

FLEXERA SUBSCRIPTION AGREEMENT



TermScout Certified Contract



Flexera Subscription Agreement

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

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

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

- 1.1. **Affiliate:** any entity under the control of a party to this Agreement and for which such party has the legal or practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement.
- 1.2. **Anonymized Data:** information that has been compiled and modified by Flexera in such a way that a data subject is not or no longer identifiable and cannot be re-identified when combined with other data.
- 1.3. **Authorized User:** a director, officer, employee, partner, agent, adviser, independent contractor and subcontractor of Customer or its Affiliates, for whom Customer administers access to use the Products.
- 1.4. **Background IP:** any intellectual property rights owned or created by or on behalf of a party and whether in existence prior to the Effective Date and/or created thereafter independently of this Agreement.
- 1.5. **Business Day:** any day which is not a Saturday, Sunday, legal holiday, or other day on which commercial banks are required or authorized by law to be closed in the applicable Customer’s location.
- 1.6. **Confidential Information:** any business and/or technical information that is received by the Recipient from the Discloser that a) is in written, recorded, graphical or other tangible form and is marked "Confidential" or "Trade Secret" or similar designation; b) is in oral form and identified by the Discloser as "Confidential" or "Trade Secret" or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality.
- 1.7. **Customer:** the above-named company or Affiliate that may place an Order subject to the terms of this Agreement.
- 1.8. **Customer Data:** any data loaded by Customer into Flexera’s SaaS Products.
- 1.9. **Customer Site:** any location owned or leased by Customer or the portion of any shared space attributable to Customer, or the location from which an Authorized User is working while using Customer provided equipment.
- 1.10. **Documentation:** the technical specification documentation for the Products made generally available by Flexera to its customers.
- 1.11. **Force Majeure Event:** any strike, blockade, war, act of terrorism, riot, natural disaster, sanction, or failure or diminishment of power or of telecommunications or data networks or services.
- 1.12. **License Level:** the Product usage limits specified in the Order.
- 1.13. **Order:** either (i) an order document executed by both Customer and Flexera referencing this Agreement or (ii) a purchase order delivered by Customer to Flexera referencing a valid Flexera quote, and in each case that includes the specific Products or Services, Subscription Term, quantities, and prices.
- 1.14. **Output:** any data, results, reports, analyses, or other materials generated through the use of the SaaS in conjunction with the Customer Data.
- 1.15. **Products:** both SaaS and Software.
- 1.16. **Region-Specific Terms:** the terms and conditions set forth in the Global Appendix that apply to Customers and/or Authorized Users located in the applicable region and supplement this Agreement.

- 1.17. **SaaS:** a software application (including any associated database content provided with or embedded within the software application as well as any associated Software to be deployed on physical and/or virtual resources) licensed to Customer and which is owned, delivered, and managed by Flexera as part of a multi-tenant hosted environment.
- 1.18. **Service Levels:** the service levels that will apply to SaaS set out at <https://www.flexera.com/legal/saas-service-levels.html>.
- 1.19. **Services:** any professional, consulting and training services other than Support.
- 1.20. **Software:** the object code form of software products (including any associated database content provided with or embedded within the software products) licensed to Customer for installation at Customer Sites.
- 1.21. **Subcontractor:** any third party engaged by Flexera to deliver Services.
- 1.22. **Subscription Term:** duration of Customer's license to use the Products as agreed in an Order.
- 1.23. **Support:** the support services that will apply to Products set out at www.flexera.com/legal/support-terms.
- 1.24. **Update:** patches, additions, modifications and new versions of a Product incorporating such patches, additions, and modifications that are provided to Customer by Flexera and that are not included in the initial delivery of the Product. Updates do not include additions or modifications for which Flexera charges its customers extra or separately.
- 1.25. **Work Product:** any custom deliverable created exclusively for Customer in the performance of the Services.

