

**FLEXINET LTD
TERMS AND CONDITIONS FOR DATA NETWORK SERVICES**

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;
Charges	the charges as notified to the Customer from time to time and payable by the Customer to the Company for the Services;
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
Company Equipment	any equipment owned by the Company or its licensors that We use to provide the Services;
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	a single connection of the Customer to the Services;
Customer, you	the individual, company, entity, organisation or business that purchases the Services from the Company;
Customer's Website	any website provided and which the Customer uses in connection with the Website Services;
Domain Name	such domain name as We may allocate to the Customer such allocation being subject to separate terms and conditions details of which can be obtained upon written request or by contacting 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	means: (i) all Charges that are accrued up to and including the date of termination; plus

- (ii) an average per day value of the 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	any communications or other equipment recommended and approved by the Supplier and/or third party operator as an essential part of providing the Services. This may include (without limitation) modem and router cables. It does not include leads, batteries or other accessories or equipment the Customer might purchase from any supplier the Supplier recommends or any alternative supplier;
ESTN	Ethernet Services Telephone Network;
Excess Construction Charges	any Charge that We may apply for resources (including Equipment) required to provide a Service, or any aspect of a Service to a Site that exceeds the level of resources normally required to provide the applicable Service to a Site;
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;
Minimum Term	means twelve (12) months (or such other minimum period as is set out in the Order) from the date the Order is deemed completed by the Company and made available to the Client;
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;
Order	the Customer's order for the Services;
Our Website	the website located at http://www.flexinet.uk as may be amended from time to time;
Overage Charge	means the charges for use of data in excess of any agreed limit on the Services levied by the Company and as more particularly detailed in the Service Plan;

Renewed Term	the renewed term agreed with the Company in writing in accordance with Clause 3.3;
Rental	the monthly, quarterly or annual 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;
Service Plan	the monthly, quarterly or annual tariff which the Customer selects at the time the Customer orders the Services;
Services	the data services including but not limited to broadband, FTTC, MPF, SMPF, ESTN, Ethernet First Mile and Ethernet as set out in the Order and that the Company agrees to supply 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;
Transmission Speed	either the rate in Kbps or Mbps that data is transferred between the Equipment and the Service. The Transmission Speed available to the Customer will be affected by the operational and technical characteristics of the Customer's telephone line, the Network and the Customer's chosen Equipment;
Working Day	09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Company.

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 in writing or (if earlier) the Company provides the Services to the Customer.
- 2.3. Subject to Clause 7.8, once an Order has been accepted by the Company, the Customer may not cancel an Order.
- 2.4. We shall be under no obligation to provide the Services until acceptance of the relevant Order by the Company. We may accept or reject an Order at Our sole discretion.

- 2.5. Subject to Clause 2.6, 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. The Customer acknowledges and agrees that where the Order includes ESTN Services the Company Terms and Conditions for Calls and Lines, available on Our Website, shall apply to and form part of the Agreement.
- 2.7. 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 9.1.
- 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 9.1

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 9.1.

- 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 9.1.
- 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. **THE SERVICES**

- 4.1. In order for the Company to enable the Customer to use the Services the Customer agrees to comply with the following:
 - 4.1.1. the Customer must have an existing BT or any other non-cable network telephone line;
 - 4.1.2. the Customer must have a personal computer of minimum specification;
 - 4.1.3. the Customer must have compatible cables and extension leads between any communications equipment and telephone socket; and
 - 4.1.4. the Company's provision of the Services is subject to testing to the Company's satisfaction of the Customer's telephone line to ensure that broadband is available in the Customer's area and can be activated. If any installation work is needed at the Customer's Site before the Company is able to provide the Services, the Customer must arrange this through an authorised third party or by the Company at the Customer's own cost.
- 4.2. In certain limited circumstances, in addition to any express restrictions set out in any relevant handbook for the Services, the Customer accepts that:
 - 4.2.1. We may not be able to set up the Services for technical reasons beyond the Company's control;

- 4.2.2. some limitations within the Network may not become apparent through no fault of the Company until after the Service has been installed and working for some time; and
- 4.2.3. there may be geographical limitations that may affect or prevent installation of a Service.

The Customer accepts that provision of the Services is subject to these potential limitations. In such circumstances, We will notify the Customer as soon as possible and the Service may have to be withdrawn. Where the Services are withdrawn, We will provide the Customer with a refund of any advance Charges that the Customer has already paid to the Company for such withdrawn Services.

