

FLEXERA SUBSCRIPTION AGREEMENT



TermScout Certified Contract



Flexera Subscription Agreement

This contract has been carefully reviewed and certified **Customer Favorable** by TermScout, an independent contract rating company.

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**\*This Flexera Subscription Agreement was certified to be more customer-favorable than 99% of 1,500+ similar agreements reviewed by TermScout, as of 13 June 2024.**

This Flexera Subscription Agreement (“**Agreement**”) is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the “**Customer**”), and the Flexera entity listed in the Global Appendix attached hereto (“**Flexera**”) for the Products and Services (collectively “**Products**”).

By copying, downloading, accessing, or otherwise using the Product(s), Customer agrees to be bound by the terms of this Agreement. If Customer is an individual entering into this Agreement on behalf of a company or other legal entity, such individual represents that it has the authority to bind that entity and its Affiliates to these terms and conditions; if such individual does not have such authority, or if such individual does not wish to be bound by the terms of this Agreement, such individual must not install, access or use the Product(s). If Customer has a separately executed written agreement with Flexera for the Product(s), then that separate agreement will apply and this Agreement will be of no force or effect with respect to those Product(s). The Effective Date of this Agreement is the date Customer copies, downloads, accesses, or otherwise uses the Product(s).

**1. Definitions.** Terms will have the meanings as ascribed in this Section or as otherwise described throughout this Agreement.

- 1.1. **Affiliate:** any entity in which a party to this Agreement has the legal or practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement.
- 1.2. **Background IP:** any intellectual property rights owned or created by or on behalf of a party and whether in existence prior to the Effective Date and/or created thereafter independently of this Agreement.
- 1.3. **Business Day:** any day which is not a Saturday, Sunday, legal holiday, or other day on which commercial banks are required or authorized by law to be closed in the applicable Customer’s location.
- 1.4. **Confidential Information:** any business and/or technical information that is received by the Recipient from the Discloser that a) is in written, recorded, graphical or other tangible form and is marked "Confidential" or "Trade Secret" or similar designation; b) is in oral form and identified by the Discloser as "Confidential" or "Trade Secret" or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality.
- 1.5. **Customer:** the above-named company or Affiliate that may place an Order subject to the terms of this Agreement, as applicable.
- 1.6. **Customer Site:** any location owned or leased solely by Customer or an Affiliate or that portion of any shared space, such as a shared data center, attributable solely to Customer or such Affiliate, or in the instance of an employee working remotely, that location from which such employee is working while using Customer or Affiliate-provided equipment on which the Software may be installed.
- 1.7. **Data Protection Laws:** those laws applicable to the processing of personal data in the relevant jurisdictions, including but not limited to the General Data Protection Regulation 2016/679.
- 1.8. **Discloser:** the party disclosing Confidential Information.
- 1.9. **Diverse Suppliers:** businesses owned by minority, women, lesbian, gay, bisexual or transgender (LGBT), veteran, or persons with disabilities.
- 1.10. **Documentation:** the technical specification documentation generally made available by Flexera to its customers regarding the Products from time to time.
- 1.11. **Force Majeure Event:** any strike, blockade, war, act of terrorism, riot, natural disaster, sanction, or failure or diminishment of power or of telecommunications or data networks or services.
- 1.12. **Internal Purposes:** use of the Products for the benefit of Customer (and/or its Affiliates) for the purpose of managing its own IT estate.
- 1.13. **License Level:** the Products usage limits as specified in the Order.

- 1.14. **Order:** either (i) a written order document executed by Customer and Flexera referencing this Agreement and specifying the Products or Services purchased by Customer hereunder or (ii) a purchase order delivered by Customer for Products or Services, provided that such purchase order contains the requisite level of detail for the parties to identify the specific Products or Services, quantities, and prices.
- 1.15. **Products:** Both SaaS and Software.
- 1.16. **Recipient:** the party receiving Confidential Information.
- 1.17. **SaaS:** means a software application (including any associated database content provided with or embedded within the software application as well as the software to be deployed on physical and/or virtual resources) licensed to Customer on a subscription basis that is owned, delivered, and managed remotely by Flexera as part of a multi-tenant hosted environment, and specified in an applicable Order.
- 1.18. **Service Levels:** the service levels that will apply to SaaS and that are set out at <https://www.flexera.com/legal/saas-service-levels.html> or as otherwise agreed in an Order.
- 1.19. **Services:** any professional, consulting and training services (not including Support) as further defined in an Order.
- 1.20. **Software:** the object code form of software products (including any associated database content provided with or embedded within the software products) licensed to Customer for installation at Customer Sites. Except as otherwise expressly set forth herein or in an applicable Order, Software does not include source code.
- 1.21. **Subcontractor:** any third party engaged by Flexera to deliver Services.
- 1.22. **Subscription Term:** duration of Customer's license to use the Products as agreed in the applicable Order.
- 1.23. **Support:** the support services set out at [www.flexera.com/legal/support-terms](http://www.flexera.com/legal/support-terms) or as otherwise agreed in an Order.
- 1.24. **Update:** means patches, additions, modifications and new versions of a Software product incorporating such patches, additions, and modifications that are provided to Customer by Flexera and that are not included in the initial delivery of the Software. Updates do not include additions or modifications that Flexera considers to be a separate product or for which Flexera charges its customers extra or separately.
- 1.25. **Work Product:** any custom deliverable created exclusively for Customer in the performance of the Services.