2. License Grant.

- 2.1. **Grant of License.** For the Subscription Term and License Level set forth in an Order, Flexera grants to Customer a non-transferable (except as provided herein), non-sublicensable, non-exclusive license to use the Products in accordance with the Documentation and the applicable Product Specific Terms set forth at <https://www.flexera.com/legal/product-specific-terms.html>.
- 2.2. **Delivery.** Customer will receive access to SaaS via a website hosted by or on behalf of Flexera and Software via electronic delivery.
- 2.3. **Installation and Copies.** Customer may install Software at Customer Sites only. Customer may make a reasonable number of copies of Software for testing, back-up and archival purposes.
- 2.4. **Authorized Users.** Customer's Authorized Users may use the licenses granted to Customer, provided that (a) such use is only for Customer's or an Affiliate's benefit, and (b) Customer agrees to remain responsible for each such Authorized User's compliance with the terms and conditions of this Agreement. Use of the Products by all Authorized Users in the aggregate must be within the License Level.
- 2.5. **License Restrictions.** Except as expressly permitted in this Agreement or an Order, Customer will not (and will require any third party not to):
 - 2.5.1. modify, distribute, sell, sublicense, rent, or lease the Products (or any part thereof) or use the same for any reason other than internal business purposes;
 - 2.5.2. remove any product identification, proprietary, copyright, or other notices contained in the Products or Documentation;
 - 2.5.3. modify any part of the Products or Documentation or create a derivative work of any part of the Products or Documentation, except for Customer's own internal business purposes or otherwise expressly authorized in writing by Flexera;
 - 2.5.4. conduct vulnerability scanning or penetration testing of Flexera systems or the SaaS without Flexera's written consent;
 - 2.5.5. reverse engineer, decompile, or otherwise interrogate any libraries, data or databases incorporated or provided with the Products;
 - 2.5.6. access or attempt to access any libraries, data or databases incorporated or provided with the Products via any mechanism other than the Products;
 - 2.5.7. publicly disseminate performance information or analysis from any source relating to the Products; or
 - 2.5.8. use any machine learning, predictive analytics, nature language processing or other forms of analysis on the SaaS or Flexera's underlying libraries, data or databases incorporated or provided with the Products or Background IP.
- 2.6. **Intellectual Property Rights.**
 - 2.6.1. **Products and Documentation.** Flexera will retain exclusive ownership of all rights, title, and interest in and to the Products and Documentation, including but not limited to data or other information that is generated or processed (including by way of machine learning, predictive analytics, natural language processing or other forms of analysis) by the Products other than Customer Data or Output.
 - 2.6.2. **Customer Data and Output.** Customer will retain exclusive ownership of all rights, title, and interest in and to Customer Data and the Output, provided that any Background IP of Flexera will remain the property of Flexera. To the extent any Output incorporates the Flexera's Background IP, Flexera grants the Customer a non-exclusive, royalty-free, perpetual license to use such Background IP solely as incorporated in the Output, for the Customer's internal business purposes ("**Licensed Background IP**"). For the avoidance of doubt, this license does not grant any right to use the SaaS beyond the duration of the Customer's Subscription Term.
 - 2.6.3. **Anonymized Data.** Flexera shall have the right to access, compile, and aggregate Customer Data and Output into Anonymized Data. Flexera shall own all Anonymized Data and may use or distribute such Anonymized Data for any lawful purpose, including without limitation, analytics, benchmarking, development and offering of new products or services, and research purposes.
- 2.7. **Overages and Annual True-up.**
 - 2.7.1. **Overages.** Customer will at all times maintain a License Level equal to or greater than its actual usage as measured under the applicable Product Specific Terms. If during the Subscription Term Customer's usage exceeds its License Level (an

"Overage"), Customer will, via a new Order, correct the Overage within thirty (30) days by purchasing additional licenses in the quantity or tier sufficient to cover its usage through the remainder of the Subscription Term. If Customer does not correct the Overage within that period, Flexera may suspend Customer's use of the affected Product on fifteen (15) days' prior notice and will use commercially reasonable efforts to restore normal service promptly upon remediation of the Overage. Customer will (i) permit Flexera to access and view Customer's instance(s) and (ii) provide all information reasonably required to verify compliance with the License Level, which may take the form of a certification.