- 4.3. Use of the internet is subject to the Customer's own risk and subject to any applicable laws.
- 4.4. Upon activation of the Services the Customer accepts that the Customer may experience a temporary loss of the Customer's existing line.
- 4.5. In the event that the Customer wishes to port an existing URL which the Customer wishes to use in connection with the Services, the Customer agrees and understands there may be downtime associated with this process and the Company is not responsible for any costs or consequence of delay arising in connection with any such downtime, provided always that the Company reserves the right to reject such porting request at its sole discretion.
- 4.6. We may reject or remove names that the Company believes may infringe someone else's trade mark or other intellectual property rights or which the Company considers is offensive, abusive, defamatory or obscene.
- 4.7. The Customer may be allocated a username and password in order to access the Services. The Customer shall keep such username and password confidential and shall take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. The Customer will:
 - 4.7.1. inform the Company if the Customer becomes aware of or suspects any unauthorised use of the Customer's username and password and agrees to take all necessary steps (or such steps as may be requested by the Company) to prevent such use; and
 - 4.7.2. indemnify the Company for any loss, costs, expenses or damages that We may suffer as a result of a breach of this Clause 4.7.
- 4.8. To ensure that the Services remain secure, the Customer must not change or attempt to change a username without the Company's written permission.
- 4.9. If the Customer moves and wishes to access the Services at their new site then:
 - 4.9.1. the Customer will be required to set up a new account for such new site by contacting the Company in writing;
 - 4.9.2. the Customer shall provide the Company with proof of its new address. If the Customer does not, its existing account will not be terminated and the Customer will be liable for any Charges that remain due on that account;
 - 4.9.3. the Customer will pay the administration fee for setting up a new account when the Customer moves;
 - 4.9.4. if any the Company Equipment is lost or damaged when the Customer moves address the Customer will indemnify the Company in respect of, all costs, expenses and liabilities that the Company incurs as a result of any loss of or damage to the Equipment, unless directly caused by the Company.

- 4.10. When the Customer has moved address and notified the Company in accordance with Clause 4.9, a telephone line test will need to be carried out. If it is not possible to connect the Customer, the Customer may terminate the Agreement provided:
- 4.10.1. it is no earlier than the date the Customer actually moves;
 - 4.10.2. the Customer gives the Company ten (10) days' notice in writing; and
 - 4.10.3. the Customer sends to the Company proof of the Customer's change of address.
- Any Charges due in respect of the Customer's existing account to the date of cancellation will remain payable.
- 4.11. Where the Company connect the Customer at the Customer's new address, We will use reasonable endeavours to ensure that the Customer's connection is at the same Transmission Speed as that at the Customer's old address prior to the Customer's move. However, if it is not possible, We will connect the Customer at the Transmission Speed the Company determines is available and possible.
- 4.12. As part of the Services the Customer may set up the Customer's Website(s). Domain Names are subject to availability and the Company cannot guarantee the availability of any specific domain name. The Customer shall ensure that the Customer saves the Customer's e-mails in the event that the Customer's e-mail storage is approaching its limit. Only one free Domain Name may be allocated to the Customer during the term of the Agreement at no additional cost; any additional Domain Names will be charged at the Company's then current rate.
- 4.13. Where the Company provides the Customer with one or more e-mail addresses and storage as part of providing the Services the Customer acknowledge that such e-mail addresses are not the Customer's property and that the Company is entitled to alter them in its sole discretion. We will only change the Customer's e-mail addresses where reasonably necessary after providing the Customer with reasonable notice of such change.
- 4.14. The number of e-mail addresses and the amount of e-mail storage that the Company provides to the Customer will depend on the Service Plan the Customer subscribes to.
- 4.15. The Customer acknowledges that the Customer has no right to sell (or to agree to transfer) or dispose of in any way, any e-mail addresses or Domain Name provided to the Customer by the Company.
- 4.16. If the Company receives a complaint about the Customer's Website We may suspend it immediately without notifying the Customer beforehand. We may ask the Customer to either agree with the person making the complaint that the material can remain or can be altered or ask the Customer to agree to remove it permanently. However, if the Company believes that the material on the Customer's Website is sufficiently harmful, unlawful or offensive, is illegal or the Company receives further complaints about the Customer's Website after the Company has already issued the Customer with a warning, We may end the Agreement without further notice to the Customer. In such circumstances We will be under no obligation to provide the Customer with any refund.
- 4.17. If the Company supplies or provides any third party software to the Customer pursuant to the Agreement, then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision, provided such terms and such conditions are not inconsistent with the Customer's rights under this Agreement. The Customer undertakes to:
- 4.17.1. use such software strictly in accordance with such terms and conditions, which have been provided to it by the Company;
 - 4.17.2. enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any software supplied to the Customer for the purpose of accessing the Services.