## 2. License Grant.

- 2.1. **Grant of License.** For the Subscription Term and License Level set forth in an Order, Flexera grants to Customer a non-transferable (except as provided herein), non-sublicensable, non-exclusive license to use the Products in accordance with the Documentation. The Order will specify the specific Products offering and license model purchased by Customer and the applicable Product Specific Terms set forth at <https://www.flexera.com/legal/product-specific-terms.html> will apply.
- 2.2. **Delivery.** Customer will receive access to SaaS via a website hosted by Flexera and Software via electronic delivery.
- 2.3. **Installation and Copies.** Customer may install Software at Customer Sites only. Customer may make a reasonable number of copies of Software for testing, back-up and archival purposes.
- 2.4. **Use by Affiliates and Contractors.** Customer's Affiliates and contractors may also use the licenses granted to Customer, provided that (a) such use is only for Customer's or such Affiliate's benefit, (b) Customer agrees to remain responsible for each such Affiliate's and/or contractor's compliance with the terms and conditions of this Agreement, and (c) Customer's Affiliate or contractor is not already an existing customer of Flexera under a separate Order. Use of the Products by the Affiliates, contractors and Customer in the aggregate must be within the License Level.
- 2.5. **License Restrictions.** Customer will not (and will require any third party not to):
  - 2.5.1. modify, distribute (except as expressly permitted herein), sell, sublicense, rent, lease the Products or Documentation (or any part thereof) or use the same for any reason other than Internal Purposes, provided that Customer may use Products to manage the IT estate of any third party (other than Affiliates) if it purchases a service provider license as expressly set forth in an Order;
  - 2.5.2. remove any product identification, proprietary, copyright, or other notices contained in the Documentation;
  - 2.5.3. modify any part of the Documentation or create a derivative work of any part of the Documentation, except for Customer's own internal use or otherwise expressly authorized in writing by Flexera;
  - 2.5.4. conduct vulnerability scanning or penetration testing of Flexera systems or the SaaS;
  - 2.5.5. reverse engineer, decompile, or otherwise interrogate any libraries, data or databases incorporated or provided with the Products to create or improve a similar product;
  - 2.5.6. access any libraries, data or databases incorporated or provided with the Products via any mechanism other than the Products;
  - 2.5.7. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Products or Documentation; or
  - 2.5.8. use SaaS and/or Flexera's data (including any data arising in connection with or derived from Flexera's data even if it has been de-identified or anonymized) for machine learning, predictive analytics, nature language processing or other forms of analysis.

