisions of these Terms We will use reasonable endeavours to provide continuous access to the Recordings but cannot guarantee all calls are recorded at all times and cannot be liable for any lost, corrupted or failed Recordings; and
 - 4.8.13.3. the Customer shall promptly download any Recordings which it deems important.

- 4.9. The Customer shall, at the Company's request, arrange for the Customer's equipment to be reprogrammed by its designated maintainer in accordance with instructions provided by the Company, to enable any indirect or other access. We will have no responsibility in respect of such reprogramming.
- 4.10. Following termination of the Agreement, if there is any programming on the Customer's equipment to route calls via the System the Customer shall be responsible for arranging for such programming to be removed and may be subject to payment of the Company's applicable charges. If the new supplier fails to successfully transfer the Services then the Customer shall remain liable for the Charges after the date of termination until transfer is complete.
- 4.11. The Customer shall:
 - 4.11.1. provide a suitable and safe working environment for the Company, BT or Network Operator and anyone acting on their behalf, at the Site; and
 - 4.11.2. ensure that any Site where the Company, BT or Network Operator and anyone acting on their behalf shall be carrying out work in relation the Services shall comply with all applicable laws.

5. THE COMPANY'S GENERAL OBLIGATIONS

- 5.1. We shall supply the Services to the Customer from the Commencement Date for the term of the Agreement in accordance with these Terms.
- 5.2. We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and We shall notify the Customer in any such event.
- 5.3. The provision of the Services is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Customer shall obtain any consent or facility that is necessary or desirable for the Company to provide the Services at the Site.
- 5.4. We may:
 - 5.4.1. change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and
 - 5.4.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. the Company can change the way they are presented, delivered or otherwise made available to the Customer at any time.
- 5.5. The Services will be provided within the Company's Network Operator's network area but it's always possible that the quality or coverage may be affected at times.
- 5.6. We shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:
 - 5.6.1. the Company cannot guarantee that the Services will be available without interruption or will be free from error;
 - 5.6.2. the Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;
 - 5.6.3. the operability, quality and availability of the Services may sometimes be affected by factors outside the Company's, BT's or the Network Operator's control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks or other events;
 - 5.6.4. the existence of any minor errors in the Services shall not constitute a breach of the Agreement; and
 - 5.6.5. the Company, BT or other Network Operator may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services

and We shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Services.
- 5.7. We shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. Time shall not be of the essence of the Agreement.

- 5.8. The Customer shall report any fault in the Services to the Company's Customer Services Department as soon as reasonably practicable, where it will be dealt with in accordance with the agreed fault repair service or any applicable service level agreement. We shall not be obliged to fix any fault if:
- 5.8.1. the defect arises because the Customer failed to follow any user manual or other documentation available from the manufacturer or the Company's oral or written instructions as to the use or maintenance of the Services or (if there are none) good trade practice;
 - 5.8.2. the defect is caused by improper use of the Services or use outside its normal application;
If the Company agrees to fix a fault:
 - 5.8.3. caused by the circumstances set out in this Clause 5.8; or
 - 5.8.4. caused by the Customer; or
 - 5.8.5. that otherwise falls outside the responsibility of the Company; or
 - 5.8.6. where no fault is subsequently found
We may charge the Customer for such work at Our applicable man-hour rate.
- 5.9. We shall not be liable for any fault whether under Clause 5.8 or otherwise unless the Customer gives written notice of the defect to the Company within seven (7) days of the time when the Customer discovers or ought to have discovered the defect.
- 5.10. The technical specification of each Service and manner in which the Company discharges its obligations under these Terms is at the sole discretion of the Company.
- 5.11. Where the Customer suffers a fault or interruption in respect of any Service, the Company acknowledges that, in relation to such Service, the Customer is entitled to arrange for traffic to be redirected to another operator and the Customer agrees that, subject to compliance with any obligations in each applicable service level agreement, it is not the Company's responsibility to arrange for the provision of alternative services in such circumstances.
- 5.12. **Service Levels:** In fulfilling Our obligations under these Terms We shall provide support to the Customer for the Services in accordance with Schedule 1.

