



## CLICKTHROUGH PURCHASE AGREEMENT

This Clickthrough Purchase Agreement (“**Agreement**”) is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the “**Licensee**”), and Flexera for the Software, Software as a Service, Content, Support, and Professional Services (collectively “**Products**”).

By clicking on the “I ACCEPT” button or by copying, downloading, accessing or otherwise using the Product(s), Licensee agrees to be bound by the terms of this Agreement. If Licensee 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 click the “I DO NOT ACCEPT” button, and/or must not install, access or use the Product(s). If Licensee has a separately executed written agreement with Flexera for the Product(s), then that separate agreement will apply and this Clickthrough Purchase Agreement will be of no force or effect with respect to those Product(s). The Effective Date of this Agreement is the date Licensee clicks “I ACCEPT” or copies, downloads, accesses, or otherwise uses the Product(s).

As used herein, *for Licensees in Japan*, “**Flexera**” means Flexera Software GK, a Godo Kaisha organized under the laws of Japan; *for Licensees in Europe, Middle East, Africa, or India*, “**Flexera**” means Flexera Software Limited, a private company limited by shares and incorporated in England and Wales with company number 6524874; *for Licensees in Australia and New Zealand*, “**Flexera**” means Flexera Software Pty Limited, with ABN 40 052 412 156 and *for Licensees outside of the countries listed above*, “**Flexera**” means Flexera Software LLC, a Delaware limited liability company.

## GENERAL TERMS AND CONDITIONS

1. **Products and Ordering.** Licensee may purchase Products via either (i) a written order document executed by both parties referencing this Agreement and specifying the Products purchased by Licensee hereunder or (ii) a purchase order delivered by Licensee for Products, provided that such purchase order contains the requisite level of detail for the parties to identify the specific Products, quantities, and prices (in either case, an “**Order**”). In addition, any entity in which Licensee has the legal or practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement (an “**Affiliate**”) may purchase Products via an Order. Any Products provided by Flexera on an evaluation basis or otherwise free of charge are provided pursuant to the “**Free Software**” and “**Evaluation Software**” terms located at <https://www.flexera.com/legal/product-specific-terms.html>.
2. **Invoicing and Payment.**
  - 2.1. **Invoicing.** Unless otherwise agreed in an executed Order, Flexera will invoice Licensee as follows:
    - 2.1.1. for perpetual licenses to Products, fully in advance;
    - 2.1.2. for subscription-based Products, annually in advance; and/or
    - 2.1.3. for all other Professional Services and associated expenses, monthly in arrears.
  - 2.2. **Payment.** Licensee agrees to pay Flexera the fees indicated in each applicable Order. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made within thirty (30) days of Licensee’s receipt of the invoice for the applicable Order. All fees are pre-tax and Licensee shall 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 Licensee is required to withhold and pay any withholding tax imposed at source on any amount payable to Flexera under this Agreement, then Licensee shall deliver to Flexera the original tax receipt or other proof of payment, and Licensee’s payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Licensee to Flexera and Licensee will assist Flexera in recovering any withholding tax from the relevant tax authority. In the event that Flexera is required by Licensee to use any invoicing portal or similar service in order to issue invoices, receive purchase orders, or otherwise contract with Licensee, then any fees incurred by Flexera for Flexera’s use of such portal or service shall be billed back to Licensee.
  - 2.3. **Purchase Orders.** If Licensee requires a separate purchase order to be provided to Flexera in order for Flexera to invoice Licensee, Licensee commits to providing a purchase order within three (3) business days of its receipt of license keys from Flexera. In the event Licensee fails to deliver a purchase order within such timeframe, Licensee’s signed Order, if there is one, will constitute Licensee’s approval for Flexera to invoice Licensee. For subscription based products with multi-year subscription terms, Licensee 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 term; regardless of the purchase order form selected, if Licensee licenses a Product for a multi-year subscription, the license is non-cancelable and Licensee shall be obligated to pay for the total value of the subscription term.

