

DEPARTMENT OF DEFENSE and FLEXERA SOFTWARE LICENSE AGREEMENT

This document sets forth the Department of the Defense (DOD) Software License Requirements. Licensor's Software License Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A: Software License and Services Agreement, constitutes the Agreement between the Licensor and the DOD. The terms and conditions set out below in these Software License Requirements, supplement and to the extent a conflict exists, supersede and take precedence over the terms and conditions of Exhibit A. For clarification in this agreement, Publisher, Contractor and Manufacturer are synonymous.

1. **Enterprise Language:** The parties agree that more than one agency of the DOD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "Principle element of the DOD" as defined by the 32 Code of Federal Regulations, sections 700.203 and 700.204, the terms and conditions of this Agreement apply to any purchase of products by the DOD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Contractor's published policy or program documentation or customer ordering documents. It is also understood by both parties that any Contractor policies will have not been considered part of this license agreement.
2. **Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFAR), without regard to principles of conflict of laws.
3. **Indemnification:** The DOD does not have the authority to and shall not indemnify any entity. The DOD agrees to pay for any loss, liability or expense, which arises out of or relates to the DOD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DOD is established by a court of law or where settlement has been agreed to by the DOD agency. This provision shall not be construed to limit the DOD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DOD.
4. **Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Licensor shall, at its expense, defend, indemnify and hold the DOD harmless from any suit or proceeding which may be brought by a third party against the DOD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DOD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DOD agrees to give Licensor prompt notice of any such claim of which it learns. The DOD has the sole authority to represent itself in actions brought against the DOD. The DOD may, however, in its sole discretion, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. Licensor shall not without the DOD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DOD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DOD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DOD to make a payment which Licensor

is not obligated by this Agreement to pay on behalf of the DOD. If the DOD delegates such rights to the Licensor, the DOD will cooperate with all reasonable requests of Licensor made in the defense and or settlement of a Claim. In all events, the DOD shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensor that, in the event it requests that the DOD to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DOD for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DOD for such support. If DOD does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. If DOD does not delegate the right of defense to Licensor, upon written request from the DOD, the Licensor will, in its sole reasonable discretion, cooperate with DOD in its defense of the suit.

- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to confirm that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the DOD or agreed to by Licensor in any settlement. If information and assistance are furnished by the DOD at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- d) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DOD to continue the use of such licensed products.
- e) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
- f) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the DOD the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- g) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- h) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
 - (1) modification of any licensed products provided by the DOD or any party acting under the direction of the DOD;
 - (2) any material provided by the DOD to the Licensor and incorporated into, or used to prepare the product;
 - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;

- (4) use of the licensed products in other than its specified operating environment;
 - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the DOD's use of the licensed product beyond the scope contemplated by the Agreement; or
 - (8) the DOD's failure to use corrections or enhancements made available to the DOD by the Licensor at no charge.
- i) The obligation to indemnify the DOD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. Virus, Malicious, Mischievous or Destructive Programming:

Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DOD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DOD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DOD for the actual reasonable cost to remove the Virus and restore the DOD's most recent back up copy of data provided that:

- the licensed products have been installed and used by the DOD in accordance with the Documentation;
- the licensed products has not been modified by any party other than Licensor;
- the DOD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DOD for loss of the DOD's data arising from the failure of the licensed products to conform to the warranty stated above.

6. Limitation of Liability: The Licensor's liability to the DOD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:

- bodily injury;
- death;
- intentional injury;
- damage to real property or tangible personal property for which the Licensor is legally liable; or
- Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