- 4.18. The Customer acknowledges that as part of the Customer's Order to receive and enjoy the full benefit of the Services some minor modifications may need to be made to the Customer's computer. It is the Customer's responsibility to ensure that such modifications do not invalidate the terms of any warranty that the Customer may have concerning the Customer's computer. We will not be liable for any claim that the Customer's warranty has been invalidated (if applicable) as a result of work carried out by the Customer, the Company, or the Company's agents in order to make the Customer's computer operate with the Services.
- 4.19. It is the Customer's responsibility to ensure the compatibility of the Services with the Customer's personal computer; any hardware, software or any other equipment or services.
- 4.20. The Customer recognises that the Services may from time to time be adversely affected by failure of a server or other external causes and may fail or require maintenance without notice. The Customer further acknowledges that We will have no liability for failure of the Services unless and to the extent caused by the Company's negligence or fraudulent misrepresentation.

ROUTER

- 4.21. The Customer acknowledges that the Company is not responsible for any broadband router that has not been provided by the Company or the configuration of that device and that any fault diagnosis on the broadband circuit will only be carried out with the test router supplied by the Company for that purpose. The Customer also acknowledges that it is the Customer's responsibility to provide full assistance during that testing and that failure to provide such assistance that results in an inability for the Company to correctly troubleshoot the fault will be the sole responsibility of the Customer and We will not be liable for any claim resulting due to loss of, or a poor speed Services.

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. Pursuant to Clause 5.4 where a change to, or withdrawal of, a Service option arises:
 - 5.5.1. solely due to the Company's business requirements We will give at least three months' written notice to the Customer; or
 - 5.5.2. as a result of changing arrangements with a third party or for legal or regulatory reasons, We will give as much notice to the Customer as is reasonably practicable in the circumstances.

- 5.6. Upon expiry of any such notice period set out in Clause 5.5:
 - 5.6.1. We will not accept any new Orders for the relevant service option; and
 - 5.6.2. At the Company's discretion:
 - 5.6.2.1. any Orders that have been accepted by the Company but where a Connection is not available for use will either be:
 - 5.6.2.1.1. ceased by the Company; or
 - 5.6.2.1.2. allowed to progress through to completion; or
 - 5.6.2.2. the Customer will be offered a new service option for acceptance, save that if, in the reasonable opinion of the Customer, it deems the service levels of the new service to be materially less than the service to be withdrawn, and the Customer may terminate the Order without incurring any form of Early Termination Charges.
- 5.7. We may relocate a Connection within the Network for reasons including security, improvements to infrastructure, capacity management, cost reduction or mitigation of a known fault, provided any such relocation will not have an adverse effect on the Services. If the Customer concludes (in consultation with the Company) that the relocation will have an adverse effect on the relevant Services it may terminate the Connection without incurring Early Termination Charges.
- 5.8. 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.
- 5.9. The Customer acknowledges that:
 - 5.9.1. the provision of certain Services shall be subject to the completion of a satisfactory Site survey. In a limited number of cases, the Company or its representative shall require access to the Site to complete the Site survey;
 - 5.9.2. upon completion of the Site survey, We shall notify the Customer of the estimated Connection date for the relevant Service; and
 - 5.9.3. We shall inform the Customer by email when the Service has successfully been installed.
- 5.10. We shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:
 - 5.10.1. the Company cannot guarantee that the Services will be available without interruption or will be free from error;
 - 5.10.2. it is technically impossible to provide an incident free service and We do not undertake to do so;
 - 5.10.3. the Services have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;
 - 5.10.4. 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;
 - 5.10.5. the existence of any minor errors in the Services shall not constitute a breach of the Agreement; and

5.10.6. 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.

5.11. We shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them or for any delay caused by circumstances beyond the Company's reasonable control including but not limited to delays in obtaining consent to carry out work at the Site or delay in the Customer approving any Excess Construction Charges. Time shall not be of the essence of the Agreement.

5.12. We shall not and shall not be under any obligation (express or implied) to monitor the Customer's usage and/or patterns of usage.