- 2.4. Purchases through Resellers. In the event Licensee purchases Products via a reseller, the invoicing and payment terms agreed between Licensee and such reseller will apply in lieu of the terms set forth herein. If the reseller fails to pay the fees applicable to the Products delivered to Licensee, Licensee will be responsible to Flexera for payment of the fees due and not paid by the reseller.

### 3. Term of Agreement.

- 3.1. Term. This Agreement is effective as of the Effective Date and will continue until terminated in accordance with its terms.
- 3.2. Termination for Cause.
- 3.2.1. 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.
- 3.2.2. The parties acknowledge that a violation of the sections titled "License", "Confidential Information", and "Certification and Audit Rights" will be deemed to be a material breach of this Agreement.
- 3.3. Termination for Convenience. Either party may terminate this Agreement by providing thirty (30) days written notice to the other party; provided, however, that the termination of this Agreement will not terminate any outstanding Orders, and Orders may only be terminated by a party for cause as set forth above.
- 3.4. Effect of Expiration or Termination.
- 3.4.1. Upon any (i) expiration of a subscription term, (ii) termination by Licensee of an Order for a subscription license or (iii) termination by Flexera of an Order, Licensee shall cease any and all use of the Products licensed under such Order and destroy all copies of such Products and associated Documentation, if any, and so certify to Flexera in writing.
- 3.4.2. 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.
- 3.5. 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.

### 4. Representations and Warranties.

- 4.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that, as of the applicable Order Effective Date:
- 4.1.1. it is duly incorporated and validly existing under applicable laws and in good standing in applicable business locations as required; and
- 4.1.2. it is duly authorized to enter into and to perform its obligations under this Agreement; and
- 4.1.3. it is in compliance with all applicable laws related to the performance of its obligations under this Agreement.
- 4.2. Flexera's Representations and Warranties. In addition to the warranties set forth above, any additional representations and warranties in the Schedules attached hereto will apply.
- 4.3. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND IN AN APPLICABLE SCHEDULE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER FLEXERA NOR ITS SUPPLIERS MAKE ANY OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 5. Confidential Information.

- 5.1. Confidential Information. "Confidential Information" means any business and/or technical information that is received by a party ("Recipient") from the disclosing party ("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.
- 5.2. Protection of Confidential Information. The Recipient shall a) have the right to disclose the Confidential Information only to its employees, consultants 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 Product, and the terms of this Agreement will be deemed "Trade Secrets" of Flexera without any marking or further designation.

- 5.3. **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).
- 5.4. **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 appropriate equitable relief in addition to whatever other remedies it might have at law.

**6. Ownership.** Licensee acknowledges and agrees that Flexera or its licensors, as the case may be, will retain exclusive ownership of all rights, title and interest in and to the Products. Licensee acknowledges that its use of the Products will not vest in Licensee any right, title or interest in or to the Products other than the limited license rights granted under this Agreement and any applicable Order, and all intellectual property rights arising from such uses will be owned by Flexera or its respective licensors.

**7. Data Privacy.** 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 Flexera's 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. Licensee is entitled to request a separately executed DPA at any time.

**8. Usage Information.** Flexera may collect and use information based on Licensee's use of the Products licensed hereunder, and Licensee hereby consents to Flexera's collection and use of such information (i) for improvement and development of Flexera's Products, (ii) to provide Licensee with visibility to Licensee's actual usage and consumption patterns, (iii) to make recommendations to Licensee regarding improvements to Licensee's environment and utilization of elements therein; (iv) in connection with predictive analytics, benchmarking and usage intelligence; (v) to optimize Licensee'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 Licensee could not be identified as the source of the information.

## 9. Liability.

- 9.1. **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.
- 9.2. **LIMIT OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:
  - 9.2.1. EACH PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES AND EXPENSES ARISING PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT WILL NOT EXCEED THREE MILLION DOLLARS (\$3,000,000).
  - 9.2.2. 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.
  - 9.2.3. EXCEPT AS SET FORTH ABOVE, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.
- 9.3. 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.