7. **Termination:** Licensor may not terminate this Agreement for non-payment by the applicable reseller to Licensor; provided, however, that the applicable licenses may be terminated if the DOD does not make any payment for such licenses to either Licensor or the applicable reseller.
 - a. The DOD may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice (Notice of Termination) whenever the DOD shall determine that such termination is in the best interest of the DOD (Termination for Convenience).
8. **Background Checks:** Upon prior written request by the DOD, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have on site access to the DOD's IT facilities. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before the DOD will permit an employee access to the DOD's facilities, Licensor must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, Licensor shall not assign that employee to any DOD facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to DOD facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of Licensor to comply with the terms of this paragraph may result in default of Licensor under its contract with the DOD.
9. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
10. **Publicity/Advertisement:** The Licensor must obtain DOD approval prior to mentioning the DOD or a DOD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
11. **Territory:** Any Department of Defense (DOD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
12. **Backup for User Documentation:** Licensor grants DOD to make a reasonable number of copies for DOD's internal business purposes. DOD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DOD is also responsible for reporting to Licensor if DOD learns of the misuse or mishandling of User Documentation provided under the contract to DOD personnel, contractors or Government employees.
13. **Transfers:** DOD is authorized to sublicense, assign or transfer the Software or DOD's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between Authorized Users as defined in Section 1 and Section 24, or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement. In the event that an Authorized User has purchased a license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor. It is inherently understood that the licensed agency and the successor agency agree to be bound to this Software License Agreement. The transferee shall be bound by the license metrics and limitations in this license. DOD shall complete any required Licensor documentation required to facilitate the transfer of license and continuation of support for the transferee. All license transfers will be without cost to the DOD.
14. **Assignment of Licenses:** DOD will provide advanced written notice to Licensor when DOD intends to designate an outsourcer/contractor/agent to manage and maintain (e.g., installation, configuration, version and release

management) the Software on DOD's behalf. All activities by such outsourcer/contractor/agent shall be subject to the Software Publisher's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such outsourcer/contractor/agent specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to DOD in the Software Publisher's Software License Agreement, as modified herein. The Licensor shall provide a copy of such separate agreement to the DOD. The assignment of licenses will be without cost to any party involved in the assignment of licenses

- 15. Functionality Replacement and Extended Support.** If Licensor removes any or all of the material features or functionality to which DOD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DOD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product, or (iii) another reasonable substitute as determined by DOD, will be provided to DOD under the terms of this Agreement at no additional charge to DOD. If the Software provided to DOD is updated as replacement, renamed or re-branded applications or products for any reason, then DOD shall be entitled to the same license to use the replacement, renamed or re-branded product as DOD had with respect to the Software that DOD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DOD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DOD that Licensor intends to cease supporting the initial Software while DOD was still purchasing Maintenance and Support for such Software. However, throughout the term of this agreement, the contractor will provide support services for at least a period of one year.
- 16. Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.
- 17. Audit Responsibilities:** DOD will maintain, and promptly provide to Licensor upon its request, accurate records regarding use of the software by or for the DOD. If the DOD becomes aware of any unauthorized use of all or any part of the software, the DOD will notify Licensor promptly, providing reasonable details. The limit of the DOD's responsibility for any unauthorized use of the software by any individuals employed by or performing services for the DOD is the requirement that it purchase additional licenses for the product through its reseller.

DOD will perform a self-audit upon the request of Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). DOD shall notify Licensor of the True up number no later than 90 calendar days after the request that the DOD perform a self-audit. If the user count has increased, DOD will make an additional purchase of the product through its reseller, which is equivalent to the additional users.

This paragraph sets out the sole audit right under this contract.

- 18. US Government Configuration Baseline.** The Publisher shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov> to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration.
- a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

- b) Publisher shall also certify that any subsequent product/module for the life of the agreement is/are fully functional and operate correctly as intended on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with USGCB standards as they evolve.
- c) DOD buyers may require compliance with additional baseline configuration requirements.

19. Net-Centricity. The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this “Net-Centric” state, DOD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DOD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cionii/docs/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DOD and Intelligence Community shall be licensed by the software publisher without restriction to information sharing among the DOD and IC in performing their missions.

20. Section 508 of the Rehabilitation Act Compliance. All products and services provided under this agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Publisher’s Section 508 compliancy information must be readily available at the Publisher’s website.

21. Temporary Use of Software During Times of Conflict and/or Natural Disaster. As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DOD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.

For licenses connected to a DOD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event

For computers not connected to a DOD network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers.

After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DOD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DOD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

22. Software Asset Management & ISO-IEC 19770:2009 Series. The Licensor shall comply with ISO 19770:2009 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO-IEC 19770:2009 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall have 18 months to comply with the standard upon approval by ISO.

