



## MASTER PURCHASE AGREEMENT

This Master Purchase Agreement (“**Agreement**”) is entered into by and between Flexera Software LLC (“**Flexera**”), a Delaware limited liability company having its principal office located at 300 Park Blvd., Suite 500, Itasca, IL 60143, and \_\_\_\_\_ (“**Licensee**”), a \_\_\_\_\_ having its principal office located at \_\_\_\_\_, and is effective as of the date last executed (the “**Effective Date**”).

This Agreement consists of (i) the General Terms and Conditions set forth below, (ii) the terms and conditions included in any Schedule attached hereto, (iii) the Product Specific Terms, as applicable, (iv) terms and conditions included in any attachments or exhibits referenced herein, and (v) terms and conditions included in any executed amendments, attachments, exhibits, and/or Orders referencing this Agreement, and sets forth the terms and conditions under which Products will be purchased by Licensee and delivered by Flexera. This Agreement will govern Licensee’s initial purchase on the Effective Date as well as any future purchases made by Licensee that expressly reference this Agreement.

Now, therefore, in consideration of the mutual promises herein made, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows.

### GENERAL TERMS AND CONDITIONS

#### 1. Definitions.

**Affiliate** means any entity in which Licensee has the legal and practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement.

**Order** means an order for Products, as more fully described below.

**Products** means Software, Software as a Service, Content, Support, and Professional Services delivered to Licensee hereunder.

**Subscription Term** means the fixed period of time for which Licensee is authorized to use a subscription-based Product set forth in an applicable Order.

**2. Products and Ordering.** Licensee may purchase Products via an Order. An Order may either be (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.

#### 3. Invoicing and Payment.

3.1. **Invoicing.** Unless otherwise agreed in an Order, Flexera will invoice Licensee as follows:

- 3.1.1. for perpetual licenses to Products, fully in advance;
- 3.1.2. for subscription-based Products, annually in advance; and/or
- 3.1.3. for all other Professional Services and associated expenses, monthly in arrears.

3.2. **Payment.** Licensee agrees to pay Flexera the undisputed 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.

3.3. **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.

#### 4. Term of Agreement.

4.1. **Term.** This Agreement is effective as of the Effective Date and will continue until terminated in accordance herewith.

4.2. **Termination for Cause.**

- 4.2.1. 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.

4.2.2. 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.

4.3. **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.

4.4. **Effect of Expiration or Termination.**

4.4.1. 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.

4.4.2. 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.

4.5. **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.

## 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.** In addition to the warranties set forth above, any additional representations and warranties in the Schedules attached hereto will apply.

5.3. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND IN AN APPLICABLE SCHEDULE, 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.

## 6. Confidential Information.

6.1. **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.

6.2. **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.

6.3. **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).

6.4. **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.

7. **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.
8. **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.
9. **Liability.**
  - 9.1. **DAMAGES WAIVER.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING 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. 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.
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.** This Agreement is 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.
  - 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; (b) two (2) Business Days following deposit for delivery to the party with an internationally recognized overnight courier; or (c) via confirmed facsimile in which case it will be deemed received on the date of the transmission as evidenced by a valid receipt of confirmation. **“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 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 shrink-wrap, click-wrap, click-through, click-accept, online terms or website terms will modify any of the terms and conditions of 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. No provision of any purchase order or other business form employed by Licensee will 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.
  - 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. 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 hereof or affect the construction or interpretation of any provision hereof.

- 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, 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 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 the Agreement.



- 10.16. Order of Precedence. In the event of a conflict between the terms of this Agreement, a Schedule, the Product Specific Terms, and an Order, the order of precedence is as follows: (i) Product Specific Terms, (ii) Schedule, (iii) Agreement, and (iv) 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:
- Software Schedule
  - Software as a Service (SaaS) Schedule
  - Content Schedule
  - Professional Services Schedule

**By signing below, the parties agree to be bound by the terms and conditions set forth herein.**

**LICENSEE**

**FLEXERA**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Software Schedule

This Schedule applies to all Orders of licenses of Software purchased by Licensee and delivered by Flexera.

### 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 delivered by Flexera to its customers with regard to the Software.