6. THE CUSTOMER'S OBLIGATIONS

- 6.1. The Customer may only use Services:
- 6.1.1. as laid out in the Agreement; and
 - 6.1.2. for their own use. The Customer may not resell or commercially exploit any of the Services or content without the prior written consent of the Company.
- 6.2. The Customer shall not utilise and shall ensure that no other person uses the Services or the telephone number(s) allocated to the Customer:
- 6.2.1. for purposes other than the genuine conveyance of calls;
 - 6.2.2. for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or in breach of the Company's acceptable use policy; or
 - 6.2.3. fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or
 - 6.2.4. to make defamatory, offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or
 - 6.2.5. to cause annoyance, inconvenience or needless anxiety to any person; or
 - 6.2.6. contrary to instructions that We may give to the Customer from time to time; or
 - 6.2.7. to copy, store, modify, publish or distribute services or content (including ringtones), except where the Company gives the Customer prior permission in writing; or
 - 6.2.8. to download, send or upload content of an excessive size, quantity or frequency. We will contact the Customer if the Customers use is excessive; or
 - 6.2.9. in violation of any applicable local, national, or international law or regulation;
 - 6.2.10. in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.
- 6.3. We may publish an acceptable use policy which provides more detail about the rules for use of certain Services in order to ensure that use of Services is not excessive, or to combat fraud and where Services We may

introduce require certain rules to ensure they can be enjoyed by the Customer. If the Company publishes a policy, We will let the Customer know – such a policy may be amended from time to time.

- 6.4. The Customer will not use the Services to access any computer, network, or data without authorisation or in a manner which exceeds authorisation including, any attempt to:
 - 6.4.1. retrieve, alter, or destroy data;
 - 6.4.2. probe, scan or test the vulnerability of a system or network; or
 - 6.4.3. breach, or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.
- 6.5. The Customer shall co-operate with and comply with at all times:
 - 6.5.1. any operating procedures and any other technical requirements of the Company as may be notified to the Customer from time to time
 - 6.5.2. the Company's reasonable instructions to ensure the proper use and security of the Services.
- 6.6. The Customer must only use Equipment authorised by the Company for Connection to the Network and also comply with all relevant legislation relating to their use.
- 6.7. The Customer will provide the Company with all up to date and accurate information that the Company needs to provide the Services.
- 6.8. The Customer shall:
 - 6.8.1. keep all of Equipment at the Site safe and shall pay for the replacement and/or repair of any of Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed by an act or omission of the Customer, its employees, agents or subcontractors;
 - 6.8.2. not alter or move any of Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so;
 - 6.8.3. not modify, move, relocate or in any way interfere with such Service Equipment;
 - 6.8.4. not cause the Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Company;
 - 6.8.5. insure and keep insured all Equipment;
 - 6.8.6. use the Company Equipment only for the purpose of receiving the Services and in accordance with such reasonable instructions as may be given by the Company from time to time; and
 - 6.8.7. permit the Company to inspect or test the Company Equipment at all reasonable times.
- 6.9. It is the Customer's responsibility to make sure that Equipment is only used to access Services as permitted.
- 6.10. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice Equipment in any way. The Customer will allow the Company to inspect, test, modify, change, add to, replace or remove any Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Company access at all reasonable times to collect any of Equipment in the Customer's possession.
- 6.11. The Customer shall at its own cost arrange for the required Site specific conditions, as notified by the Company. This will include, without limitation, mains electricity supply, Connection Points and computer terminals. The Customer shall prepare the Sites in accordance with the Company's reasonable instructions and reinstate them at the Customer's expense after the Company has completed any work necessary for the Company to be able to provide the Services.
- 6.12. The Customer shall ensure that any equipment (excluding Equipment) that it uses in connection with the Services meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Company to do so at the Customer's expense.
- 6.13. The Customer shall indemnify the Company against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by the Company arising out of or in connection with breach by or other act or omission of the Customer under or in relation to the Agreement.
- 6.14. Where the Company is providing Calls & Lines Service:
 - 6.14.1. the Customer shall comply with any requirements notified by the Company relating to number portability; and

- 6.14.2. where the Customer's existing account with BT includes BT equipment which is not required for the provision of the Services, the Customer shall contact BT in order to remove the BT equipment or move such equipment to another BT account.

