

FlexNet Operations

1. Definitions.

- a. "Account" means an entity, or a unit or sub-unit of an entity that is designated by Licensee as an "account" or "organization" or some derivation thereof in the Cloud Site (currently, "Account", "Allocation Account", "Organization", and "Sub-Organization"). A company or organization may include multiple Accounts (for example, where units or sub-units within it are entitled to receive different sets of Licensee FNO Products).
- a. "FNO End User" means an individual licensee of a Licensee FNO Product.
- b. **"FNO Revenue"** means the sum of (i) all revenue from all sources directly related to the Licensee FNO Software Products recognized in accordance with GAAP during each of Licensee's fiscal years, including, but not limited to all license, subscription and recurring maintenance and support revenue plus (ii) all revenue from all sources directly related to the Licensee FNO Hardware Products recognized in accordance with GAAP during each of Licensee's fiscal years, including, but not limited to all license, lease and recurring maintenance and support revenue. FNO Revenues does not include (a) revenue from consulting services related to the implementation, installation, customization or configuration of Licensee FNO Products or (b) revenue from any generic hardware (e.g., a 3rd party blade server) sold alongside a Licensee FNO Product.
- c. "Licensee FNO Hardware Products" means the hardware products developed by or for Licensee that will be directly or indirectly enabled, protected or managed by FlexNet Operations. A Licensee hardware product is not a Licensee FNO Hardware Product merely because FlexNet Operations or a Licensee FNO Software Product is installed upon it; rather a Licensee hardware product must be enabled, protected or managed by FlexNet Operations for it to be a Licensee FNO Hardware Product.
- d. "Licensee FNO Products" means collectively, the Licensee FNO Software Products and the Licensee FNO Hardware Products.
- "Licensee FNO Software Products" means the software application products developed by or for Licensee that will be directly or indirectly enabled, protected or managed by FlexNet Operations, including, but not limited to any Licensee software that is enabled by the use of a base product that is enabled by FlexNet Operations (e.g., plugins, APIs, web services, etc.). Licensee FNO Software Products does not include any Licensee software product that, even if sold alongside or bundled with a different Licensee FNO Software Product, can be installed and used in its entirety by an end user without the use and/or installation of a Licensee FNO Software Product.
- f. "Licensee Site" means the website hosted by Licensee through which FNO End Users may access Licensee's production instance of FlexNet Operations.
- 2. **Fiscal Year.** The last month of Licensee's fiscal year will be established as December. Licensee may request a change by providing a written request to Flexera regarding such change.
- 3. **Limitations.** For Software, Licensee may install and use FlexNet Operations at Licensee's site(s) only and use solely with Licensee FNO Products that generate revenue and that generate FNO Revenue in an amount that does not exceed the License Level. For SaaS, FlexNet Operations may be used by Licensee solely with Licensee FNO Products that generate revenue and that generate FNO Revenue in an amount that does not exceed the License Level.
- 4. **End Users.** For Software, Flexera grants to Licensee the right to provide each FNO End User with limited access to the Licensee Site for the limited purpose of managing such FNO End User's assets and entitlements to Licensee FNO Products, Licensee may install an unlimited number of copies of FlexNet Operations, however Licensee may only have a single Licensee Site. For SaaS, Flexera grants to Licensee the right to provide each FNO End User with limited access to the Cloud Site for the limited purpose of managing such FNO End User's assets and entitlements to Licensee FNO Products, notwithstanding the foregoing, Flexera or its licensors own all right, title and interest in and to the Cloud Site and related documentation, and in all proprietary and intellectual property rights related thereto, including but not limited to patent, copyright, trademark and trade secret rights wherever arising in the world. Subject to the limited licenses granted herein, no such rights are transferred to Licensee hereunder. Licensee will not use, copy, modify, distribute, or provide any third party access to the Cloud Site (including their user interfaces) except as provided in the Agreement.
- 5. License Grant to Licensee FNO Products. Licensee grants to Flexera the right to reproduce, copy, host and distribute the Licensee FNO Products as necessary for Flexera to implement and provide the Cloud Site. Notwithstanding the foregoing, Licensee or its licensors own all right, title and interest in and to the Licensee FNO Products and related Licensee documentation, and in all proprietary and intellectual property rights related thereto, including but not limited to patent, copyright, trademark and trade secret rights wherever arising in the world. Subject to the limited licenses granted herein, no such rights are transferred to Flexera hereunder. Flexera will not use, copy,



modify, distribute, or provide any third party access to the Licensee FNO Products except as contemplated under this Agreement. Flexera will not decompile, disassemble or reverse engineer the Licensee FNO Products. Licensee warrants that (i) it has the authority to grant to Flexera the license described herein and (ii) it shall use commercially available anti-virus software to test the Licensee FNO Products for viruses, worms, Trojan horses or other harmful, malicious or destructive code and such test has shown no such viruses, worms, Trojan horses or other harmful, malicious or destructive code.