**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 provided by Flexera to Licensee. 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 and conditions relevant to the specific Software licensed by Licensee set forth in Exhibit 1 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; 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.
5. **Third Party Software**. The Software licensed hereunder includes Third Party Software (including open source software). A list of all Third Party Software included with the Software will be provided to Licensee upon written request.
6. **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 Software infringes a patent, copyright, or trademark. If the Software is, or in Flexera's opinion use of the Software 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 Software substantially functionally similar programs; (b) procure for Licensee the right to continue using the Software; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Licensee (i) for perpetual licenses, the license fee(s) paid by Licensee as of the date of termination, reduced to reflect a five year straight-line depreciation from the applicable license purchase date, and (ii) for subscription licenses, 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: (1) modification of the Software (except for setting configuration options provided in the Software) by Licensee, a third party, or Flexera at Licensee's request; (2) the combination of the Software with other non-Flexera products or processes not specifically required in the Documentation; (3) Licensee's unauthorized use of the Software or use of the Software in violation of this Agreement; (4) Licensee'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. 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.

## Schedule 2 Software as a Service Schedule

This Schedule applies to all Orders of licenses of Software purchased by Licensee and delivered by Flexera.

### 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 delivered by Flexera to its customers with regard to the SaaS.

**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.

**Updates** means patches, additions, modifications, and new versions of a SaaS Product incorporated by Flexera during the Subscription Term.

### 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):
  - 2.4.1. distribute (except as expressly permitted herein), sell, sublicense, rent, lease or use the SaaS or Documentation (or any part thereof) for time sharing, service bureau, hosting, service provider or like purposes;
  - 2.4.2. remove any product identification, proprietary, copyright or other notices contained in the Documentation;
  - 2.4.3. modify any part of the Documentation or create a derivative work of any part of the Documentation, except for Licensee's own internal use or otherwise expressly authorized in writing by Flexera ;
  - 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 and conditions relevant to the specific SaaS licensed by Licensee set forth in Exhibit 1 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. SaaS Representations and Warranties.

- 4.1. **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 Warranty Period. 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.

- 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 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.
- 4.3. **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.
- 4.4. **Non-Infringement Warranty.** Flexera represents and warrants to Licensee that the SaaS does not infringe the intellectual property rights of a third party.
5. **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.
6. **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.

## Schedule 3 Content

This Schedule applies to all Orders of licenses of Content purchased by Licensee and delivered by Flexera.

### 1. Definitions.

**Catalog** means the proprietary compilation of content or any subset thereof delivered by Flexera hereunder, as “compilation” is defined in 17 U.S. Code Section 101 (the “Copyright Act of 1976”). Flexera owns a copyright in the selection, coordination, arrangement and enhancement of the Catalog, including the taxonomy employed by Flexera to organize the Catalog.

**Content** means the information and content, or any subset thereof, contained in the Catalog (as defined in the Product Specific Terms).

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

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

**License Level** means the allowed level of usage of the Content licensed to Licensee in an 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 access and use the Content within the License Level for Internal Purposes only.
- 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. The Content will be delivered by electronic means.
- 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.
- 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 Content 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 Content or attempt to reconstruct or discover any underlying ideas, algorithms, libraries, file formats, data, databases or programming interfaces of or provided with the Content by any means whatsoever (except and only to the extent that applicable law 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 Content (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 Content;
  - 2.6.4. modify any part of the Content or Documentation, create a derivative work of any part of the Content or Documentation, or incorporate the Content (or any part thereof) into or with other Content, except to the extent expressly authorized in writing by Flexera or, where applicable to any Third Party Content and then only in relation to such component(s) by any applicable Third Party Content license agreement included with the Content;
  - 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 and conditions relevant to the specific Content licensed by Licensee set forth in Exhibit 1 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.

## Schedule 4 Professional Services

This Schedule applies to all Orders for Professional Services purchased by Licensee and delivered by Flexera.

### 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.



**Exhibit 1**  
**Product Specific Terms**

The terms and conditions to follow apply to the specific Products licensed by Licensee under the terms of this Agreement.