## 10. General.

- 10.1. **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.
- 10.2. **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.
- 10.3. **Publicity.** Either party may include the other party's company name in a list of customers and/or suppliers without the other party's written consent. Any other use of the other party's name or logo is prohibited without such other party's written consent.
- 10.4. **Governing Law.** For Licensees in North America and Latin America, this Agreement will be governed by the laws of the State of

Illinois and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Europe, Middle East, or Africa, this Agreement will be governed by the substantive laws of England and Wales, excluding that body of law known as conflicts of law and without regard to the United Nations Convention on Contracts for the Sale of Goods. For Licensees in Australia, this Agreement will be governed by the laws of the State of Victoria, Australia without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Japan, this Agreement will be governed by the laws of Japan without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in the Asia Pacific region other than Australia and Japan, this Agreement will be governed by the laws of Special Administrative Region of Hong Kong without regard to conflicts of laws provisions thereof, and without regard to the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods.

- 10.5. Notices and Reports. Any notice or report hereunder will be in writing to the notice address set forth in the preamble to this Agreement (for Flexera, a mandatory copy must always be sent to: Flexera Software LLC, 300 Park Boulevard Suite 500, Itasca, IL 60143, Attention Legal Department) and will be deemed given: (a) upon receipt if by personal delivery; or (b) two (2) Business Days following deposit for delivery to the party with an internationally recognized overnight courier. “**Business Day**” means 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 appropriate jurisdiction. 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.
- 10.6. Amendments; Waivers. No provision of any purchase order or other business form employed by Licensee 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. 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, except that Flexera may modify this Agreement from time to time by including a revised version with new versions of the Products. The modified terms will become effective upon inclusion with the new version and will apply only to that version and any future version thereafter. By Licensee accepting the revised Agreement, Licensee agrees to be bound by the current terms then in effect. It is Licensee’s responsibility to review the Agreement for all new versions. 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.
- 10.7. Construction and Interpretation. The original of this Agreement has been written in English. Licensee 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.
- 10.8. Independent Contractors. The parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Licensee 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 Licensee based on the output of the Products are the responsibility of Licensee. 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.
- 10.9. 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 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 (a “**Force Majeure Event**”). In the event that a Force Majeure Event occurs and continues for a period of thirty (30) days, Licensee 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 Licensee will be equitably adjusted to reflect the period of non-performance.
- 10.10. Export Compliance. Licensee acknowledges that the Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Unless authorized by a license or by regulation, Licensee shall not export or re-export the Products, directly or indirectly, to: (a) any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval;

(b) any end user who has been prohibited from participating in United States export transactions by any federal agency of the United States government; or (c) any end user who you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems. Licensee is responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Products.

- 10.11. Non-Solicitation. During the term of this Agreement and for a period of one year thereafter, Licensee agrees that it will not hire or attempt to hire, on behalf of Licensee or any other organization, any employee of Flexera unless Licensee has first obtained Flexera's written consent. Notwithstanding the foregoing, Licensee will not be in breach of this provision if an employee of Flexera responds to a general advertisement for employment.
- 10.12. 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:
  - (a) 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,
  - (b) Commercial General Liability Insurance with \$1,000,000 bodily injury and property damage combined single limit of coverage, and
  - (c) 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.
  - (d) 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.Upon Licensee's request, Flexera will provide Licensee with a certificate of insurance completed by its insurance carrier certifying that minimum insurance coverage as required above are in effect.
- 10.13. 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.
- 10.14. 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.
- 10.15. Execution. This Agreement becomes effective upon Licensee's electronic acceptance of the Agreement as a part of the download or access to the Product or submission of a purchase order tied to a quote referencing these terms.
- 10.16. Order of Precedence. In the event of a conflict between the terms of this Agreement, a Schedule, the Product Specific Terms, terms located at a URL referenced in this Agreement, and an Order, the order of precedence is as follows: (i) Product Specific Terms, (ii) Schedule, (iii) Agreement, (iv) terms located at a URL referenced in this Agreement, and (v) Order.
- 10.17. 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 Schedules apply to this Agreement:
  - The Software Schedule applies to all Software licensed to Licensee under this Agreement
  - The Software as a Service (SaaS) Schedule applies to all SaaS licensed to Licensee under this Agreement
  - The Content Schedule applies to all Content licensed to Licensee under this Agreement
  - The Professional Services Schedule applies to all Professional Services delivered to Licensee under this Agreement



## Software Schedule

### 1. Definitions.

**Contractor** means any third party contracted by Licensee to perform services on behalf of and for the sole benefit of Licensee.