- 2.6. **Intellectual Property Rights.** Flexera or its licensors will retain exclusive ownership of all rights, title, and interest in and to the Products and Documentation. Customer will own any output of the Products, provided that any Background IP included in the output will remain the property of Flexera. All data or other information in any medium that is generated or processed (including by way of machine learning, predictive analytics, natural language processing or other forms of analysis) in connection with SaaS, Products, Documentation of the Services will be owned by Flexera.
  - 2.7. **Overage.** At any time during the Subscription Term set forth in an Order, if Customer usage exceeds its License Level (“**Overage**”), Customer will correct the Overage by purchasing additional licenses within thirty (30) days of the Overage. If Customer does not purchase licenses for the Overage within such thirty (30) day period, Flexera may suspend Customer’s use of the SaaS by providing fifteen (15) days prior notice. Customer agrees (i) that Flexera may access to view Customer’s instance(s) of the SaaS and (ii) to provide Flexera with all information reasonably required for the purpose of verifying Customer’s compliance with the License Level, which may be in the form of a formal certification.
- 3. Support and Service Levels.** Flexera will provide Support during the applicable Subscription Term and will provide SaaS in accordance with the Service Levels during the applicable Subscription Term. Flexera will not, during the Subscription Term, make any changes to Products, Support, or Service Levels that result in a material diminution to the terms agreed herein.
- 4. Services.**
- 4.1. **Expenses.** If Services are performed onsite at Customer facilities, Customer will reimburse Flexera for actual and reasonable travel expenses. Flexera will adhere to the more stringent of either Flexera’s or Customer’s travel policy (as provided by Customer and agreed to by Flexera).
  - 4.2. **Customer Policies.** Flexera and its personnel will comply with all reasonable policies of Customer applicable to the provision of Services, provided that such policies do not materially add to or conflict with the terms of this Agreement or the applicable Order or purport to impose any personal liability on such personnel.
  - 4.3. **Delays and Cancellations.** If performance of Services is delayed due to Customer’s failure to provide required access, Customer personnel availability or canceled by Customer on less than five (5) Business Days’ notice, Customer will pay Flexera at the rate set forth in the applicable Order per day, per individual resource designated in the Order who cannot be redeployed by Flexera using reasonable efforts. In addition, Customer agrees to reimburse any travel expenses which have been incurred and are non-cancelable, non-refundable, or non-creditable.
  - 4.4. **Work Product.** Customer will own all Work Product, provided that any Background IP included in the Work Product will remain the property of Flexera.
  - 4.5. **Personnel** Flexera agrees not to assign any personnel to perform Services at a Customer site who have failed a background check or who have committed a felony shown by such background check. Flexera will, at a minimum, have performed the following checks on such personnel to the extent permitted by applicable laws:
    - 4.5.1. Verification of the personnel’s applicable identification number (e.g., social security number) to verify the accuracy of the personnel’s identity and current and previous addresses.
    - 4.5.2. A criminal background search of all court records of the personnel’s addresses over the past seven (7) years.
    - 4.5.3. Verification of the personnel’s post high school education or degrees or professional certifications.
- 5. Representations and Warranties.**
- 5.1. **Mutual Representations and Warranties.** Each party represents and warrants to the other party that, as of the applicable Order Effective Date:
    - 5.1.1. it is duly incorporated and validly existing under applicable laws and in good standing in applicable business locations as required; and
    - 5.1.2. it is duly authorized to enter into and to perform its obligations under this Agreement; and
    - 5.1.3. it is in compliance with all applicable laws related to the performance of its obligations under this Agreement.
  - 5.2. **Flexera’s Representations and Warranties.**
    - 5.2.1. **Performance Warranty.** Flexera represents and warrants to Customer that (i) for a period of ninety (90) days from delivery of the Software (for Software) or (ii) during the applicable Subscription Term (for SaaS), the Products will operate in substantial conformity with the Documentation and the Service Levels. Flexera does not warrant that Customer’s use of the Products will be uninterrupted or error-free. This warranty does not apply to claims arising out of or relating to: (a) use of the Products with hardware or software not required in the Documentation; or (b) defects arising from use of the Products in violation of this Agreement. In response to a performance warranty claim Flexera will either (a) use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the reported non-conformity or (b) to replace the non-conforming Products with conforming Products. If the parties determine such remedies to be impracticable within a reasonable period of time, either party may terminate the part of the Order applicable to the non-conforming Products and Flexera will refund any prepaid and unused fees for the non-conforming Products.

- 5.2.2. Service Warranty. Flexera represents and warrants that the Services will be performed in a professional and workmanlike manner and in accordance with generally accepted industry standards and practices.
- 5.2.3. Anti-Virus Warranty. Flexera represents and warrants to Customer that the Products do not contain any known viruses, worms, Trojan horses or other harmful, malicious, or destructive code.
- 5.2.4. No Disabling Devices Warranty. Flexera represents and warrants to Customer that the Products do not include any functionality that generates messages, data, or reports that are transmitted to Flexera without consent from Customer. Notwithstanding the foregoing, the Products may include features that will limit use of the Products beyond the License Level.
- 5.2.5. Non-Infringement Warranty. Flexera represents and warrants to Customer that the Products do not infringe the intellectual property rights of a third party.
- 5.3. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER FLEXERA NOR ITS SUPPLIERS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES, AND FLEXERA AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 6. Indemnities

- 6.1. General Indemnities. Flexera will defend and indemnify Customer and its employees, officers, board members, agents, representatives, and officials from and against any and all claims, demands, actions, losses, liabilities, injury, damages, which are brought by a third party and caused by, arise from or relate to (i) the willful or reckless acts or omissions of Flexera, its employees, agents, subcontractors or consultants; (ii) wrongful death, bodily injury, or damage to real and tangible property caused by Flexera; (iii) any material breach by Flexera of the confidentiality obligations set forth in the section of this Agreement titled "Confidential Information"; and (iv) any material breach by Flexera of the data privacy obligations set forth in the section of this Agreement titled "Data Privacy".
- 6.2. Infringement Indemnity. Flexera will defend and indemnify Customer and its employees, officers, board members, agents, representatives, and officials from and against all claims, demands, actions, losses, liabilities, injury, damages, which are brought by a third party and caused by, arise from, or relate to an allegation that the Products infringe a patent, copyright, or trademark. If the Products are, or in Flexera's opinion use of the Products is likely to be, subject to an infringement claim, or if required by settlement of the same, Flexera will either: (a) substitute for the Products substantially functionally similar programs; (b) procure for Customer the right to continue using the Products; or if (a) and (b) are commercially impracticable, (c) terminate the applicable Order and refund to Customer any prepaid and unused fees for the affected Products.. The foregoing infringement indemnity does not apply to the extent the infringement claim arises as a result of: (1) modification of the Product (except for setting configuration options provided in the Product) by or on behalf of Customer; (2) the combination of the Product with other non-Flexera products or processes not specifically required in the Documentation; (3) Customer's unauthorized use of the Product or use of the Product in violation of this Agreement; (4) Customer's failure to implement an Update to the Software which would avoid the infringement after Flexera provides notice that implementing such Update would avoid the infringement; or (5) third party software.
- 6.3. Process. The foregoing indemnity obligations are conditioned upon Customer providing to Flexera (i) prompt written notice of any claim (but in any event notice in sufficient time for Flexera to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation. Flexera will not agree to any settlement that admits fault or attributes liability or otherwise imposes any affirmative obligation of Customer without first obtaining Customer's prior written consent.