## AdminStudio

1. **“Administrator”** means the individuals within Licensee’s organization who access AdminStudio for the purpose of packaging, re-packaging, evaluating compatibility or suitability of, or creating any workflows for the purpose of deploying a software application or any administrative function related to the software. Each Administrator license may be installed on one computer and used solely by an individual Administrator within Licensee’s organization. If AdminStudio is licensed on a per Administrator model, the license is node-locked and is limited to use by a single individual on a single computer or virtual image; Licensee may not install AdminStudio in such instance on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited. For the purpose of clarity, a single Administrator license may not be used by more than one individual. For the purpose of certification as set forth in this Agreement, the number of Administrators includes all Administrators that accessed AdminStudio at any point during the previous year.
  2. **“Employee”** means any individual in Licensee’s organization that may request, have deployed to, or otherwise receive any application, package, or other software prepared using AdminStudio. If AdminStudio is licensed on a per Employee model, AdminStudio may be installed and used by Licensee on computers only at Licensee’s site(s) solely for the benefit of some or all of the Employees within Licensee’s organization, and only if that total number of Employees within Licensee’s organization does not exceed the License Level. For the purpose of certification as set forth in the Agreement, the number of Employees includes the highest number of Employees that were in place at any point during the previous year.
  3. **Transfers.** For licenses based on Administrators, transfers that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than annually.
  4. **Redistributables.** AdminStudio component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as “redistributables” and redistribute such files to Licensee’s end users of Licensee’s products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee’s end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee’s products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademarks and copyright notices that accompany AdminStudio, but Licensee may not use Flexera’s name, logos or trademarks to market Licensee’s products.
  5. **Internal Purposes.** The license granted hereunder is for the purpose of distributing packages to Licensee’s own systems and employees. Distribution of packages to any third-party customer of Licensee shall require a separate license.
  6. **Software.** For the purpose of the Agreement, AdminStudio is considered “Software”.
-

## ***App Broker for ServiceNow***

1. **“User”** means any individual that may request, have deployed to, or otherwise receive any application, package, or other software, or other IT or corporate resource or service, prepared using App Broker for ServiceNow. For the purpose of certification as set forth in the Agreement, the number of Users includes the highest number of Users that were in place at any point during the previous year.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing applications located within Licensee’s (including Affiliates) own systems. Management of applications of any third party shall require a separate license.
  3. **Software.** For the purpose of the Agreement, App Broker for ServiceNow is considered “Software”.
-

## ***App Portal***

1. **“User”** means any individual that may request, have deployed to, or otherwise receive any application, package, or other software, or other IT or corporate resource or service, prepared using App Portal. For the purpose of certification as set forth in the Agreement, the number of Users includes the highest number of Users that were in place at any point during the previous year.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing applications located within Licensee’s (including Affiliates) own systems. Management of applications of any third party shall require a separate license.
  3. **Software.** For the purpose of the Agreement, App Portal is considered “Software”.
-

## ***Cloud Asset Insights***

1. **"AWS Instance"** means an AWS EC2 instance that is monitored by the Software.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing Licensee's (including Affiliates) own systems. Management of systems of any third party shall require a separate license.
  3. **Software.** For the purpose of the Agreement, Cloud Asset Insights is considered "Software".
-

## ***Content Packs***

1. **“Device”** means any device that is not a Server such as desktops, routers, switches, etc. for which any function is performed with the Content. For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **“End Point”** means any Server and/or Device, or the combination thereof. For the purpose of certification as set forth in the Agreement, the number of End Points includes the highest number of End Points that were in place at any point during the previous year.
  3. **“End Use”** means the final work product resulting from Licensee’s combination of the Content Pack with Licensee’s asset management data as necessary to enhance such Licensee’s data.
  4. **“Server”** means any computer server (physical or virtual) for which any function is performed with the Content. For the purpose of certification as set forth in the Agreement, the number of Servers includes the highest number of Servers that were in place at any point during the previous year.
  5. **License Restriction.** Licensee may only use Content Packs to produce the End Use. In addition, an Order may identify the license as a “Limited Use License”, which will further restrict the license to the specific use case identified in the Order.
  6. **Internal Purposes.** The license granted hereunder is for the purpose of providing data related to Devices located within Licensee’s (including Affiliates) own systems. Providing data related to Devices of any third party shall require a separate license.
  7. **Content.** For the purpose of the Agreement, Content Packs are considered “Content”.
-