5.13. 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:

5.13.1. 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;

5.13.2. the defect is caused by improper use of the Services or use outside its normal application;

If the Company agrees to fix a fault:

5.13.3. caused by the circumstances set out in this Clause 5.13; or

5.13.4. caused by the Customer; or

5.13.5. that otherwise falls outside the responsibility of the Company; or

5.13.6. where no fault is subsequently found

We may charge the Customer for such work at Our applicable man-hour rate.

5.14. We shall not be liable for any fault whether under Clause 5.13 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.

5.15. 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.

5.16. 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.

5.17. In fulfilling Our obligations under these Terms We will comply with Our obligations as set out in any applicable service level agreement for the Services and the provisions of Schedule 1 to these Terms shall apply.

6. THE CUSTOMER'S OBLIGATIONS

6.1. The Customer may only use the 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 without the prior written consent of the Company.
- 6.2. The Customer shall comply with all security standards applicable to the Services and as notified to the Customer by the Company from time to time.
- 6.3. The Customer shall not utilise and shall ensure that no other person uses the Services:
 - 6.3.1. 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
 - 6.3.2. fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or
 - 6.3.3. to make defamatory, offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or
 - 6.3.4. to cause annoyance, inconvenience or needless anxiety to any person; or
 - 6.3.5. contrary to instructions that We may give to the Customer from time to time; or
 - 6.3.6. to copy, store, modify, publish or distribute services or content (including ringtones), except where the Company gives the Customer prior permission in writing; or
 - 6.3.7. 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
 - 6.3.8. in violation of any applicable local, national, or international law or regulation;
 - 6.3.9. in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.
- 6.4. To prevent spam from entering and affecting the operation of the Company's systems and the Services, We may take any reasonable measures or actions necessary to block access to or delivery of any e-mail which appears to be of an unsolicited nature and/or part of a bulk e-mail transmission. We may also use within Our systems virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. However, We do not warrant that such technology will be effective against all virus attacks or unsolicited e-mails.
- 6.5. The Customer acknowledges that the Services are provided to other users and the Company owes a duty to them as a whole to preserve Network integrity and to avoid Network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation We may change the Customer's Transmission Speed or manage the Customer's use of our Services as the Company see fit in the circumstances. This includes, but is not limited to, any circumstances where the Customer is running an application or program that places excessive bandwidth demands on the Services for continued periods. We may also impose a limit on the Customer's usage capacity at any time at our sole discretion if the Customer's usage is affecting or may affect other users' enjoyment of the Services.
- 6.6. During the term of the Agreement the Customer may request a change to the Customer's Service Plan at any time provided that it is only once in every thirty (30) days. Changes to the Customer's Service Plan are subject to availability and payment of any applicable Charges. We will use reasonable endeavours to complete the change as soon as possible but cannot guarantee how quickly this will be done and time shall not be of the essence. The Customer will be responsible for all Charges on the existing Service Plan until the change is completed.

- 6.7. 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 the 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.
- 6.8. 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.
- 6.9. 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:
 - 6.9.1. retrieve, alter, or destroy data;
 - 6.9.2. probe, scan or test the vulnerability of a system or network; or
 - 6.9.3. breach, or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.
- 6.10. The Customer shall co-operate with and comply with at all times:
 - 6.10.1. any operating procedures and any other technical requirements of the Company as may be notified to the Customer from time to time;
 - 6.10.2. the Company's reasonable instructions to ensure the proper use and security of the Services.
- 6.11. The Customer will provide the Company with all up to date and accurate information that the Company needs to provide the Services.
- 6.12. The Customer shall:
 - 6.12.1. keep all of Company Equipment at the Site safe and shall pay for the replacement and/or repair of any of Company 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;
 - 6.12.2. not alter or move any of Company 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;
 - 6.12.3. not modify, move, relocate or in any way interfere with such the Company Equipment;
 - 6.12.4. comply at all times with the specified operating procedures and interconnection requirements of the Company as may be notified to it from time to time;
 - 6.12.5. indemnify the Company in respect of, all costs, expenses and liabilities that the Company incurs as a result of any loss of or damage to the Equipment, unless directly caused by the Company;
 - 6.12.6. not cause the Company Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Company;
 - 6.12.7. insure and keep insured all Company Equipment;
 - 6.12.8. 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
 - 6.12.9. permit the Company to inspect or test the Company Equipment at all reasonable times.