2.7.2. Annual True-Up Review. On each anniversary of the Subscription Term the parties will meet to review Customer's actual license measurement, determined in accordance with the applicable Product Specific Terms, against the then-current License Level. If the actual measurement is higher, Customer will, via a new Order, increase its License Level within thirty (30) days by purchasing additional licenses in the quantity or tier sufficient to cover its usage through the remainder of the Subscription Term. Additional licenses will be priced at the committed rates in the applicable Order or, if none, Flexera's rates then in effect. The License Level may not be reduced below the License Level in effect for the preceding year.

3. **Support and Service Levels.** Flexera will provide Support and will provide SaaS in accordance with the Service Levels during the Subscription Term. Flexera will not, during the Subscription Term, make any changes to Products, Support, or Service Levels that result in a material diminution to the terms agreed herein.

4. **Services.**

- 4.1. Expenses. If Services are performed at Customer Sites, Customer will reimburse Flexera for actual and reasonable travel expenses in accordance with Customer's travel policy (as provided by Customer and agreed to by Flexera).
- 4.2. Customer Policies. Flexera and its personnel will comply with all reasonable policies of Customer applicable to the provision of Services, provided that such policies do not materially add to or conflict with the terms of this Agreement or the applicable Order, or purport to impose any personal liability on such personnel.
- 4.3. Delays and Cancellations. If performance of Services is delayed due to Customer's failure to provide necessary access or personnel availability, or otherwise canceled by Customer with less than five (5) Business Days' notice, Customer will pay Flexera at the rate set forth in the applicable Order per day, per individual resource designated in the Order who cannot be redeployed by Flexera using reasonable efforts (not to exceed [five (5)] Business Days of the applicable Fees). In addition, Customer agrees to reimburse any travel expenses which have been incurred and are non-cancelable, non-refundable, or non-creditable.
- 4.4. Work Product. Customer will own all Work Product, provided that any Background IP of Flexera included in the Work Product will (i) remain the property of Flexera; and (ii) be subject to the Licensed Background IP rights described above).
- 4.5. Integrations. Any integrations provided by Flexera as a part of Services that are not included in the Product as delivered initially by Flexera or as an Update are provided without Support or Service Levels, provided that post-implementation support of such integrations may be purchased by Customer as a part of a Services Order.
- 4.6. Personnel Flexera agrees not to assign any personnel to perform Services at a Customer site who have failed a background check or who have committed a felony shown by such background check. Flexera will, at a minimum, have performed the following checks on such personnel to the extent permitted by applicable laws:
 - 4.6.1. Verification of the personnel's applicable identification number (e.g., social security number) to verify the accuracy of the personnel's identity and current and previous addresses.
 - 4.6.2. A criminal background search of all court records of the personnel's addresses over the past seven (7) years.
 - 4.6.3. Verification of the personnel's post high school education or degrees or professional certifications.

5. **Representations and Warranties.**

- 5.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that, as of the applicable Order Effective Date:
 - 5.1.1. it is duly incorporated and validly existing under applicable laws and in good standing in applicable business locations as required; and
 - 5.1.2. it is duly authorized to enter into and to perform its obligations under this Agreement; and
 - 5.1.3. it is in compliance with all applicable laws related to the performance of its obligations under this Agreement.
- 5.2. Flexera's Representations and Warranties.
 - 5.2.1. Performance Warranty. Flexera represents and warrants to Customer that (i) for a period of ninety (90) days from delivery (for Software) or (ii) during the applicable Subscription Term (for SaaS), the Products will operate in substantial conformity with the Documentation and the Service Levels. Flexera does not warrant that Customer's use of the Products will be uninterrupted or error-free. This warranty does not apply to claims arising out of or relating to: (a) use of the Products with hardware or software not required in the Documentation; or (b) defects arising from use of the Products in violation of this Agreement. In response to a performance warranty claim Flexera will either (a) use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the reported non-conformity or (b) to replace the non-conforming Products with conforming Products. If the parties determine such remedies to be impracticable within a reasonable period, either party may terminate the part of the Order applicable to the non-conforming Products and Flexera will refund any prepaid and unused fees for the non-conforming Products.