## ***FlexNet Manager for Clients and Data Centers***

1. **“Device”** means any physical or virtual device for which any function is performed by the FlexNet Manager Product (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status or history of any software or hardware components or software licenses on or used by the device). A **“Server Device”** is any Device running a server-based operating system. A **“Client Device”** is any other Device.
  2. **IBM Cognos.** Licensee has the rights to use certain IBM Cognos programs embedded within the FlexNet Manager Product solely in conjunction with the Product. If Licensee purchases the Software version of the FlexNet Manager Product, in addition to Licensee’s obligations hereunder, Licensee shall also comply with the terms and conditions contained at <http://support.installshield.com/kb/view.asp?articleid=Q203636>.
  3. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  4. **Software or SaaS.** For the purpose of the Agreement, FlexNet Manager for Clients and Data Centers may be considered either “SaaS” or “Software” and the Order will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.
-

## ***FlexNet Manager for SAP***

1. **“User”** means the individuals within Licensee’s organization who access any software application or database on an SAP system or SAP may deem as a user. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed any such software application or database at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing Users located within Licensee’s (including Affiliates) own systems. Management of Users of any third party shall require a separate license.
  3. **Software or SaaS.** For the purpose of the Agreement, FlexNet Manager for SAP may be considered either “SaaS” or “Software” and the Order will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.
-

## ***FlexNet Manager for Engineering Applications***

1. **“User”** means the individuals within Licensee’s organization who access a license server for which FlexNet Manager for Engineering Applications is providing reporting services. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed such license server at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
  2. **FlexNet Manager for Engineering Applications.** Each license for FlexNet Manager for Engineering Applications permits the management and administration of license servers and processing of reports associated with the licensed number of Users within Licensee’s organization who access the software application identified by a distinct vendor daemon name(s) (“**Vendor Daemon**”). FlexNet Manager for Engineering Applications may be installed on a single named server identified by a distinct server identification (“**HostID**”). A set of redundant servers is considered a “single named server” for purposes of this license.
  3. **HostID Changes.** The designated HostID may be changed only once during the Support period while Licensee is under a Support contract without additional cost to Licensee. Additional changes may require an additional fee.
  4. **Vendor Daemon Substitutions.** The designated Vendor Daemon(s) may not be substituted unless the underlying vendor changes the Vendor Daemon. In such instances, there is no extra charge for exchanging the Vendor Daemon.
  5. **Internal Purposes.** The license granted hereunder is for the purpose of managing applications located within Licensee’s (including Affiliates) own systems. Management of applications of any third party shall require a separate license.
  6. **IBM Cognos.** Licensee has the rights to use certain IBM Cognos programs embedded within FlexNet Manager for Engineering Applications solely in conjunction with FlexNet Manager for Engineering Applications. In addition to Licensee’s obligations hereunder, Licensee shall also comply with the terms and conditions contained at <http://support.installshield.com/kb/view.asp?articleid=Q203636>.
  7. **Software.** For the purpose of the Agreement, FlexNet Manager for Engineering Applications is considered “Software”.
-