7. TELEPHONE NUMBERS, CODES AND DIRECTORIES

- 7.1. We will allocate a telephone number to the Customer in respect of the Exchange Line and, unless the Customer requests otherwise, will arrange for a free standard entry to be made in a telephone directory published by BT or any other operator (as appropriate). If the Company agrees to arrange a special entry (for which a charge would be made), this will be subject to additional terms and conditions.
- 7.2. We may alter the name or number of a telephone exchange serving the Exchange Line, the telephone number, or any other name, code or number whatsoever that the Company allocates to the Customer in instances where such alterations are required as a result of necessary operational or technical changes to the Network or changes in legal or regulatory requirements.
- 7.3. Where the Company allocates telephone numbers to the Customer, the Customer will not (subject to any statutory or licence provisions relating to number portability) acquire any rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark.
- 7.4. The Customer acknowledges and agrees that allocated phone number(s) may have been listed in a directory and/or on a website(s) or other publications at the request of a previous subscriber; this is beyond the Company's control and We shall not be held liable for any resulting harm or loss. If phone calls are received from a previous subscriber's callers, please contact the Company immediately to cancel the phone number(s) and select replacement phone number(s). Please note that no credit(s) will be applied to the Customer for any such calls.
- 7.5. We will not reimburse the Customer, in any way, for any cost(s) associated with the publication of allocated the Company phone number(s). The Customer shall be solely responsible for any costs, fees, damages and/or losses related to the publication of the phone number(s) provided by the Company.
- 7.6. If the Company has an agreement with the Customer's existing telecommunications service provider, the Company can, at the Customer's request, provide the Customer with a telephone line using the Customer's existing number subject to the following:
 - 7.6.1. there are no technical reasons preventing the use of the number;
 - 7.6.2. the existing telecommunications service provider agrees to release the relevant telephone number(s);
 - 7.6.3. the Customer agrees to cease service on the existing telecommunications service provider's telephone line using the telephone number and authorises the Company to arrange such cessation to take place;
 - 7.6.4. the Customer provides the Company with full details including (but not limited to) the account name, account number, service address and billing address;
 - 7.6.5. the Customer paying the Company's charges (if any) for number portability; and
 - 7.6.6. number portability being available at the Site.
- 7.7. We do not accept any liability for claims relating to the Customer's ability to use or continue use of a particular telephone number.

8. CHARGES AND PAYMENT

- 8.1. The Customer shall pay the Charges.
- 8.2. We shall be entitled to send an invoice to the Customer for:
 - 8.2.1. the Connection Charge when the Services are made available to the Customer;
 - 8.2.2. the Rental monthly in advance and;
 - 8.2.3. the Call Charges after the end of the month in which the relevant calls were made.
- 8.3. The Call Charges will be calculated using the details recorded or logged at the Company's telephone exchange and not details recorded by the Customer.
- 8.4. The Customer shall pay all Rental and Call Charges whether the Customer or someone else uses the Services. We shall not and shall not be under any obligation (express or implied) to monitor the Customer's calls, call usage and/or patterns of usage.