**Documentation** means the technical specification documentation generally made available by Flexera to its customers with regard to the Software from time to time.

**Internal Purposes** means the use of the Software where Licensee is the primary beneficiary, as further defined in an Order.

**License Level** means the allowed level of usage of the Software licensed to Licensee in an Order.

**Licensee Site** means any location owned or leased solely by Licensee or an Affiliate or that portion of any shared space, such as a shared data center, attributable solely to Licensee or such Affiliate, or in the instance of an employee working remotely, that location from which such employee is working while using Licensee or Affiliate-provided equipment on which the Software may be installed.

**Software** means the object code form of software products (including any associated database content provided with or embedded within the software products) licensed to Licensee for installation at a Licensee Site as specified in an applicable Order, including any Updates to the Software. Except as otherwise expressly set forth herein or in an applicable Order, Software does not include source code.

**Third Party Software** means any software contained in the Software that is licensed to Flexera by a third-party, including but not limited to open source software.

**Updates** means patches, additions, modifications, and new versions of a Software product incorporating such patches, additions and modifications that are provided to Licensee 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.

### 2. License.

- 2.1. Grant of License. Subject to all of the terms and conditions of this Agreement and the applicable Order, Flexera grants to Licensee a non-transferable (except as provided herein), non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation.
- 2.2. License Term. An Order will identify whether Licensee is purchasing a subscription or perpetual license. In the case of a subscription license, the subscription term will be identified in the Order.
- 2.3. Delivery. Software and associated Documentation will be delivered by electronic means.
- 2.4. Installation and Copies. Licensee may install Software at Licensee Sites only. Licensee may make a reasonable number of copies of Software for testing, back-up and archival purposes.
- 2.5. Use by Affiliates and Contractors. Licensee's Affiliates and Contractors may also use the licenses granted to Licensee, provided that (a) such use is only for Licensee's or such Affiliate's benefit, and (b) Licensee agrees to remain responsible for each such Affiliate's and Contractor's compliance with the terms and conditions of this Agreement. Use of the Software by the Affiliates, Contractors and Licensee in the aggregate must be within the License Level.
- 2.6. License Restrictions. Licensee shall not (and shall not allow any third party to):
  - 2.6.1. decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, libraries, file formats, data, databases or programming interfaces of or provided with the Software by any means whatsoever (except and only to the extent that applicable law or Third Party Software license terms prohibits or limits reverse engineering restrictions, and then only with prior written notice to Flexera);
  - 2.6.2. distribute (except as expressly permitted herein), sell, sublicense, rent, lease or use the Software or Documentation (or any part thereof) for time sharing, service bureau, hosting, service provider or like purposes;
  - 2.6.3. remove any product identification, proprietary, copyright or other notices contained in the Software or Documentation;
  - 2.6.4. modify any part of the Software or Documentation, create a derivative work of any part of the Software or Documentation, or incorporate the Software (or any part thereof) into or with other software, except to the extent expressly authorized in writing by Flexera or, where applicable to any Third Party Software and then only in relation to such component(s) by any applicable Third Party Software license agreement included with the Software;
  - 2.6.5. access any libraries, data or databases incorporated or provided with the Software via any mechanism other than the Software; or
  - 2.6.6. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software or Documentation.
- 2.7. Product Specific Terms. In addition to the General Terms and Conditions and the terms of this Schedule, the terms relevant to the specific Software licensed by Licensee set forth at <https://www.flexera.com/legal/product-specific-terms.html> will apply.
- 2.8. Certification and Audit. Within thirty (30) days of Flexera's request and no more than once per year, Licensee shall provide a written certification of its compliance with the applicable License Level (including usage by Affiliates and Contractors) for the immediately preceding twelve (12) month period. Such certification shall be provided by a person sufficiently aware of the information being certified to and at a level sufficient to bind Licensee. If Licensee fails to certify, or if Flexera has a good faith belief that Licensee's certification is inaccurate, Flexera may audit Licensee for the purpose of verifying Licensee's usage of the Software in accordance with the License Level. Audits will (i) only be performed during the term of this Agreement, (ii) require prior notice of at least thirty (30) days, (iii) be conducted during regular business hours, (iv) not unreasonably interfere with the