## 7. Liability.

- 7.1. GENERAL LIABILITY CAP. EXCEPT AS SET FORTH BELOW, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.
- 7.2. ENHANCED LIABILITY CAP. FLEXERA'S LIABILITY TO CUSTOMER FOR DAMAGES AND EXPENSES ARISING PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS (INCLUDING INDEMNITIES RELATED TO CONFIDENTIALITY, DATA PRIVACY AND INFRINGEMENT) UNDER THIS AGREEMENT WILL NOT EXCEED FIVE MILLION DOLLARS (\$5,000,000).
- 7.3. UNLIMITED LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO LIMIT OF LIABILITY WILL APPLY TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, OR FOR DAMAGES ARISING FROM DEATH OR BODILY INJURY CAUSED BY A PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR FOR PAYMENT OF FEES, OR FOR ANY OTHER LOSS THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.
- 7.4. DAMAGES WAIVER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY (i) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR (ii) LOST PROFITS, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, OR INTERRUPTION OF BUSINESS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH

DAMAGES IN ADVANCE.

- 7.5. [EMEA ONLY] No person who is not a party to this Agreement is entitled to enforce any terms of the same under the Contracts (Rights of Third Parties) Act 1999.

**8. Invoicing and Payment.**

- 8.1. Invoicing. Unless otherwise agreed in an Order, Flexera will invoice Customer as follows:
- 8.1.1. for Products, annually in advance; and/or
  - 8.1.2. for Services and associated expenses, monthly in arrears.
- 8.2. Payment. Customer agrees to pay Flexera the fees indicated in each applicable Order within thirty (30) days of Customer's receipt of the invoice for the applicable Order. All payments are non-refundable (except as expressly set forth in this Agreement). All fees are pre-tax, and Customer will be responsible for all taxes, withholdings, duties, and levies arising from the Order (excluding taxes based on the real property, personal property, or net income of Flexera). Any late payments will be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less. If Customer is required to withhold and pay any withholding tax imposed at source on any amount payable to Flexera under this Agreement, then Customer will deliver to Flexera the original tax receipt or other proof of payment, and Customer's payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Customer to Flexera and Customer will assist Flexera in recovering any withholding tax from the relevant tax authority. If Flexera is required by Customer to use any invoicing portal or similar service to issue invoices, receive purchase orders, or otherwise contract with Customer, then any fees incurred by Flexera for Flexera's use of such portal or service will be billed back to Customer.
- 8.3. Purchase Orders. If Customer requires a separate purchase order to be provided to Flexera for Flexera to invoice Customer, Customer commits to providing a purchase order within five (5) Business Days of its receipt of license keys from Flexera. In the event Customer fails to deliver a purchase order within such timeframe, Customer's signed Order, if there is one, will constitute Customer's approval for Flexera to invoice Customer. For multi-year Subscription Terms, Customer must provide a purchase order for either (i) the total payable for the entire Subscription Term, or (ii) one (1) year at a time, provided that the first purchase order must indicate that it is for the first year of a committed three (3) year Subscription Term; regardless of the purchase order form selected, if Customer licenses Products for a multi-year Subscription Term, the license is non-cancelable and Customer will be obligated to pay for the total value of the Subscription Term. The parties agree that any additional or conflicting terms and conditions included in a Customer purchase order shall have no force and effect and are hereby rejected.
- 8.4. Purchases Through Resellers. In the event Customer purchases Products via a reseller, the invoicing and payment terms agreed between Customer and such reseller will apply in lieu of the terms set forth herein.
- 8.5. Renewal. Following the Subscription Term set forth in an Order, licenses will automatically renew for additional periods of three (3) years at a time (each a "**Renewal Term**"). Fees for each Renewal Term will be equal to the fees payable during the immediately preceding year plus an uplift of 8% thereon applicable to each year of the Renewal Term, unless agreed otherwise in writing. At any point, either party may give written notice of its election not to renew, provided such notice is provided no later than ninety (90) days prior to the end of the current Subscription Term.