- 8.5. Where the Company is providing Calls & Lines Services the Customer shall pay any cancellation charges, abortive visit charges, engineering visit or site survey charges, or maintenance service charges imposed on the Company by BT and relating to the Calls & Lines Service, save where such abortive visit or service maintenance charges arise through the Company's default.
- 8.6. Where the Charges have been based upon Calls & Lines Service being provided as part of the Services or independently of other services the Customer acknowledges that:
- 8.6.1. if the majority of Exchange Line rental or Sip Trunk rental or cloud based CLI ceases to be provided, We shall be entitled to amend Our Call Charges to Our then higher standard charges. For the purposes of this Clause 8.6.1, majority shall mean 50% or more of Service as provided at the Commencement date ceases to be provided;
- 8.6.2. if the majority of Call Charges ceases to be provided, We shall be entitled to amend Our Exchange Line Rental, SIP Trunk rental or Cloud CLI rental charges to Our then higher standard charges. For the purposes of this Clause 8.6.2, majority shall mean 50% or more of calls based on previous 3 months' typical call volume cease to be provided;
- 8.6.3. if the majority of Exchange Line Rental or SIP Trunk rental or cloud based CLI, or Call Charges cease to be provided (including but not limited to if you port such services) the agreement shall terminate and the Early Termination Fee will apply unless the business returns within 30 working days. For the purposes of this Clause 8.6.3, majority shall mean:
- 8.6.3.1. 50% or more of Service as provided at the Commencement date cease to be provided; and
- 8.6.3.2. 50% or more of calls based on previous 3 months' typical call volume cease to be provided.
- 8.7. The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.
- 8.8. The Customer shall pay the full amount invoiced by the Company by direct debit within fourteen (14) days of the date of invoice. If the Customer's credit rating decreases at any time, We will be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.
- 8.9. The Customer shall pay the Charges in pounds sterling without set-off or deduction.
- 8.10. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.
- 8.11. Time for payment of the Charges shall be of the essence of the Agreement.
- 8.12. If the Customer fails to make payment in full by the due date, in addition to the Company's right to suspend the Services as set out in Clause 9.1, We may charge interest at the rate of 4% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full.
- 8.13. We will give the customer as much prior notice as practicable of any alteration to the charges and in any event not less than 1 month's prior notice of such change. This notice may be included in an invoice to the Customer. If, during the Minimum Term, the Company increases the Charges by **more than** the Retail Price Index, the Customer may terminate the Agreement during the Minimum Term on written notice to the Company within thirty (30) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee. For the avoidance of doubt, any increase to the Charges that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the RPI annual inflation rate at the date We notify the Customer of the applicable increase in the Charges shall not entitle the Customer to terminate the Agreement under this Clause 8.13.
- 8.14. We may also change the level of Our Charges during or after the Minimum Term as a consequence of:
- 8.14.1. any OFCOM direction, determination, order or similar decision; or
- 8.14.2. any notice issued by BT or other Network Operator correcting an error in the amount or application of a charge or payment under its interconnect agreement with the Company.
- In both cases, We shall only be entitled to change the level of Our Charges where the foregoing impacts upon the basis upon which the Charges were calculated.
- 8.15. If the Customer disputes any invoice (including the calculation of any amounts payable) they must notify the Company within 6 months of the date of the invoice. The Customer shall not be entitled to any credit or refund relating to disputes raised after expiry of this period.

- 8.16. The Customer shall pay any charges raised to cover time spent dealing with matters (such as repairing faults) where this work is not covered under any of the terms of the Agreement. Such Charges could involve the provision or rearrangement of equipment, wiring, network or services.
- 8.17. If the Company becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services to the Customer under the Agreement, We will be entitled to pass through such fees, costs and charges to the Customer with immediate effect.
- 8.18. Where the Company agrees to do work outside a Working Day at the request of the Customer, We may charge the Customer in accordance with the Company's applicable man-hour rate.