audited party's business activities, (v) be conducted no more than once per year, and (vi) only cover the immediately preceding two (2) years. If an audit reveals that Licensee intentionally misrepresented its certification, then Licensee shall pay Flexera's reasonable costs of conducting the audit in addition to any other fees due or refunds required and Flexera may immediately terminate this Agreement and/or all outstanding Orders.

### 3. Support.

- 3.1. Support. Unless otherwise set forth in an Order, Flexera will provide Support in accordance with the terms set forth at [http://resources.flexera.com/web/pdf/archive/Silver\\_Support.pdf](http://resources.flexera.com/web/pdf/archive/Silver_Support.pdf) ("**Support**"). Support is for a period of one (1) year from the date of delivery of the Software for perpetual licenses; subscription license fees include Support for the subscription term.
- 3.2. Renewals of Support for Perpetual Licenses. Support may be renewed for the first renewal period (the duration of which may be no shorter than one year and no longer than the length of the initial Support period) for the same annual rate paid during the first Support period. In the event Licensee elects not to obtain or renew Support, Licensee may retain the Software and Documentation but will have no further right to Support for the Software.

### 4. Software Representations and Warranties.

- 4.1. Performance Warranty. Flexera represents and warrants to Licensee that for a period of ninety (90) days from initial delivery of the Software, the Software will operate in substantial conformity with the Documentation. Flexera does not warrant that Licensee's use of the Software will be uninterrupted or error-free. All warranty claims must be submitted to Flexera in writing within the Warranty Period. This warranty does not apply to warranty claims arising out of or relating to: (a) use of the Software with hardware or software not required in the Documentation; (b) modifications to the Software source code by or on behalf of Licensee; or (c) defects in the Software due to unauthorized use of the Software or use of the Software in violation of this Agreement. Flexera's sole liability (and Licensee's exclusive remedy) for any breach of this or any performance warranty, express or implied, will be, in Flexera's sole discretion, to either (a) use commercially reasonable efforts to provide Licensee with an error-correction or work-around that corrects the reported non-conformity or (b) to replace the non-conforming Software with conforming Software. If Flexera determines such remedies to be impracticable within a reasonable period of time, Flexera may terminate the applicable Order and refund the fees paid for the non-conforming Software.
- 4.2. Anti-Virus Warranty. Flexera represents and warrants to Licensee that it has used industry standard anti-virus software and processes to test the Software for viruses, worms, Trojan horses or other harmful, malicious or destructive code and such tests have shown no such viruses, worms, Trojan horses or other harmful, malicious or destructive code.
- 4.3. No Disabling Devices Warranty. Flexera represents and warrants to Licensee that the Software does not include any functionality that (i) generates messages, data, or reports that are transmitted to Flexera without consent from Licensee or (ii) allows Flexera to remotely access the Software. Notwithstanding the foregoing, the Software may include features that will limit use of the Software beyond the License Level or notifies Flexera of license activations.
- 4.4. Non-Infringement Warranty. Flexera represents and warrants to Licensee that the Software does not infringe the intellectual property rights of a third party.

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## Software as a Service Schedule

### 1. Definitions.

**Contractor** means any third party contracted by Licensee to perform services on behalf of and for the sole benefit of Licensee.

**Documentation** means the technical specification documentation generally made available by Flexera to its customers with regard to the SaaS from time to time.

**Internal Purposes** means the use of the SaaS where Licensee is the primary beneficiary, as further defined in an Order.