**9. Term and Termination.**

- 9.1. Term. This Agreement is effective as of the Effective Date and will continue until terminated in accordance with its terms.
- 9.2. Termination for Cause.
- 9.2.1. Either party may immediately terminate this Agreement and/or any related Orders if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after receipt of written notice of such breach; (b) ceases operation without a successor; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter); or (d) materially violates the other party's intellectual property rights.
  - 9.2.2. The parties acknowledge that a violation of the sections titled "License Restrictions", "Overage", "Payment", and "Confidential Information" will be deemed to be a material breach of this Agreement.
- 9.3. Effect of Expiration or Termination.
- 9.3.1. Upon any expiration or termination of an Order, Customer will cease all use of the Products licensed under such Order. Where Customer terminates an Order for cause, Flexera will refund Customer for all fees paid in advance for Products or Services not yet received, on a pro-rata basis from the termination date to the end of the Subscription Term. Where Flexera terminates an Order for cause, all fees committed under the terminated Orders will become immediately due and payable.
  - 9.3.2. Termination of this Agreement or an Order will not automatically terminate any other agreement or order unless the terminating party is entitled to terminate such other agreement or order and includes such other agreements or orders in its termination notice to the other party.
  - 9.3.3. With respect to SaaS and provided all fees due under the Agreement have been paid, Customer will have up to 30 calendar days from the effective date of the termination or expiration of this Agreement or an Order to access the SaaS



solely to retrieve the available Customer content and for no other usage. Thereafter, (i) Customer will have no access to the SaaS, and (ii) Flexera will have no obligation to retain the Customer content or make the Customer content available to Customer.

- 9.4. Transition Assistance. Upon any expiration or termination of an Order, Flexera agrees to provide transition Services pursuant to an Order.
- 9.5. Survival. In the event this Agreement is terminated but an Order is still outstanding, this Agreement will continue to apply to the outstanding Order until such Order expires or is terminated in accordance with this Agreement. Any provision that by the very nature of which should survive will survive any termination or expiration of this Agreement.

## 10. Confidential Information.

- 10.1. Protection of Confidential Information. The Recipient will a) have the right to disclose the Confidential Information only to its employees, consultants, contractors and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Confidential Information will remain confidential for a period of three (3) years from disclosure. No time limit will apply to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret". Any software, documentation or technical information provided by Flexera (or its agents), performance information relating to the Products, and the terms of this Agreement will be deemed "Trade Secrets" of Flexera without any marking or further designation.
- 10.2. Exclusions. The Recipient's nondisclosure obligation does not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).
- 10.3. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.
11. **Data Privacy**. Where personal data is being processed, the parties will comply with their respective obligations as a data processor and a data controller under the relevant Data Protection Law(s). The Data Processing Agreement ("**DPA**") located at [www.flexera.com/legal/dpa](http://www.flexera.com/legal/dpa) as of the Effective Date will apply to the Processing of Personal Data (as each is defined in the DPA), unless the parties execute (or have already executed) a different DPA, in which case the executed DPA will apply. For the avoidance of doubt the SaaS does not require Flexera to have access to any sensitive or special categories of Customer personal data. Flexera will conduct annual SSAE 16 SOC audits during any Subscription Term for SaaS. Flexera will, upon request, provide Customer a SSAE 16 SOC Type I and/or II audit report covering the SaaS. Customer agrees that the foregoing fulfills Flexera's audit obligations under applicable Data Protection Laws, except for any additional audits required by an applicable data protection authority or regulatory body with authority over Flexera and Customer.
12. **Security**. Flexera will provide the SaaS in accordance with the information security terms attached at Schedule 1 to this Agreement.
13. **Audit by Customer**. Customer may audit Flexera for the purpose of verifying Flexera's compliance with the terms of this Agreement. Audits performed subject to this Section will (i) only be performed during the term of this Agreement, (ii) require prior written notice of at least thirty (30) days, (iii) be conducted remotely and during regular business hours, (iv) not unreasonably interfere with Flexera's business activities, (v) be conducted no more than once per year, (vi) not be related to security or privacy, which are covered separately under this Agreement or the DPA; and (vii) only cover the immediately preceding two (2) years.
14. **Evaluation**. If Flexera provides a Product as a trial, evaluation, beta version, or proof of concept, or otherwise at no charge, then the following terms shall apply to such Product and take precedence in the event of any inconsistency between this Section "Evaluation" and any other term or condition in this Agreement: (a) Flexera grants Customer a worldwide, nonexclusive, revocable, nontransferable, nonsublicensable license to use the Product during the term and within the usage limits identified by Flexera solely for Customer's internal evaluation purposes; (b) Flexera may revoke Customer's Product license at any time for any reason; (c) the following Sections of this Agreement shall not apply: (i) "Indemnities", and (ii) "Flexera's Representations and Warranties"; (d) to the maximum extent permitted by applicable law, the Products are provided "as is" and Flexera disclaims all obligations or liability, including any statutory or implied warranty obligations, and in any event, Flexera's aggregate liability shall not exceed US \$100.00, and (e) in addition to (a) to (d) above for any Product or feature made available as a beta version (i) the beta Product is not an official product and has not been commercially released for sale by Flexera; (ii) the beta Product may not operate properly, be in final form or fully functional; (iii) the