9. **SUSPENSION AND VARIATION OF THE SERVICES**

- 9.1. The Company reserves the right (at its option) to terminate the Agreement or suspend or vary the Services without notice:
 - 9.1.1. if the Company is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Radio Communications Agency, Phone-paid Services Authority, an emergency services organisation or a competent administrative authority;
 - 9.1.2. if the Company reasonably believe the Customer has provided false or misleading details about the Customer;
 - 9.1.3. if the Company needs to modify, expand, improve, maintain or repair the Services or vary Network capacity;
 - 9.1.4. if the Company needs to vary the technical specification of the Services in order to comply with any relevant law or regulation or direction from a competent authority;
 - 9.1.5. if the Company advises the Customer that the Customers excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;
 - 9.1.6. if the Company receives a serious complaint against the Customer which the Company believes to be genuine;
 - 9.1.7. if the Company reasonably believes that the Customer has used the Services or a telephone number for illegal or improper purposes in contravention of the Company's acceptable use policy, requirements or instructions;
 - 9.1.8. if the Company reasonably suspects or believes that the Customer is in breach of Clause 8;
 - 9.1.9. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges;
 - 9.1.10. if the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Company; or
 - 9.1.11. if the Company's contract with BT or other Network Operator relating to the Calls & Lines Services is suspended, varied or terminated.
- 9.2. The re-instatement of suspended Services shall be at the Company's sole discretion and the Customer shall nevertheless be responsible for payment of the Charges during any period where the Services are suspended pursuant to Clause 9.1.2, Clause 9.1.9, and Clause 9.1.10.
- 9.3. We have the right, without notice, to suspend or deny access to the Network:
 - 9.3.1. by any equipment which will or may adversely affect the operation of the Network or provision of the Services whether or not such equipment has been approved or tested by the Company; or
 - 9.3.2. if the Company suspects criminal or illegal activities are being carried out, or are likely to be carried out, via that equipment or otherwise;
 - 9.3.3. whenever We in Our absolute discretion it considers necessary or desirable in order to monitor or reduce the incidence of fraud.
- 9.4. We will use Our reasonable endeavours to notify the Customer promptly of the details of any incident where the Company has relied on its rights under Clause 9.3.3. The Customer acknowledges and agrees that it shall be liable to pay the Charges in accordance with Clause 8 whether or not the Services have been used by or with the authority of the Customer and irrespective of any fraud by the Customers. The parties shall work together to establish procedures to reduce fraud or the opportunity for fraud in relation to the Service.

- 9.5. The Customer acknowledges that BT or other Network Operator's may make alterations to the Calls & Lines Services (including, without limitation, conversions, shifts, reconfigurations and renumbers) which may result in disruption.
- 9.6. The Customer shall reimburse the Company for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer.
10. **TERMINATION**
- 10.1. The Customer may:
 - 10.1.1. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of three (3) months prior written notice to the Company such notice to expire on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be); or
 - 10.1.2. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired by giving a minimum of four (4) weeks prior written notice to the Company or such other notice period as agreed in writing by the Company) but will have to pay the Early Termination Fee to the Company.
- 10.2. Subject to Clause 8.6, the Customer may port CLIs to the Network and may also port CLIs from the Network to other third party Network Operators with whom the Company has a porting agreement.
- 10.3. Either Party may immediately terminate the Agreement by written notice if the other Party:
 - 10.3.1. commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
 - 10.3.2. commits a material breach that is not capable of being remedied; or
 - 10.3.3. commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non-payment of monies owing.
- 10.4. The Company may, without prejudice to any of its other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing without liability to the Customer in the event that:
 - 10.4.1. the Company is not, for whatever reason, permitted or authorised to provide the Services;
 - 10.4.2. the Company reasonably considers that the breach, act, omission or default of the Customer may result in the Company's failure to comply with any applicable legislation or may place the Company in breach of its agreement with the Network Operator;
 - 10.4.3. use by the Customer of the Network or the Services is, or is likely to cause damage to, interrupt or otherwise prevent the Company from supplying the Services to other customers or complying with obligations owed to other customers;
 - 10.4.4. the Customer fails to pay the Charge when due;
 - 10.4.5. such action is required in order to comply with any legislation;
 - 10.4.6. the Company has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 10.5. If the Agreement is signed before the Company has completed its credit check of the Customer, We will be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Company's credit policy.
- 10.6. The rights to terminate the Agreement given by this Clause 10 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 10.7. Following termination of the Calls & Lines Service:
 - 10.7.1. the telephone service may be disconnected unless the Customer makes alternative arrangements with the Company or another communications service provider;
 - 10.7.2. the Customer shall pay to the Company all amounts due to the Company in accordance with the terms of the Agreement;