**License Level** means the allowed level of usage of the SaaS licensed to Licensee in an Order.

**Software as a Service or SaaS** means a software application (including any associated database content provided with or embedded within the software application) licensed to Licensee 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.

### 2. License.

- 2.1. Grant of License. Subject to all of the terms and conditions of this Agreement and the applicable Order, Flexera grants to Licensee a non-transferable (except as provided herein), non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only and for the subscription term, (i) SaaS, in accordance with the Documentation, and (ii) Documentation.
- 2.2. Delivery. Licensee will receive access to SaaS via a website hosted by Flexera.
- 2.3. Use by Affiliates and Contractors. Licensee's Affiliates and Contractors may also use the licenses granted to Licensee, provided that (a) such use is only for Licensee's or such Affiliate's benefit, and (b) Licensee agrees to remain responsible for each such Affiliate's and Contractor's compliance with the terms and conditions of this Agreement. Use of the SaaS by the Affiliates, Contractors and Licensee in the aggregate must be within the License Level.
- 2.4. License Restrictions. Licensee shall not (and shall not allow any third party to):
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  - 2.4.4. conduct vulnerability scanning or penetration testing of Flexera systems or the SaaS Product;
  - 2.4.5. access any libraries, data or databases incorporated or provided with the SaaS via any mechanism other than the SaaS; or
  - 2.4.6. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the SaaS or Documentation.
- 2.5. Product Specific Terms. In addition to the General Terms and Conditions and the terms of this Schedule, the terms relevant to the specific SaaS licensed by Licensee set forth at <https://www.flexera.com/legal/product-specific-terms.html> will apply.
- 2.6. Certification and Audit. Within thirty (30) days of Flexera's request and no more than once per year, Licensee shall provide a written certification of its compliance with the applicable License Level (including usage by Affiliates and Contractors) for the immediately preceding twelve (12) month period. Such certification shall be provided by a person sufficiently aware of the information being certified to and at a level sufficient to bind Licensee. If Licensee fails to certify, or if Flexera has a good faith belief that Licensee's certification is inaccurate, Flexera may audit Licensee for the purpose of verifying Licensee's usage of the SaaS in accordance with the License Level. Audits will (i) only be performed during the term of this Agreement, (ii) require prior notice of at least thirty (30) days, (iii) be conducted during regular business hours, (iv) not unreasonably interfere with the audited party's business activities, (v) be conducted no more than once per year, and (vi) only cover the immediately preceding two (2) years. If an audit reveals that Licensee intentionally misrepresented its certification, then Licensee shall pay Flexera's reasonable costs of conducting the audit in addition to any other fees due or refunds required and Flexera may immediately terminate this Agreement and/or all outstanding Orders.

3. **Support**. Unless otherwise set forth in an Order, Flexera will provide Support in accordance with the terms set forth at [http://resources.flexera.com/web/pdf/archive/Silver\\_Support.pdf](http://resources.flexera.com/web/pdf/archive/Silver_Support.pdf) ("**Support**"). Subscription license fees include Support for the duration of the subscription term.

4. **Service Levels**. Flexera will provide SaaS in accordance with the service levels set forth at <http://www.flexera.com/SaaS-Service-Levels>.

### 5. SaaS Representations and Warranties.

- 5.1. Performance Warranty. Flexera represents and warrants to Licensee that during the subscription term, the SaaS will operate in substantial conformity with the Documentation. Flexera does not warrant that Licensee's use of the SaaS will be uninterrupted or error-free. All warranty claims must be submitted to Flexera in writing within the subscription term. This warranty does not apply to warranty claims arising out of or relating to: (a) use of the SaaS with hardware or software not required in the Documentation; or (b) defects in the SaaS due to unauthorized use of the SaaS or use of the SaaS in violation of this Agreement. Flexera's sole liability (and Licensee's exclusive remedy) for any breach of this or any performance warranty, express or implied,



will be, in Flexera's sole discretion, to either (a) use commercially reasonable efforts to provide Licensee with an error-correction or work-around that corrects the reported non-conformity or (b) to replace the non-conforming SaaS with conforming SaaS. If Flexera determines such remedies to be impracticable within a reasonable period of time, Flexera may terminate the applicable Order and refund any prepaid and unused fees for the non-conforming SaaS.