beta Product may contain errors, design flaws or other problems; (iv) Flexera is under no obligation to release a commercial version of the beta Product, (v) Customer's use of the beta Product shall be for evaluation and feedback purposes only.

## 15. General.

- 15.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement (or any part thereof) without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities. No assignment will be effective until the assigning party provides written notice of such assignment, including the assignee's written agreement to the terms of this Agreement. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.
- 15.2. Subcontracting. Flexera may engage a Subcontractor to perform its obligations hereunder provided that Flexera remains responsible for the compliance of such Subcontractor with the terms of this Agreement.
- 15.3. Severability. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.
- 15.4. Governing Law. This Agreement is governed, without reference to applicable conflicts of law principles, by the laws of the jurisdiction as set forth in the Global Appendix attached hereto ("**Governing Law**"), which is incorporated herein by reference. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The language of any litigation or legal proceeding shall be English. The prevailing party in arbitration or litigation is entitled to recover its reasonable attorneys' fees and costs from the other party. CUSTOMER MUST INITIATE ANY CAUSE OF ACTION FOR ANY CLAIM(S) ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ITS SUBJECT MATTER WITHIN 1 YEAR FROM THE DATE WHEN CUSTOMER KNEW, OR SHOULD HAVE KNOWN AFTER REASONABLE INVESTIGATION, OF THE FACTS GIVING RISE TO THE CLAIM(S).
- 15.5. Amendments; Waivers. Unless expressly stated otherwise in this Agreement, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. Where this Agreement provides for a specific remedy to be provided by Flexera, such remedy will be the sole and exclusive remedy for Customer. No provision of any purchase order or other business form employed by Customer will add to or supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.
- 15.6. Construction and Interpretation. The original of this Agreement has been written in English. Customer waives any rights it may have under the law of its country to have this Agreement written in the language of that country. The use of the terms "including," "include" or "includes" will in all cases herein mean "including without limitation," "include without limitation" or "includes without limitation," respectively. Unless the context otherwise requires, words importing the singular include the plural and words importing the masculine include the feminine and vice versa. This Agreement will be equally and fairly construed without reference to the identity of the party preparing this document as the parties have agreed that each participated equally in negotiating and preparing this Agreement or have had equal opportunity to do so. To the maximum extent permitted by applicable law, the parties waive the benefit of any statute, law, or rule providing that in cases of uncertainty, contract language should be interpreted most strongly against the party who caused the uncertainty to exist. The headings and titles to the articles and sections of this Agreement are inserted for convenience only and will not be deemed a part of or affect the construction or interpretation of any provision of this Agreement.
- 15.7. Usage Information. Flexera may collect and use information related to Customer's use of and output from the Products, and Customer hereby consents to Flexera's collection and use of such information (i) for improvement and development of Flexera's products and services, (ii) to provide Customer with visibility to Customer's actual usage and consumption patterns, (iii) to make recommendations to Customer regarding improvements to Customer's environment and utilization of elements therein; (iv) in connection with predictive analytics, benchmarking and usage intelligence; (v) to optimize Customer's future planning activities and requirements and (vi) in Flexera's marketing efforts to describe how and to what extent Flexera's customers generally use Products and the information gained therefrom. Any information disseminated by Flexera hereunder will be anonymized and aggregated such that Customer could not be identified as the source of the information.
- 15.8. Independent Contractors. The parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Customer acknowledges and agrees that the Products may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Products; all actions taken or not taken by Customer based on the output of the Products are the responsibility of Customer. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