10.7.3. any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

10.8. Due to the nature of porting, the Customer acknowledges certain Services may not be available on CLIs ported to or CLIs ported away from the Network from time to time.

11. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

11.1. This Clause 11 sets out the Company's entire liability (including any liability for acts or omissions of the Company's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.

11.2. Except as set out in these Terms, the Company provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

11.3. Subject to Clause 11.5, the Company's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall not exceed £1,000,000 (one million pounds sterling).

11.4. Subject to Clause 11.5, We shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:

11.4.1. loss of profits; or

11.4.2. loss of revenue;

11.4.3. loss of income or business;

11.4.4. depletion or loss of goodwill, reputation or similar losses;

11.4.5. loss of anticipated savings;

11.4.6. loss of use;

11.4.7. loss of contract;

11.4.8. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

11.5. Nothing in these Terms shall exclude or limit the liability of the Company for:

11.5.1. death or personal injury resulting from the Company's negligence; or

11.5.2. for fraud or fraudulent misrepresentation; or

11.5.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.

11.6. Subject to Clause 11.5, the Company shall not be liable for any direct or indirect loss or damage (whether physical, financial or otherwise) howsoever arising from the act or default of the Network Operator.

11.7. The provisions of this Clause 11 shall survive termination or expiry of the Agreement.

12. **CONFIDENTIALITY AND DATA PROTECTION**

12.1. During the term of this Agreement and for three (3) years after termination, the Customer shall:

12.1.1. keep all Confidential Information confidential;

12.1.2. disclose Confidential Information only to its employees that need to know it for the purposes contemplated by the Agreement; and

12.1.3. use the Confidential Information exclusively for the purposes contemplated by the Agreement.

This Clause shall not apply to information that the Customer can prove:

12.1.4. is in the public domain otherwise than by the Customer's breach;

12.1.5. it already had in its possession prior to obtaining the information directly or indirectly from the Company; or

12.1.6. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use.

- 12.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.3. The Company's Privacy Notice sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (where **Personal Data** has the meanings as defined in the Data Protection Legislation) the Company collects.
- 12.4. Without prejudice to the generality of Clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Company for the duration and purposes of the Agreement.

13. IPR AND OWNERSHIP

- 13.1. All IPR relating to the subject matter of the Agreement shall vest in the Company or its licensors, as appropriate and ownership of Equipment and the System (including any works performed by the Company to connect the Site to the System) shall remain with the Company or its licensors, as appropriate. The Customer:
 - 13.1.1. acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Company or its licensors or Equipment or the System;
 - 13.1.2. may not include the Company's name or any other trade mark, brand name, logo or get-up associated with the Company without the Company's prior written consent.
- 13.2. Risk in any rental equipment shall pass to the Customer on delivery. Ownership of rental equipment remains at all times with the Company or other third party owner. The Customer has no right, title or interest in the rental equipment except that it is provided to the Customer for the duration of and on the terms of the Agreement.
- 13.3. This Clause shall survive termination or expiry of the Agreement.

14. CIRCUMSTANCES BEYOND REASONABLE CONTROL

- 14.1. For the purposes of the Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2. We will not be liable to the Customer for any failure or delay in performing Our obligations under the Agreement or supplying the Services:
 - 14.2.1. as a result of a Force Majeure Event;
 - 14.2.2. if another supplier delays or refuses the supply of an electronic communications service to the Company or any of the Company's suppliers and no alternative service is available at reasonable cost; or
 - 14.2.3. if legal or regulatory restrictions are imposed upon the Company or any of the Company's suppliers that prevent the Company or any of the Company's suppliers from supplying the Service.
- 14.3. If the Force Majeure Event prevents the Company from providing any of the Services for more than 12 weeks, We shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.