- 6.13. It is the Customer's responsibility to make sure that Company Equipment is only used to access Services as permitted.
- 6.14. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice Company Equipment in any way. The Customer will allow the Company to inspect, test, modify, change, add to, replace or remove any Company 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 Company Equipment in the Customer's possession.
- 6.15. 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.
- 6.16. The Customer shall ensure that any Equipment (excluding Company 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.
- 6.17. 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:
 - 6.17.1. the use or misuse of the Services by the Customer;
 - 6.17.2. claims of third parties seeking damages for any loss or misuse of data by the Customer;
 - 6.17.3. any breach by the Customer of the use provisions set out in this Agreement.

7. CHARGES AND PAYMENT

- 7.1. The Customer shall pay the Charges.
- 7.2. We will send to the Customer within thirty (30) days of the Start Date, an invoice which will include a pro-rated charge for the remainder of the Minimum Term in which the Customer's account is activated and the charge for the any Renewed Term or Subsequent Term and, if applicable any costs for Equipment the Customer has purchased. Thereafter We will prepare and send to the Customer each month, quarter or year (as the case may be) an invoice detailing the charge for the following month, quarter or year.
- 7.3. 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.
- 7.4. Where any Customer exceeds their allocated monthly limit (including but not limited to upload and / or download limits or any other limit) then Overage Charges will apply to each applicable Connection.
- 7.5. 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 shall be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.
- 7.6. The Customer shall pay the Charges in pounds sterling without set-off or deduction.
- 7.7. 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.
- 7.8. If any Excess Construction Charges are identified such Charges must be accepted by the Customer before work on the Order can continue. Where such Excess Construction Charges are identified, if no acceptance

of such Excess Construction Charges is provided by the Customer within 30 days of notification by the Company of such Excess Construction Charges (or such longer period as the Parties may expressly agree), the Charges will be considered rejected and the Order deemed cancelled.

- 7.9. Time for payment of the Charges shall be of the essence of the Agreement.
- 7.10. 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 8.1, 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.
- 7.11. 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 7.11.

- 7.12. We may also change the level of Our Charges during or after the Minimum Term as a consequence of:
- 7.12.1. any OFCOM direction, determination, order or similar decision; or
- 7.12.2. 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.
- 7.13. If the Customer disputes any invoice (including the calculation of any amounts payable) they must notify the Company within six (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.
- 7.14. 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.
- 7.15. 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 shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.
- 7.16. 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.

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

- 8.1. The Company reserves the right (at its option) to terminate the Agreement or suspend or vary the Services without notice:
- 8.1.1. 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;

- 8.1.2. if the Company reasonably believe the Customer has provided false or misleading details about the Customer;
 - 8.1.3. if the Company needs to modify, expand, improve, maintain or repair the Services or vary Network capacity;
 - 8.1.4. 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;
 - 8.1.5. 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;
 - 8.1.6. if the Company receives a serious complaint against the Customer which the Company believes to be genuine;
 - 8.1.7. if the Company reasonably believes that the Customer has used the Services for illegal or improper purposes in contravention of the Company's acceptable use policy or requirements;
 - 8.1.8. if the Company reasonably suspects or believes that the Customer is in breach of Clause 6;
 - 8.1.9. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges; or
 - 8.1.10. 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.
- 8.2. We shall have the right, without notice, to suspend or deny access to the Network:
- 8.2.1. 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
 - 8.2.2. if the Company suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that equipment,
 - 8.2.3. whenever it in Our absolute discretion it considers necessary or desirable in order to monitor or reduce the incidence of fraud.
- 8.3. 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 8.2.3. The Customer will be responsible for all Charges incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services (other than by the Company or its representatives). the Company is not obliged to detect unauthorised or fraudulent use of the Services.
- 8.4. 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.

9. TERMINATION

- 9.1. The Customer may:
 - 9.1.1. 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

- 9.1.2. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Company.
- 9.2. Either Party may immediately terminate the Agreement by written notice if the other Party:
 - 9.2.1. 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;
 - 9.2.2. commits a material breach of any of the terms of the Agreement that is not capable of being remedied; or
 - 9.2.3. 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.
- 9.3. 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:
 - 9.3.1. the Company is not, for whatever reason, permitted or authorised to provide the Services;
 - 9.3.2. 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;
 - 9.3.3. 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;
 - 9.3.4. the Customer fails to pay the Charges when due;
 - 9.3.5. such action is required in order to comply with any legislation;
 - 9.3.6. the Company has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 9.4. If the Agreement is signed before the Company has completed its credit check of the Customer, We shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Company's credit policy.
- 9.5. The rights to terminate the Agreement given by this Clause 9 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. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 10.1. This Clause 10 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.
- 10.2. 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.
- 10.3. Subject to Clause 10.5, 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).