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

6. Indemnities

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

7. Liability.

- 7.1. GENERAL LIABILITY CAP. EXCEPT AS SET FORTH BELOW, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.
- 7.2. ENHANCED LIABILITY CAP. FLEXERA'S LIABILITY TO CUSTOMER FOR DAMAGES AND EXPENSES ARISING PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF (i) ONE MILLION DOLLARS (\$1,000,000) OR (ii) THREE TIMES (3X) THE AMOUNT ACTUALLY PAID BY CUSTOMER (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.
- 7.3. UNLIMITED LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO LIMIT OF LIABILITY WILL APPLY (i) TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, (ii) FOR DAMAGES ARISING FROM DEATH OR BODILY INJURY CAUSED BY THE PARTY, (iii) FOR PAYMENT OF FEES, OR (iv) FOR ANY OTHER LOSS THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.
- 7.4. DAMAGES WAIVER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY (i) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR (ii) LOST PROFITS, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, LOSS OF ANTICIPATED SAVINGS, 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.

8. Invoicing and Payment.

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

9. Term and Termination.

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

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

9.5. Transition Assistance. Upon any expiration or termination of an Order, Flexera agrees to provide transition Services pursuant to an Order.

9.6. Survival. In the event this Agreement is terminated but an Order is still outstanding, this Agreement will continue to apply to the outstanding Order until such Order expires or is terminated in accordance with this Agreement. Any provision that by the very nature of which should survive will survive any termination or expiration of this Agreement.

10. Confidential Information.

10.1. Protection of Confidential Information. The party receiving Confidential Information ("**Recipient**") from the party disclosing Confidential Information ("**Discloser**") will a) have the right to disclose the Confidential Information only to its employees, consultants, contractors and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Confidential Information will remain confidential for a period of three (3) years from disclosure. No time limit will apply to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret". Any software, documentation or technical information provided by Flexera (or its agents), performance information relating to the Products, and the terms of this Agreement will be deemed "Trade Secrets" of Flexera without any marking or further designation.

10.2. Exclusions. The Recipient's nondisclosure obligation does not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).

10.3. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11. Artificial Intelligence. Flexera may leverage generative artificial intelligence and other artificial intelligence technologies in the delivery of its Products. Flexera's Artificial Intelligence Schedule is available at www.flexera.com/legal/ai-schedule and is incorporated into this Agreement by reference.

12. Data Privacy and Security.

12.1. Data Privacy. Any Personal Data Processed (as each is defined in the DPA) in compliance with each party's respective obligations as a data processor and a data controller under the laws applicable to the processing of Personal Data in the relevant jurisdictions, including but not limited to the General Data Protection Regulation 2016/679 ("**Data Protection Law(s)**"). The Data Processing Agreement at www.flexera.com/legal/dpa will apply to the Processing of Personal Data unless the parties execute a different DPA, in which case the executed DPA will apply ("**DPA**"). For the avoidance of doubt the SaaS does not require Flexera to have access to any sensitive or special categories of Customer Personal Data. Flexera will conduct annual SSAE 18 SOC 2 Type II audits during any Subscription Term for SaaS. Flexera will, upon request, provide Customer a SSAE 16 SOC Type I and/or II audit report covering the SaaS. Customer agrees that the foregoing fulfills Flexera's audit obligations under applicable Data Protection Laws, except for any additional audits required by an applicable data protection authority or regulatory body with authority over Flexera and Customer.

12.2. Security. Flexera will provide the SaaS in accordance with the information security terms at <https://www.flexera.com/sites/default/files/flexera-security-terms.pdf>.