15. NOTICES

- 15.1. Notices must be in writing. The address for service on the Company (subject to any change notified by Us) is: FlexiNet Ltd (Company Number: 13808372) whose Registered Office is at 4th Floor, Chantry House, Andover, SP10 1RL. The address for service on the Customer is as set out in the most recent invoice.
- 15.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been

received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

16. ENTIRE AGREEMENT

- 16.1. It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) (the **Documents**) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;
- 16.2. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);
- 16.3. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

17. GENERAL

17.1. Assignment and other dealings.

- 17.1.1. We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights under the Agreement and may subcontract or delegate in any manner any or all of Our obligations under the Agreement to any Authorised Party, third party or agent.
- 17.1.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

- 17.2. **Severance.** Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 17.3. **Waiver.** Any failure by the Company to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent the Company from exercising or enforcing such right at a later time.
- 17.4. **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.5. **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 17.6. **Variation.** Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed by the Company in writing and signed by an authorised representative of the Company.
- 17.7. **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English law.
- 17.8. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1**SERVICE LEVELS**

- 1.1 In fulfilling Our obligations under these Terms We shall provide support to the Customer for the Services in accordance with Schedule 1 as follows:
 - 1.1.1 **Level 1:** Cover is provided Mon-Fri 0800-1800 and the expected repair time from the point the fault is logged is end of Next Working Day plus 1.
 - 1.1.2 **Level 2:** Cover is provided Mon-Sat 0800-1800 and the expected repair time from the point the fault is logged is end of Next Working Day.
 - 1.1.3 **Level 3:** Cover Mon-Sun and the timings for cover are Mon-Fri 0700-2100 and Sat-Sun 0800-1800. The expected repair time if the fault is logged by 1300 is the same day and if logged after 1300 would be by lunch time the next day.
 - 1.1.4 **Level 4:** Cover 24/7 with a 6hr expected repair.
- 1.2 If the Customer instructs the Company to dispatch a representative of the Company to any site to investigate a possible fault, the Company reserves the right to invoice the Customer for the visit should the fault be found to be with the Customer's network.
- 1.3 Where at the Customer's request the Company spends time investigating any fault which is repeatedly or continuously reported by the Customer and the Company concludes each time that there has been no service failure, the Company reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the alleged Service Failure and the Customer agrees to pay such charges in accordance with Clause 8.
- 1.4 The Customer shall be responsible for claiming any service credit in accordance with the applicable service level agreement. Where a valid claim is made and the Customer becomes entitled to a service credit, We will issue a credit note to the Customer for an amount equal to the applicable service credit.
- 1.5 In order to receive an available service credit, the Customer must give notice to the Company, within 15 days of the end of the calendar month for which the service credit is claimed. If the Customer fails to claim the service credit to which it is entitled, the Customer shall be deemed to have waived its right to claim the service credit.
- 1.6 Service credits will not be available to the Customer to the extent that the Company fails to meet any service levels as a result of:
 - 1.6.1 an act, fault or omission by the Customer, or any of its representatives, employees, agents or sub-contractors;
 - 1.6.2 any equipment not supplied by the Company or a Network Operator;
 - 1.6.3 any circumstances beyond the Company's control;
 - 1.6.4 any failure by the Customer to act on the Company's reasonable instructions;
 - 1.6.5 any suspension of the Services under Clause 9; or
 - 1.6.6 any other event specified in the applicable service level agreement.
- 1.7 The duration of any Service fault, for the purposes of calculating service credits, will be measured from the time the fault report is logged by Our Customer Services Department to the time the Company can demonstrate that the Service has been restored to the standards set out in the applicable service level agreement.