- 10.4. Subject to Clause 10.5, 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:
- 10.4.1. loss of profits; or
 - 10.4.2. loss of revenue;
 - 10.4.3. loss of income or business;
 - 10.4.4. depletion or loss of goodwill, reputation or similar losses;
 - 10.4.5. loss of anticipated savings;
 - 10.4.6. loss of or corruption of data or information;
 - 10.4.7. loss of use;
 - 10.4.8. loss of contract;
 - 10.4.9. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.
- 10.5. Nothing in these Terms shall exclude or limit the liability of the Company for:
- 10.5.1. death or personal injury resulting from the Company's negligence; or
 - 10.5.2. for fraud or fraudulent misrepresentation; or
 - 10.5.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 10.6. Subject to Clause 10.5, 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.
- 10.7. The provisions of this Clause 10 shall survive termination or expiry of the Agreement.

11. **CONFIDENTIALITY AND DATA PROTECTION**

- 11.1. During the term of this Agreement and for three (3) years after termination, the Customer shall:
- 11.1.1. keep all Confidential Information confidential;
 - 11.1.2. disclose Confidential Information only to its employees that need to know it for the purposes contemplated by the Agreement; and
 - 11.1.3. use the Confidential Information exclusively for the purposes contemplated by the Agreement.
- This Clause shall not apply to information that the Customer can prove:
- 11.1.4. is in the public domain otherwise than by the Customer's breach;
 - 11.1.5. it already had in its possession prior to obtaining the information directly or indirectly from the Company; or

- 11.1.6. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use.
- 11.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.3. 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.
- 11.4. Without prejudice to the generality of Clause 11.2, 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.

12. IPR AND OWNERSHIP

- 12.1. All IPR relating to the subject matter of the Agreement shall vest in the Company or its licensors, as appropriate and ownership of Company 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:
 - 12.1.1. acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Company or its licensors or Company Equipment or the System;
 - 12.1.2. 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.
- 12.2. 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.
- 12.3. This Clause shall survive termination or expiry of the Agreement.

13. CIRCUMSTANCES BEYOND REASONABLE CONTROL

- 13.1. 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.
- 13.2. We will not be liable to the Customer for any failure or delay in performing Our obligations under the Agreement or supplying the Services:
 - 13.2.1. as a result of a Force Majeure Event;
 - 13.2.2. 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
 - 13.2.3. 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.

- 13.3. 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.

14. NOTICES

- 14.1. Notices must be in writing. The address for service on the Company (subject to any change notified by the Company) is: FlexiNet Ltd, 4th Floor, Chantry House, Andover, SP10 1RL. The address for service on the Customer is as set out in the most recent invoice.
- 14.2. 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.

15. ENTIRE AGREEMENT

- 15.1. 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;
- 15.2. 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);
- 15.3. 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.

16. GENERAL

16.1. Assignment and other dealings.

16.1.1. 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.

16.1.2. 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.

- 16.2. **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.

- 16.3. **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.

- 16.4. **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.

- 16.5. **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

- 16.6. **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.
- 16.7. **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.
- 16.8. **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

SERVICE	SERVICE LEVEL	DO OVER-USAGE CHARGES APPLY?
Ethernet	Support 24/7 6 hour fix time	No
EFM	Support Mon – Fri 8am to 6pm 7 hour fix time	No
Ethernet over Fibre to the cabinet (EoFTTC)	Support Mon – Fri 8am to 6pm	No
Fibre to the cabinet (FTTC)	No Service Level available	Yes
Broadband (ADSL, MPF SMPF)	No Service Level available	Yes

- 1.1 If the Customer instructs the Company to dispatch a Company representative 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.
- 1.2 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 7.
- 1.3 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.
- 1.4 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.
- 1.5 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:
 - 1.5.1 an act, fault or omission by the Customer, or any of its representatives, employees, agents or sub-contractors;
 - 1.5.2 any equipment not supplied by the Company or a Network Operator;
 - 1.5.3 any circumstances beyond the Company's control;
 - 1.5.4 any failure by the Customer to act on the Company's reasonable instructions;
 - 1.5.5 any suspension of the Services under Clause 8; or
 - 1.5.6 any other event specified in the applicable service level agreement.

- 1.6 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.