- 5.2. Anti-Virus Warranty. Flexera represents and warrants to Licensee that it has used industry standard anti-virus software and processes to test the SaaS for viruses, worms, Trojan horses or other harmful, malicious or destructive code and such tests have shown no such viruses, worms, Trojan horses or other harmful, malicious or destructive code.
- 5.3. No Disabling Devices Warranty. Flexera represents and warrants to Licensee that the SaaS does not include any functionality that (i) generates messages, data, or reports that are transmitted to Flexera without consent from Licensee or (ii) allows Flexera to remotely access the SaaS. Notwithstanding the foregoing, the SaaS may include features that will limit use of the SaaS beyond the License Level.
- 5.4. Non-Infringement Warranty. Flexera represents and warrants to Licensee that the SaaS does not infringe the intellectual property rights of a third party.
6. **SOC Audits.** Flexera will conduct annual SSAE 16 SOC audits during any subscription term for SaaS. Flexera shall, upon request, provide Licensee a SSAE 16 SOC Type I and/or II audit report covering the SaaS. Licensee agrees that the foregoing fulfills Flexera's audit obligations under applicable data protection regulations (including GDPR), except for any additional audits required by an applicable data protection authority or regulatory body with authority over Flexera and Licensee.
7. **Infringement Indemnity.** Flexera will defend and indemnify Licensee from and against any claim asserted against Licensee and its employees, officers, board members, agents, representatives, and officials by a third party based upon an allegation that the SaaS infringes a patent, copyright, or trademark. If the SaaS is, or in Flexera's opinion use of the SaaS is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Flexera may, in its sole discretion: (a) substitute for the SaaS substantially functionally similar programs; (b) procure for Licensee the right to continue using the SaaS; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Licensee any prepaid and unused fees as of the date of termination. The foregoing indemnification obligation of Flexera does not apply to the extent the infringement claim arises as a result of Licensee's unauthorized use of the SaaS or use of the SaaS in violation of this Agreement. THIS SECTION SETS FORTH FLEXERA'S AND ITS SUPPLIERS' SOLE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING A BREACH OF ANY REPRESENTATION OR WARRANTY RELATED THERETO. The foregoing indemnity obligations are conditioned upon Licensee 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 Licensee without first obtaining Licensee's prior written consent.

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### 1. Definitions.

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- 2.2. License Term. An Order will identify whether Licensee is purchasing a subscription or perpetual license. In the case of a subscription license, the subscription term will be identified in the Order.
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- 2.4. Copies. Licensee may not make copies of Content unless expressly authorized by Flexera in writing, or except as expressly authorized in the applicable Product Specific Terms.
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  - 2.6.5. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Content.
- 2.7. Product Specific Terms. In addition to the General Terms and Conditions and the terms of this Schedule, the terms relevant to the specific Content licensed by Licensee set forth at <https://www.flexera.com/legal/product-specific-terms.html> will apply.
- 2.8. Certification and Audit. Within thirty (30) days of Flexera’s request and no more than once per year, Licensee shall provide a written certification of its compliance with the applicable License Level (including usage by Affiliates and Contractors) for the immediately preceding twelve (12) month period. Such certification shall be provided by a person sufficiently aware of the information being certified to and at a level sufficient to bind Licensee. If Licensee fails to certify, or if Flexera has a good faith belief that Licensee’s certification is inaccurate, Flexera may audit Licensee for the purpose of verifying Licensee’s usage of the Content in accordance with the License Level. Audits will (i) only be performed during the term of this Agreement, (ii) require prior notice of at least thirty (30) days, (iii) be conducted during regular business hours, (iv) not unreasonably interfere with the audited party’s business activities, (v) be conducted no more than once per year, and (vi) only cover the immediately preceding two (2) years. If an audit reveals that Licensee intentionally misrepresented its certification, then Licensee shall pay Flexera’s reasonable costs of conducting the audit in addition to any other fees due or refunds required and Flexera may immediately terminate this Agreement and/or all outstanding Orders.