22. **Authorized Users:** An Authorized User includes, but is not limited to DOD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DOD in support of DOD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs.
23. **Data Recovery and Virtualization:** Data Recovery methods include four types of environments: Backup, Failover, Standby, and Remote Mirroring. All types of data recovery servers will not require additional licenses as long as the number of data recovery servers equals the number of primary servers. For virtualized servers, both parties agree that only the primary server must be licensed. It is understood that advanced virtualization functions (soft partitioning including live migration) are incorporated herein by expressed written reference and by this license agreement. Thus, no additional licenses will be required to accommodate future data recovery and virtualization commercially accepted methods or practices. Notwithstanding the foregoing, with respect to any software that is licensed on a per individual user basis, DOD acknowledges and agrees that installing such software on a virtual server shall not in any way expand the scope of the license or expand the number of users who may use such software. For the purpose of clarity, as of the effective date of this Agreement, products that may be licensed on a per user basis are AdminStudio, Virtual Desktop Assessment, Workflow Manager, InstallShield, FlexNet Manager for Engineering Applications, and FlexNet Manager for SAP Business Suite.
24. **Shelf Ware:** It is recognized, that in some instances, DOD may have excess Licensor software licenses that are not currently being used or needed by DOD. These licenses are commonly called Shelf Ware. At DOD's sole discretion, the DOD may transfer any these licenses as described in Section 13 of this document or DOD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count. In no event, when a subset of licenses is terminated or if the level of support is reduced, support for the remaining licenses will not change in services or result in any type of fee recalculation.
25. **Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DOD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.
26. **Software Titles Incorporated by this License Agreement:** All software titles sold by Licensor will be incorporated into this agreement. Software titles included in the areas of: Application Readiness, License Optimization, and Installation and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DOD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.
27. **Use of this Agreement by an Executive Agency:** The parties agree that, if an executive agency implements another contracting vehicle for Licensor's products, and if the licensee is an executive agency (within the meaning of 5 U.S.C. 101, 102, and 104(1)), then, the terms and conditions of this Agreement can apply to any purchase of software products by the executive agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution. Additionally, should an executive agency desire to use this agreement, it will be without remuneration to any party.

Licensor acknowledges and agrees to the terms and conditions of these Software License Agreements which shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Licensor's Software License Agreement.

IN WITNESS WHEREOF, Licensor has executed and approved these Software License Agreements as an appendix to Licensor's Software License Agreement on the date indicated below.

Witness:

Licensor:

Flexera Software LLC
 Licensor Name


Kraig Washburn (Jul 26, 2012)

Jul 26, 2012 
Joseph W. Freda (Jul 19, 2012)

Jul 19, 2012

Signature

Date

Signature

Date

Kraig Washburn

Joseph W. Freda

Printed Name

Printed Name

General Counsel

CFO

Title

Title

As a corporate entity, please have either the president or vice president and either the secretary/assistant secretary or treasurer/assistant treasurer of the corporation sign. If any other person has authority to execute contracts, that person may sign, but a copy of the document or documents conferring that authority (such as by-laws or corporate resolution) must be sent with this agreement when returning it to the DOD.

FLEXERA SOFTWARE
MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Master Software License and Services Agreement (“**Agreement**”) is entered into by and between Flexera Software LLC (“**Flexera Software**”), a Delaware limited liability company having its principal office located at 1000 E Woodfield Road Suite 400, Schaumburg, IL 60173, 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 the terms and conditions set forth below, any attachments or exhibits and any Order Schedules and/or Statements of Work referencing this Agreement.

This Agreement permits Licensee to purchase software licenses and services from Flexera Software pursuant to an applicable Order Schedule and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement shall govern Licensee’s initial purchase on the Effective Date as well as any future purchases made by Licensee that reference this Agreement.

1. Definitions.

“**Affiliate**” means any entity under the control of Licensee where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity.

“**Business Day**” has the meaning ascribed to it in Section 13.7 below.

“**Confidential Information**” has the meaning ascribed to it in Section 11 below.