- 6. Electronic Delivery Module. The terms below apply if Licensee licenses the FlexNet Operations Electronic Delivery Module.
 - a. Metrics. The Order, invoice or SKU will establish the number of GB that Licensee is entitled to store in the Cloud Site (the "Storage Limit") and as well as the number of GB that Licensee is entitled to deliver via the Cloud Site (the "Delivery Limit"). To the extent Licensee exceeds the Storage Limit or Delivery Limit, Licensee shall pay Flexera overage fee(s) equal to twice the fees paid on a per GB basis for all GBs in excess of the Storage Limit or Delivery Limit.
 - Export. To provide the Cloud Site and comply with U.S. export laws, Flexera may obtain from Licensee and/or FNO End Users, store, and use personally identifying information about FNO End Users. Such data will be considered Confidential Information of Licensee, provided Flexera may disclose it to government agencies, including without limitation the Bureau of Industry and Security of the U.S. Department of Commerce (the "BIS"), as required by applicable law or regulation, including without limitation the U.S. Export Administration Regulations ("EAR"). Each party shall comply fully with applicable U.S. laws and regulations governing the export of technical data, including, but not limited to the EAR and other U.S. export laws and regulations. Licensee shall cooperate with Flexera in its efforts to ensure that the Cloud Site complies with the EAR and other applicable export laws and regulations. Such cooperation shall include Licensee's providing to Flexera export information regarding the Licensee FNO Products, including encryption levels, U.S. export control classification numbers ("ECCN") and, if applicable, U.S. commodity classification automated tracking system ("CCATS") numbers and any export control rules or data applicable to the Flexera and/or its products and services additional to those imposed by the U.S. government. Licensee shall also provide to Flexera identifying Account and FNO End User information, including Account and FNO End User names, full addresses and e-mail addresses, to enable Flexera to perform adequate export screening and any required BIS reporting. Flexera may disallow downloads outside the United States of Licensee FNO Products for which Licensee has not provided required information, may disallow downloads by Accounts or FNO End Users for which Licensee has not provided required information and may disallow downloads in order to comply with U.S. or other applicable export controls. Any such disallowance of downloads by Flexera will not constitute a breach of the Agreement or excuse non-payment by Licensee. Licensee shall not allow downloads of Licensee FNO Products with an ECCN of 5D002 outside of the United States when using the Cloud Site in Flexera's pre-production user acceptance testing environment, unless Licensee has verified that such downloads comply with the provisions of U.S. License Exception ENC (15 CFR 740.17) or that there is no US export license required. Licensee authorizes Flexera to file any necessary export control documentation on its behalf.
- 7. Indemnification. Licensee shall defend and indemnify Flexera from and against any claim asserted against Flexera by a third party based upon an allegation that a Licensee FNO Product, or Flexera's copying, hosting or distribution thereof infringes, without limitation, U.S. patent, U.S. copyright, or U.S. trademark in place as of the date of the applicable Order Confirmation for Licensees in North America and Latin America; A patent enforceable in a Patent Cooperation Treaty jurisdiction, copyright enforceable in a jurisdiction that is a signatory to the Berne Convention, or trademark in place as of the date of the applicable Order for Licensees in Europe, Middle East, Africa, or the Asia Pacific Region. The foregoing indemnification obligation of Licensee shall not apply if the Licensee FNO Product is modified (except for setting configuration options provided in FlexNet Operations) by Flexera (unless done so at Licensee's request). THIS SECTION SETS FORTH LICENSEE'S SOLE LIABILITY AND FLEXERA'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING A BREACH OF ANY REPRESENTATION OR WARRANTY RELATED THERETO.
- 8. Modules. These FlexNet Operations terms and conditions shall apply to any modules licensed in conjunction with FlexNet Operations.
- 9. **SWM Onboarding Training Services.** Terms applicable to SWM onboarding Training services for FlexNet Operations can be found at: www.revenera.com/revenera-onboarding Training-terms.
- 10. **Software or SaaS.** For the purpose of the Agreement, FlexNet Operations may be considered either "SaaS" or "Software" and the Order, invoice or SKU will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.