13. Audit by Customer. Customer may audit Flexera for the purpose of verifying Flexera's compliance with the terms of this Agreement. Audits performed subject to this Section will (i) only be performed during the term of this Agreement, (ii) require prior written notice of at least thirty (30) days, (iii) be conducted remotely and during regular business hours, (iv) not unreasonably interfere with Flexera's business activities, (v) be conducted no more than once per year, (vi) not be related to security or privacy, which are covered separately under this Agreement or the DPA; and (vii) only cover the immediately preceding two (2) years.

14. Evaluation Licenses. If Flexera provides a Product as a trial, evaluation, beta version, or proof of concept, or otherwise at no charge, then the following terms shall apply to such Product and take precedence in the event of any inconsistency between this Section and any other term or condition in this Agreement:

- 14.1. Flexera grants Customer a worldwide, nonexclusive, revocable, nontransferable, non-sublicensable license to use the Product during the evaluation term and within the usage limits identified by Flexera solely for Customer's internal evaluation purposes.
- 14.2. Flexera may revoke Customer's evaluation Product license at any time for any reason.
- 14.3. The Sections of this Agreement titled "Indemnities" and "Flexera's Representations and Warranties" shall not apply.
- 14.4. To the maximum extent permitted by applicable law, the evaluation Products are provided "as is" and Flexera disclaims all obligations or liability, including any statutory or implied warranty obligations, and in any event, Flexera's aggregate liability shall not exceed US\$100.00.
- 14.5. For any Product or feature made available as a beta version (i) the beta Product is not an official product and has not been commercially released for sale by Flexera; (ii) the beta Product may not operate properly, be in final form or fully functional; (iii) the beta Product may contain errors, design flaws or other problems; (iv) Flexera is under no obligation to release a commercial version of the beta Product, (v) Customer's use of the beta Product shall be for evaluation and feedback purposes only.

15. General.

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

parties other than Flexera Affiliates will be anonymized and aggregated such that Customer could not be identified as the source of the information.

- 15.8. Independent Contractors. The parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Customer acknowledges and agrees that the Products may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera has not independently investigated or verified. All actions taken or not taken by Customer based on the Output of the Products are the responsibility of Customer. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 15.9. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party and could not be avoided through the exercise of reasonable care and diligence, including but not limited to a Force Majeure Event. If a Force Majeure Event occurs and continues for a period of thirty (30) days, Customer may terminate this Agreement by providing written notice to Flexera. In the event Flexera's performance hereunder is the subject of a Force Majeure Event, the fees to be paid by Customer will be equitably adjusted to reflect the period of non-performance.
- 15.10. Export Compliance. Each party will comply with all applicable export laws and regulations of the United States and any other country with jurisdiction over the Products and/or either party.
- 15.11. Notices and Reports. Any notice or report to be given under this Agreement, must be in writing for the attention of Legal Dept. to the address given in the preamble to this Agreement, by the following methods only and will be deemed to have been validly given (a) on the date of delivery if delivered by hand; (b) upon transmission if delivered by email to Flexera at legal@flexera.com and to Customer at the email address on file; and (c) two (2) Business Days after posting with an internationally recognized overnight courier. Where any provision of this Agreement requires Customer to object in writing, such objection must be based on Customer's reasonable opinion that Flexera (or its Subcontractor) would be incapable of meeting the requirements of this Agreement. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this Section.
- 15.12. Insurance. Flexera is responsible for maintaining insurance to protect itself from the following: (a) claims and/or workers compensation or state disability acts; (b) claims for damages because of bodily injury, sickness, or death of any of its employees or any other person which arise out of any negligent act or omission of Flexera, its employees or agents, if any; (c) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, which arise from any negligent act or omission of Flexera, its employees or agents, if any; and (d) claims for damages because of Flexera's professional liability. Flexera will maintain insurance with the following limits for the duration of this Agreement:
- Workers Compensation Insurance in compliance with applicable Federal and State laws and Employer's Liability coverage with a minimum \$1,000,000 limit of liability.
 - Commercial General Liability Insurance with \$1,000,000 bodily injury and property damage combined single limit of coverage,
 - Automobile bodily injury and property damage liability insurance covering owned, non-owned and hired automobiles, the limits of which will not be less than \$1,000,000 combined single limit per occurrence.
 - Professional Liability insurance covering acts, errors, mistakes, omissions arising out of the work or services performed by Flexera, or any Subcontractor, agent or person employed by Flexera, with a limit of not less than \$1,000,000 per claim.
 - Cyber Insurance with a policy limit of \$10,000,000.
- Upon Customer's request, Flexera will provide Customer with a certificate of insurance completed by its insurance carrier certifying that minimum insurance coverage as required above are in effect.
- 15.13. 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.
- 15.14. 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.
- 15.15. Customer Contact Information. Customer is responsible for ensuring that Flexera has at all times updated and accurate Customer contact information for Flexera to notify Customer regarding any security and products related issues. Customer shall provide Customer current contact information via the Flexera support portal.
- 15.16. Execution. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will constitute together but one document. In addition, the parties consent to the use of a third-party service for electronically executing this Agreement.
- 15.17. Order of Precedence. Subject to Section 15.5, in the event of a conflict between the terms of this Agreement, the applicable Product Specific Terms, and an Order, the following order of precedence will apply.
- a) The Order
 - b) The applicable Product Specific Terms
 - c) This Agreement