## ***InstallAnywhere***

1. **“Build System”** means a machine or group of machines dedicated to compiling code via automated or scheduled tasks.
2. **“Upgrade”** means a new version of InstallAnywhere made available by Flexera, and identified in an invoice, Order, or SKU as an “Upgrade”.
3. **“User”** means the individuals who access InstallAnywhere for the purposes of designing and developing software installations.
4. **Internal Purposes.** The license granted hereunder is for the purpose of creating installation programs of Licensee products both internally within Licensee and externally to Licensee’s customers.
5. **License Models.** Licensee may be licensed pursuant to one of the following license models, which will be identified on the applicable Order Confirmation.
  - a. **Node-Locked Licenses.** If Licensee has licensed InstallAnywhere on a node-locked basis, Licensee may install and use one instance of InstallAnywhere on a single computer either physically installed or on a virtual image on that computer only at Licensee’s site(s) for Licensee’s Internal Purposes only in accordance with the License Level. A node-locked license is limited to use by a single User on a single computer or virtual image; Licensee may not install InstallAnywhere on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited.
  - b. **Concurrent Licenses.** If Licensee has licensed on a concurrent basis, Licensee may install InstallAnywhere on any machine at Licensee’s site(s) for Licensee’s Internal Purposes only in accordance with the License Level. All machines using InstallAnywhere must have the ability to communicate with a license server to be authorized to use InstallAnywhere. For the purpose of certification as set forth in the Agreement, the number of concurrent Users is the highest number of Users that accessed InstallAnywhere at any single point during the previous year.
6. **Standalone Build Licenses.** In addition to the use rights for InstallAnywhere, Standalone Build Licenses may also be run on a separate Build System but only if run by automated processes or by a User. If Licensee has licensed the InstallAnywhere Standalone Build Node-Lock, Licensee may install and use one copy of InstallAnywhere Standalone Build Node-Lock on a single computer residing on Licensee’s premises only for Licensee’s Internal Purposes.
7. **Upgrades.** Upgrades, if provided to Licensee, may be licensed to Licensee by Flexera with additional or different terms and conditions. Upgrades may be used only by the User of the original version of InstallAnywhere that is being upgraded. After installation of an Upgrade, such User may continue to use the prior version(s) of InstallAnywhere in accordance with the terms and conditions applicable to such version, provided that (i) the prior version(s) may only be used by the same User of the Upgrade; (ii) Licensee acknowledges that any obligation Flexera may have to support the prior version(s) may be ended upon the availability of the Upgrade.
8. **Dual-Media Software.** Licensee may receive InstallAnywhere in more than one medium (electronic and on a DVD, for example). Receipt of InstallAnywhere in more than a single manner (electronic or on a DVD, for example) does not expand the license rights granted to Licensee hereunder. Licensee’s use of InstallAnywhere is limited to the number of licenses (instances) that Licensee has acquired overall, regardless of number or type of media on which it has been provided.
9. **Transfers.** Transfers of licenses that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than annually.
10. **Redistributable Files.** InstallAnywhere component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as “redistributables” and redistribute such files to Licensee’s end users of Licensee’s products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee’s end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee’s products and not to distribute them further. Licensee will reproduce with the redistributables all applicable



trademarks and copyright notices that accompany InstallAnywhere, but Licensee may not use Flexera's name, logos or trademarks to market Licensee's products.

11. **Software.** For the purpose of the Agreement, InstallAnywhere is considered "Software".
-

## ***InstallShield***

1. **“Build System”** means a machine or group of machines dedicated to compiling code via automated or scheduled tasks.
2. **“Upgrade”** means a new version of InstallShield made available by Flexera, and identified in an invoice, Order, or SKU as an “Upgrade”.
3. **“User”** means the individuals who access InstallShield are for the purposes of designing and developing software installations.
4. **Internal Purposes.** The license granted hereunder is for the purpose of creating installation programs of Licensee products both internally within Licensee and externally to Licensee’s customers.
5. **License Models.** Licensee may be licensed pursuant to one of the following license models, which will be identified on the applicable Order Confirmation.
  - a. **Node-Locked Licenses.** If Licensee has licensed InstallShield on a node-locked basis, Licensee may install and use one instance of InstallShield on a single computer either physically installed or on a virtual image on that computer only at Licensee’s site(s) for Licensee’s Internal Purposes only in accordance with the License Level. A node-locked license is limited to use by a single User on a single computer or virtual image; Licensee may not install InstallShield on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited.
  - b. **Concurrent Licenses.** If Licensee has licensed on a concurrent basis, Licensee may install InstallShield on any machine at Licensee’s site(s) for Licensee’s Internal Purposes only in accordance with the License Level. All machines using InstallShield must have the ability to communicate with a license server to be authorized to use InstallShield. For the purpose of certification as set forth in the Agreement, the number of concurrent Users is the highest number of Users that accessed InstallShield at any single point during the previous year.
6. **Standalone Build Licenses.** In addition to the use rights for InstallShield, Standalone Build Licenses may also be run on a separate Build System but only if run by automated processes or by a User.
7. **Upgrades.** Upgrades, if provided to Licensee, may be licensed to Licensee by Flexera with additional or different terms and conditions. Upgrades may be used only by the User of the original version of InstallShield that is being upgraded. After installation of an Upgrade, such User may continue to use the prior version(s) of InstallShield in accordance with the terms and conditions applicable to such version, provided that (i) the prior version(s) may only be used by the same User of the Upgrade; (ii) Licensee acknowledges that any obligation Flexera may have to support the prior version(s) may be ended upon the availability of the Upgrade.
8. **Dual-Media Software.** Licensee may receive InstallShield in more than one medium (electronic and on a DVD, for example). Receipt of InstallShield in more than a single manner (electronic or on a DVD, for example) does not expand the license rights granted to Licensee hereunder. Licensee’s use of InstallShield is limited to the number of licenses (instances) that Licensee has acquired overall, regardless of number or type of media on which it has been provided.
9. **Transfers.** Transfers of licenses that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than annually.
10. **Redistributable Files.** InstallShield component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as “redistributables” and redistribute such files to Licensee’s end users of Licensee’s products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee’s end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee’s products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademarks and copyright notices that accompany InstallShield, but Licensee may not use Flexera’s name, logos or trademarks to market Licensee’s products.
11. **Software.** For the purpose of the Agreement, InstallShield is considered “Software”