- 15.9. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party and could not be avoided through the exercise of reasonable care and diligence, including but not limited to a Force Majeure Event. If a Force Majeure Event occurs and continues for a period of thirty (30) days, Customer may terminate this Agreement by providing written notice to Flexera. In the event Flexera's performance hereunder is the subject of a Force Majeure Event, the fees to be paid by Customer will be equitably adjusted to reflect the period of non-performance.
- 15.10. **Export Compliance.** Each party will comply with all applicable export laws and regulations of the United States and any other country with jurisdiction over the Products and/or either party.
- 15.11. **Notices and Reports.** Any notice or report to be given under this Agreement, must be in writing for the attention of Legal Dept. to the address given in the preamble to this Agreement, by the following methods only and will be deemed to have been validly given (a) on the date of delivery if delivered by hand; (b) upon transmission if delivered by email to Flexera at [legal@flexera.com](mailto:legal@flexera.com) and to Customer at the email address on file; and (c) two (2) Business Days after posting with an internationally recognized overnight courier. Where any provision of this Agreement requires Customer to object in writing, such objection must be based on Customer's reasonable opinion that Flexera (or its Subcontractor) would be incapable of meeting the requirements of this Agreement. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this Section.
- 15.12. **Diversity.** Flexera is committed to encouraging the utilization of products and services provided by Diverse Suppliers. Flexera will use commercially reasonable efforts to engage Diverse Suppliers in the support of its business. Flexera will maintain accurate and complete records relating to its Diverse Supplier obligations.
- 15.13. **Insurance.** Flexera is responsible for maintaining insurance to protect itself from the following: (a) claims and/or workers compensation or state disability acts; (b) claims for damages because of bodily injury, sickness, or death of any of its employees or any other person which arise out of any negligent act or omission of Flexera, its employees or agents, if any; (c) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, which arise from any negligent act or omission of Flexera, its employees or agents, if any; and (d) claims for damages because of Flexera's professional liability. Flexera will maintain insurance with the following limits for the duration of this Agreement:
- Workers Compensation Insurance in compliance with applicable Federal and State laws and Employer's Liability coverage with a minimum \$1,000,000 limit of liability.
  - Commercial General Liability Insurance with \$1,000,000 bodily injury and property damage combined single limit of coverage,
  - Automobile bodily injury and property damage liability insurance covering owned, non-owned and hired automobiles, the limits of which will not be less than \$1,000,000 combined single limit per occurrence.
  - Professional Liability insurance covering acts, errors, mistakes, omissions arising out of the work or services performed by Flexera, or any Subcontractor, agent or person employed by Flexera, with a limit of not less than \$1,000,000 per claim.
  - Cyber Insurance with a policy limit of \$10,000,000.
- Upon Customer's request, Flexera will provide Customer with a certificate of insurance completed by its insurance carrier certifying that minimum insurance coverage as required above are in effect.
- 15.14. **Anti-Bribery.** Each party represents and warrants that (i) in connection with this Agreement, it has not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any government or any agency or instrumentality thereof and (ii) it will comply in all respects with the Foreign Corrupt Practices Act, UK Bribery Act 2010, or any similar local laws.
- 15.15. **Equal Opportunity.** Flexera agrees that it does not and will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin, or sexual orientation.
- 15.16. **Customer Contact Information.** Customer is responsible for ensuring that Flexera has at all times updated and accurate Customer contact information for Flexera to notify Customer regarding any security and products related issues. Customer shall provide Customer current contact information via the Flexera support portal.
- 15.17. **Execution.** This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will constitute together but one document. In addition, the parties consent to the use of a third-party service for electronically executing this Agreement.
- 15.18. **Order of Precedence.** In the event of a conflict between the terms of this Agreement and an Order, the terms of the Order will take precedence with respect to the subject matter of such Order.
- 15.19. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. As of the Effective Date, the following Schedule applies to this Agreement:
- Schedule 1 – Information Security





## **Global Appendix**

### **Governing Law, and Venue of Disputes**

In accordance with and subject to Section 15.4 “Governing Law” of the Agreement, the following table sets forth the Governing Law that corresponds with the location of the Customer entity executing this Agreement:

<b>Flexera entity</b>	<b>Customer Location</b>	<b>Governing Law</b>
<b>Flexera Software GmbH</b> , having its registered office at Regus Hamburg Altona, Hahnenkamp 1, 22765 Hamburg, Germany (company number HRB 205690).	Germany, Austria and Switzerland (DACH region)	English
<b>Flexera Software Limited</b> , a private company limited by shares and incorporated in England and Wales with company number 6524874, having its principal office located at Level 2 401 Faraday Street, Birchwood Park, Warrington, Cheshire, WA3 6GA, United Kingdom.	EMEA (except for DACH region) and India	English
<b>Flexera Software Pty Limited</b> , ABN 40 052 412 156, having its principal place of business located at 990 Whitehorse Road, Level 4, Box Hill, VIC 3128, Australia.	Australia and New Zealand	Australian
<b>Flexera Software Canada Corporation</b> , having its principal place of business at 1000 Innovation Drive, Suite 513, Kanata, ON, K2K 3E7, Canada.	Canada	USA, State of Illinois
<b>Snow Software Assessoria E Representações LTDA</b> , having its registered office at Rua das Olimpíadas, 205, 4º andar, cj 41, Vila Olímpia   04551-000 São Paulo/SP, Brazil	Brazil	USA, State of Illinois
<b>Flexera Software LLC</b> , a Delaware limited liability company having its principal office located at 300 Park Blvd., Suite 400, Itasca, IL 60143.	Countries outside of those listed above	USA, State of Illinois