15.18. 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.

Global Appendix

Governing Law, and Venue of Disputes

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

Flexera entity	Customer Location	Governing Law
Flexera Software GmbH , having its registered office at Regus Hamburg Altona, Hahnenkamp 1, 22765 Hamburg, Germany (company number HRB 205690).	Germany, Austria and Switzerland (DACH region)	English
Flexera Software Limited , a private company limited by shares and incorporated in England and Wales with company number 6524874, having its principal office located at 2nd Floor, The Capitol Building, Oldbury, Bracknell, RG12 8FZ, United Kingdom.	EMEA (except for DACH region) and India	English
Flexera Software Pty Limited , ABN 40 052 412 156, having its principal place of business located at 990 Whitehorse Road, Level 4, Box Hill, VIC 3128, Australia.	Australia and New Zealand	Australian
Flexera Software Canada Corporation , having its registered office at 777 Hornby Street, Suite 600 Vancouver, British Columbia V6Z 1S4, Canada.	Canada	USA, State of Illinois
Flexera Software Brazil LTDA , having its registered office at Rua das Olimpíadas, 205, 4º andar, cj 41, Vila Olímpia 04551-000 São Paulo/SP, Brazil.	Brazil	USA, State of Illinois
Flexera Software LLC , a Delaware limited liability company having its principal office located at 300 Park Blvd., Suite 400, Itasca, IL 60143, USA.	Countries outside of those listed above	USA, State of Illinois

Region-Specific Terms and Conditions

In the event of any conflict or inconsistency with these Region-Specific Terms and the terms and conditions of the Agreement, the Region-Specific Terms will prevail.

Brazil

1. Taxes. Notwithstanding anything to the contrary in the Agreement, all fees are exclusive of any applicable taxes, including but not limited to ISS, ICMS, PIS and COFINS. To the extent any such taxes are due in connection with the provision of the Products or Services under the Agreement, such taxes shall be the sole responsibility of Customer and shall be added to the invoice or otherwise reimbursed to Flexera.

European Economic Area and United Kingdom

1. DORA. To the extent Customer is subject to the Digital Operational Resilience Act (Regulation (EU) 2022/2554), Flexera will comply with the requirements set out in the DORA Schedule at <https://www.flexera.com/sites/default/files/flexera-dora-schedule.pdf>.
2. EU Data Act. To the extent Customer is subject to the EU Data Act (Regulation (EU) 2023/2854), Flexera will comply with the applicable requirements set out in the EU Data Act.