## ***Normalize***

1. **“Device”** means any device that is not a Server such as desktops, routers, switches, etc. for which any function is performed with Normalize. For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **“End Point”** means any Server and/or Device, or the combination thereof. For the purpose of certification as set forth in the Agreement, the number of End Points includes the highest number of End Points that were in place at any point during the previous year.
  3. **“Server”** means any computer server (physical or virtual) for which any function is performed with Normalize. For the purpose of certification as set forth in the Agreement, the number of Servers includes the highest number of Servers that were in place at any point during the previous year.
  4. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  5. **Software.** For the purpose of the Agreement, Normalize is considered “Software”.
-

## *SaaS Manager*

1. **“Employee”** means any individual in Licensee’s organization that may access a cloud application on behalf of Licensee or as a part of such individual’s employment or other contractual relationship with Licensee. For the purpose of certification as set forth in the Agreement, the number of Employees includes the highest number of Employees that were in place at any point during the previous year.
  2. **“Third-Party Supported Platforms”** means a third-party software-as-a-service vendor that interoperates with SaaS Manager.
  3. **Internal Purposes.** The license granted hereunder is for the purpose of managing applications solely for the benefit of Licensee (including Affiliates). Management of applications for the benefit of any third party shall require a separate license.
  4. **Data Use.** Licensee may not use SaaS Manager to capture, collect, process or transfer any information, in violation of any privacy, confidentiality or other restrictions, laws or regulations of any United States or foreign agency or authority applicable to such information. In addition, Licensee shall ensure that the use of any such information complies with all privacy, confidentiality or other restrictions, laws or regulations of any United States or foreign agency or authority applicable to such information.
  5. **Interoperability.** Licensee acknowledges that SaaS Manager’s interoperability with the Third-Party Supported Platforms is highly dependent on the availability of such Third-Party Supported Platforms. If at any time any Third-Party Supported Platforms cease to make their features or programs available to Flexera on reasonable terms, Flexera may cease to provide access to such features or programs to Licensee without entitling Licensee to a refund, credit or other compensation. In no way is Flexera required to customize SaaS Manager for Licensee. Licensee will comply in all material respects with all applicable terms of the Third-Party Supported Platforms that Licensee accesses or subscribes to.
  6. **SaaS.** For the purpose of the Agreement, SaaS Manager is considered “SaaS”.
-

## ***Service Life Data Pack***

1. **“Device”** means any physical or virtual device for which any function is performed by Service Life Data Pack (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status or history of any software or hardware components or software licenses on or used by the device). A **“Server Device”** is any Device running a server-based operating system. A **“Client Device”** is any other Device.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  3. **Software or SaaS.** For the purpose of the Agreement, Service Life Data Pack may be considered either “SaaS” or “Software” and the Order will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.
-