## Professional Services Schedule

### 1. Definitions.

**Deliverables** means anything delivered by Flexera as a part of Professional Services.

**Professional Services** means professional consulting and training services as further defined in an Order. Professional Services do not include Support, which is otherwise defined herein.

### 2. Professional Services and Deliverables.

- 2.1. Ordering. Professional Services will be provided pursuant to an Order, provided that for certain types of Professional Services engagements Flexera may require an executed Order signed by both parties.
- 2.2. Expenses. If Professional Services are performed onsite at Licensee facilities, Licensee will reimburse Flexera for actual and reasonable travel expenses. Flexera will adhere to the more stringent of either Flexera's or Licensee's travel policy (as provided by Licensee and agreed to by Flexera).
- 2.3. Delays and Cancellations. If performance of Professional Services is delayed due to Licensee's failure to provide required access, personnel availability or canceled with less than five (5) Business Days' notice once ordered by Licensee, Licensee shall pay Flexera at the rate set forth in the applicable Order for each day for each person assigned by Flexera to provide the applicable Professional Services if the Flexera resources cannot be redeployed by Flexera using reasonable efforts. In addition, Licensee agrees to reimburse any travel expenses which have been incurred and are non-cancelable, non-refundable, or non-creditable.
- 2.4. Licensee Policies and Systems. If Flexera obtains or is granted access to any: (a) Licensee facility or location and/or (b) Licensee's respective systems, networks, databases, computers, telecommunications or other information systems owned, controlled or operated by Licensee or on its behalf (collectively "**Licensee Systems**"), then such access, in all cases, is strictly for the purpose of Flexera's provision of the Professional Services during the term of this Agreement and Flexera personnel performing Professional Services at a Licensee location will comply with all applicable and reasonable policies of Licensee that are provided to Flexera in writing in advance, 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.
- 2.5. Background Checks. Flexera agrees not to assign any personnel to perform Professional Services at a Licensee 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:
  - 2.5.1. 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.
  - 2.5.2. A criminal background search of all court records of the personnel's addresses over the past seven (7) years.
  - 2.5.3. Verification of the personnel's post high school education or degrees or professional certifications.
- 2.6. Deliverables. Unless otherwise set forth in an Order, Flexera will retain exclusive ownership of all rights, title and interest in and to all Deliverables. Licensee acknowledges that its use of the Deliverables will not vest in Licensee any right, title or interest in or to the Deliverables other than the license rights granted below, and all intellectual property rights arising from such uses will be owned by Flexera or its respective licensors.
- 2.7. Licensee Property. Licensee retains exclusive ownership of all rights, title and interest in and to all material provided to Flexera by or on behalf of Licensee.
- 2.8. Licenses. Flexera grants to Licensee a perpetual, non-exclusive, royalty-free, worldwide, non-transferable and non-assignable license to use Deliverables solely for Licensee's Internal Purposes.

3. **Professional Services Warranty**. Flexera represents and warrants to Licensee that the Professional Services will be of a professional quality conforming to generally accepted industry standards and practices and will be performed in accordance with the applicable Order.

4. **General Indemnity**. Each party (the "**Indemnifying Party**") will defend and indemnify the other party and its employees, officers, board members, agents, representatives, and officials (the "**Indemnified Party**") from and against any expense, cost, damage, loss, fine, penalty, judgment or liability, including reasonable attorneys' fees, suffered or incurred by the Indemnified Party which arises from or is in connection with any claim alleging personal injury or tangible property damage to any person to the extent resulting from the negligent acts and omissions or willful misconduct of the Indemnifying Party. These indemnity obligations are conditioned upon the Indemnified Party providing to the Indemnifying Party (i) prompt written notice of any claim (but in any event notice in sufficient time for the Indemnifying Party 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. The Indemnifying Party will not agree to any settlement that admits fault or attributes liability or otherwise imposes any obligation of the Indemnified Party without first obtaining the Indemnified Party's prior written consent.