“**Contractor**” means any third party employed by Licensee to perform services on behalf of Licensee.

“**Disclosing Party**” has the meaning ascribed to it in Section 11 below.

“**Documentation**” means the technical specification documentation generally made available by Flexera Software to its licensees with regard to the Software.

“**Excluded Claims**” has the meaning ascribed to it in Section 9.1 below.

“**Grace Period**” means the period applicable for Licensee’s certification of its compliance with its License Level pursuant to Section 2.2, which shall be within thirty (30) days (i) for perpetual licenses, before or after the end of Licensee’s fiscal year or (ii) for subscription licenses, of the anniversary date of the applicable license.

“**License Level**” means the quantitative limitations and unit of measure applicable to the license purchased by Licensee under an Order Schedule. Such unit of measure may include but is not limited the number of users, number of desktops, number of Managed Devices, applicable revenue tier, platforms, and modules.

“**Open Source Software**” has the meaning ascribed to it in Section 13.15 below.

“**Order Schedule**” means an order document specifying the Software to be purchased by Licensee hereunder.

“**Receiving Party**” has the meaning ascribed to it in Section 11 below.

“**Services**” means professional consulting services solely for Software installation, deployment, and usage as may be further defined in a Statement of Work.

“**Software**” means the object code form of the software products specified in an applicable Order Schedule.

“**Statement of Work**” means a document outlining any Services to be provided to Licensee and performed by Flexera Software. A Statement of Work shall serve as the order document for Services.

“**Subscription Period**” means the fixed period of time applicable to a subscription license set forth in an applicable Order Schedule for which Licensee is licensed to use the Software.

“**Supplemental Fee**” has the meaning ascribed to it in Section 2.2.1 below.

“**Support and Maintenance**” has the meaning ascribed to it in Section 7.1 below.

“**Updates**” means maintenance releases, additions, modifications, and new versions of the Software incorporating such additions and modifications which are made available to Licensee as part of Support and Maintenance. Updates do not include maintenance releases, additions, or modifications that Flexera Software considers to be a separate product or for which Flexera Software charges its customers extra or separately.

“**Warranty Period**” has the meaning ascribed to it in Section 6.1 below.