### Schedule 1 – Information Security

1. **Standards Compliance.** Flexera has and will maintain SOC2 certification throughout the subscription term of the Order and will and make reports on the same available to the Customer upon request.
2. **Security Organization.** Flexera has and will maintain an information security function, which has responsibility for ensuring good practice in relation to information security and in relation to the provision of the SaaS and Services, including the publication of information security policies.
3. **Reporting and Incident Management.**
  - a. Flexera has implemented procedures for Information Security Incidents to be reported through appropriate management channels as quickly as reasonably possible. All employees and representatives of Flexera or their sub-contractors will be made aware of their responsibility to report Information Security Incidents as quickly as reasonably possible.
  - b. Flexera has and will maintain procedures to ensure a quick, effective, and orderly response to Information Security Incidents.
  - c. Flexera has and will maintain an incident classification scale in place to decide whether a security event should be classified as an Information Security Incident. The classification scale will be based on the impact and extent of an incident.
  - d. Flexera will without undue delay (within 48 hours from confirmation) notify Customer of any Information Security Incidents. Notifications to Customer will be sent to the email address on file.
  - e. If an Information Security Incident reveals any deficiencies, weaknesses, or areas of non-compliance, Flexera will promptly take such steps as may be required, in Flexera’s reasonable discretion, to address material deficiencies, weaknesses, and areas of non-compliance as soon as may be practicable given the circumstances.
  - f. Upon request, Flexera will keep Customer informed of the status of any remedial action that is required to be carried out, including the estimated timetable for completing the same, and will certify to Customer as soon as may be practicable given the circumstances that all necessary remedial actions have been completed.
  - g. For the purposes of this Section, “Information Security Incidents” will mean any unmitigated security incident, of which Flexera has actual knowledge and which (i) compromises or is likely to compromise the security or integrity of Customer data or systems, or (ii) otherwise materially affects Flexera’s ability to comply with the obligations in this Schedule.
4. **Security Testing.** Flexera has arranged for all testing as detailed in this Section below to be undertaken by an independent third party.
  - a. Flexera, through its contractors, will perform penetration testing on the Flexera’s systems no more than once every twelve (12) months. If the penetration testing conducted discovers vulnerabilities in Flexera’s systems, Flexera will, to the extent that such vulnerabilities result in an inability to materially comply with this Schedule, remediate such vulnerabilities and re-perform the penetration testing focusing on those vulnerabilities discovered from the initial penetration testing. Upon receipt of a written request, Flexera will make available the penetration testing executive summary report to Customer.
  - b. Flexera will, upon request, provide mutually agreed metrics at an agreed frequency to Customer to illustrate the performance of the testing schedule.
5. **Security Communication and Assistance.**
  - a. Except as required by mandatory applicable law or by existing applicable contractual obligations, Flexera agrees that it will not inform any third party of any Information Security Incident referencing, or identifying the Customer, without Customer’s prior written consent. Flexera will fully cooperate with Customer and law enforcement authorities concerning any unauthorized access to Customer’s systems or networks, or data. Such co-operation will include the retention of all information and data within Flexera’s possession, custody, or control that is directly related to any Information Security Incident.
  - b. If disclosure is required by law, Flexera will work with Customer regarding the timing, content, and recipients of such disclosure.
  - c. Flexera will respond promptly to any reasonable Customer requests for information, cooperation, and assistance, including to a Customer designated response center.
6. **Access Management.**
  - a. Where Flexera personnel are accessing Customer systems or data, Flexera is responsible for validating the identity of such personnel.
  - b. Flexera will ensure that when accessing Customer systems or data, Flexera personnel have the minimal required system access to carry out their duties and will not use shared accounts or password.
  - c. Flexera will ensure that access to the Customer systems or data is governed by this Schedule.
7. **Security Review.** Subject to the conditions set out herein, Flexera will permit Customer personnel or authorized representatives to review and assess Flexera’s compliance with the obligations set out in this Section (“**Security Review**”). The definition of audit rights is to be mutually agreed between Flexera and Customer. Unless otherwise required by law:

- a. Any Security Review is subject to not less than 28 days advance written notice and limited to no more than once in any 12-month period;
  - b. The Security Review will take place during normal business hours and should be conducted in a manner to minimize disruption to Flexera's business operations;
  - c. Customer will bear its own costs in relation to a Security Review; and
  - d. Any third party undertaking the Security Review must (i) be subject to confidentiality obligations no less protective than those set out in the Agreement; and (ii) must not be a competitor of Flexera.
8. **Business Continuity Management.** Flexera has and will maintain a documented Business Continuity and Disaster Recovery Plan (“**BC DR Plan**”) throughout the term of the Agreement which will be tested, the results of which will be shared with the Customer upon request. Flexera has and will maintain emergency and contingency plans for the facilities that process Customer data.