## ***Software Vulnerability Manager***

1. **“Device”** means any physical or virtual device for which any function is performed by Software Vulnerability Manager (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status, history, or security vulnerabilities of any software or hardware components or software licenses on or used by the device). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **Copies.** Notwithstanding anything to the contrary in the Agreement, Licensee may not make copies of Software Vulnerability Manager without prior written approval from Flexera.
  3. **Internal Purposes.** The license granted hereunder is for the purpose of reporting of vulnerabilities related to applications located within Licensee’s (including Affiliates) own systems. Reporting on applications of any third party is prohibited.
  4. **Disclaimer.** While Software Vulnerability Manager is intended to detect and disclose vulnerabilities in Licensee’s systems, Flexera makes no representation or warranty that Software Vulnerability Manager will detect all vulnerabilities.
  5. **Software or SaaS.** For the purpose of the Agreement, Software Vulnerability Manager may be considered either “SaaS” or “Software” and the Order will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.
-

## ***Software Vulnerability Research***

1. **“Device”** means any physical or virtual device for which any function is performed by Software Vulnerability Research (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status, history, or security vulnerabilities of any software or hardware components or software licenses on or used by the device). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **Copies.** Notwithstanding anything to the contrary in the Agreement, Licensee may not make copies of Software Vulnerability Research without prior written approval from Flexera.
  3. **Internal Purposes.** The license granted hereunder is for the purpose of reporting of vulnerabilities related to applications located within Licensee’s (including Affiliates) own systems. Reporting on applications of any third party is prohibited.
  4. **Disclaimer.** While Software Vulnerability Research is intended to detect and disclose vulnerabilities in Licensee’s systems, Flexera makes no representation or warranty that Software Vulnerability Research will detect all vulnerabilities.
  5. **SaaS.** For the purpose of the Agreement, Software Vulnerability Research is considered “SaaS”.
-

## ***Technopedia Catalog***

1. **“Device”** means any device that is not a Server such as desktops, routers, switches, etc. for which any function is performed with Technopedia Catalog. For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **“End Point”** means any Server and/or Device, or the combination thereof. For the purpose of certification as set forth in the Agreement, the number of End Points includes the highest number of End Points that were in place at any point during the previous year.
  3. **“End Use”** means the final work product resulting from Licensee’s combination of Technopedia Catalog with Licensee’s asset management data as necessary to enhance such Licensee’s data.
  4. **“Server”** means any computer server (physical or virtual) for which any function is performed with Technopedia Catalog. For the purpose of certification as set forth in the Agreement, the number of Servers includes the highest number of Servers that were in place at any point during the previous year.
  5. **License Restriction.** Licensee may only use Technopedia Catalog to produce the End Use. In addition, an Order may identify the license as a “Limited Use License”, which will further restrict the license to the specific use case identified in the Order.
  6. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  7. **Content.** For the purpose of the Agreement, Technopedia Catalog is considered “Content”.
-

## ***Technopedia Private Catalog***

1. **“Device”** means any device that is not a Server such as desktops, routers, switches, etc. for which any function is performed with Technopedia Private Catalog. For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
  2. **“End Point”** means any Server and/or Device, or the combination thereof. For the purpose of certification as set forth in the Agreement, the number of End Points includes the highest number of End Points that were in place at any point during the previous year.
  3. **“End Use”** means the final work product resulting from Licensee’s combination of Technopedia Private Catalog with Licensee’s asset management data as necessary to enhance such Licensee’s data.
  4. **“Server”** means any computer server (physical or virtual) for which any function is performed with Technopedia Private Catalog. For the purpose of certification as set forth in the Agreement, the number of Servers includes the highest number of Servers that were in place at any point during the previous year.
  5. **License Restriction.** Licensee may only use Technopedia Private Catalog to produce the End Use. In addition, an Order may identify the license as a “Limited Use License”, which will further restrict the license to the specific use case identified in the Order.
  6. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  7. **Content.** For the purpose of the Agreement, Technopedia Private Catalog is considered “Content”.
-

## ***Workflow Manager***

1. **“Device”** means any physical or virtual device for which any function is performed by the Workflow Manager (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status or history of any software or hardware components or software licenses on or used by the device). A **“Server Device”** is any Device running a server-based operating system. A **“Client Device”** is any other Device.
  2. **Internal Purposes.** The license granted hereunder is for the purpose of managing Devices located within Licensee’s (including Affiliates) own systems. Management of Devices of any third party shall require a separate license.
  3. **Software or SaaS.** For the purpose of the Agreement, Workflow Manager may be considered either “SaaS” or “Software” and the Order will specify which will apply either through the words SaaS or Cloud for SaaS and On-Premise for Software.
-