2. License.

- 2.1. Grant of License. Subject to all of the terms and conditions of this Agreement, during the term specified on the applicable Order Schedule, Flexera Software grants to Licensee a non-transferable, non-sublicensable, non-exclusive license to use Software for internal purposes at Licensee’s and/or Affiliate’s site(s) only, but only in accordance with (a) the Documentation, (b) this Agreement and (c) the License Level. Software shall also include any Documentation and any Support and Maintenance releases of the same Software product provided to Licensee under this Agreement.
- 2.2. License Term. An Order Schedule will identify whether Licensee is purchasing a subscription or perpetual license.
 - 2.2.1. *Perpetual Licenses*. Licensee may use Software licensed on a perpetual basis subject to Licensee’s compliance with the following certification requirements and payment, if applicable, of Supplemental Fees (as defined below) for use in excess of the License Level. Within the Grace Period, Licensee must provide a written certification of its compliance with the applicable License Level (including usage of Affiliates and Contractors) for the previous year. If Licensee’s usage of the Software exceeded the License Level, Licensee must either (i) upgrade Licensee’s license by paying to Flexera Software a supplemental license fee, at Flexera Software’s then-current rates, based on the difference between Licensee’s current usage and Licensee’s License Level, plus applicable Support and Maintenance fees (the “**Supplemental Fee**”); or (ii) discontinue use of the Software. If Licensee fails to certify its usage, fails to pay any applicable Supplemental Fee, fails to discontinue use of the Software if not upgrading its license, or intentionally misrepresents its usage, the perpetual license will expire and automatically terminate thirty (30) days after the end of the Grace Period.
 - 2.2.2. *Subscription Licenses*. Licensee may use Software licensed on a subscription basis for the applicable Subscription Period. Subscription license fees include Support and Maintenance for the duration of the Subscription Period. For multi-year Subscription Periods, Licensee must provide, within the Grace Period, a written certification of its compliance with the applicable License Level (including usage of Affiliates and Contractors) for the previous year. If Licensee’s usage of the Software exceeded the License Level, Licensee must either (i) upgrade Licensee’s license by paying to Flexera Software a Supplemental Fee; or (ii) discontinue use of the Software. If Licensee fails to certify its usage, fails to pay any applicable Supplemental Fee, fails to discontinue use of the Software if not upgrading its license, or intentionally misrepresents its usage, the subscription license will expire and automatically terminate thirty (30) days after the end of the Grace Period. Licensee may renew subscription licenses at Flexera Software’s then-current license fees for additional subscription periods by providing written notice of renewal together with a written certification of its level of usage of the Software during the Subscription Period to Flexera Software at least thirty (30) days prior to the end of the then-current Subscription Period. If Licensee’s usage of the Software exceeded the applicable License Level, the license renewal shall be subject to a Supplemental Fee based on Licensee’s usage. If Licensee notifies Flexera Software that it wishes to discontinue use of the Software, does not provide written notice to Flexera Software of renewal, fails to certify its usage or intentionally misrepresents its usage, the license will expire and will automatically terminate at the end of the then-current Subscription Period.
- 2.3. Installation and Copies. Licensee may copy and install on Licensee’s computers for use only by Licensee’s employees and Contractors (as defined in Section 2.4 below) as many copies of the Software as is designated in the applicable Order Schedule, or if no number is specified on the Order Schedule, a reasonable number of copies. Licensee may also make a reasonable number of copies of the Software for back-up and archival purposes.
- 2.4. Use by Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Licensee’s Affiliates and Contractors may use the licenses granted to Licensee, provided that (a) such use is only for Licensee’s or such Affiliate’s benefit, (b) Licensee agrees to remain responsible for each such Affiliate’s and Contractor’s compliance with the terms and conditions of this Agreement and (c) upon request Licensee will identify each such Affiliate and Contractor to Flexera Software. Use of the Software by the Affiliates, Contractors and Licensee in the aggregate must be within the License Level set forth in the applicable Order Schedule. The Affiliate rights granted in this section shall not apply to any “enterprise wide” or limitless License Level licenses unless Affiliate usage is specifically designated in the applicable Order Schedule.
- 2.5. License Restrictions. Licensee shall not (and shall not allow any third party to):

- 2.5.1. decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Flexera Software);
- 2.5.2. distribute (except as expressly permitted herein), sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, service bureau, hosting, service provider or like purposes;
- 2.5.3. remove any product identification, proprietary, copyright or other notices contained in the Software;
- 2.5.4. modify any part of the Software, create a derivative work of any part of the Software, or incorporate the Software into or with other software, except to the extent expressly authorized in writing by Flexera Software; or
- 2.5.5. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

3. Ownership. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera Software and its suppliers have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software (including the Documentation) and all copies, modifications to, and derivative works based upon, the Software. Licensee acknowledges that it is obtaining only a limited license right to the Software and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Licensee under this Agreement or otherwise.

4. Payment and Delivery.

- 4.1. Payment. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made in U.S. dollars within thirty (30) days of the effective date of the applicable Order Schedule, unless otherwise specified in the applicable Order Schedule. Licensee shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Flexera Software). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.
- 4.2. Delivery. All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Order Schedule.

5. Term of Agreement.

- 5.1. Term. This Agreement is effective as of the Effective Date and expires on the day that the term of license for all Software licensed hereunder has expired. Either party may terminate this Agreement (including all related Order Schedules) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (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). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.
- 5.2. Termination. Upon any expiration or termination of this Agreement, Licensee shall cease any and all use of any Software and destroy all copies thereof and so certify to Flexera Software in writing.
- 5.3. Survival. Sections 2.5 (License Restrictions), 3 (Ownership), 4 (Payment and Delivery), 5 (Term of Agreement), 6.5 (Disclaimer), 9 (Limitation of Remedies and Damages), 10 (Flexera Software’s Indemnification), 11 (Confidential Information), 14 (General), and Attachment C Section 2.5.5 (Licensee’s Indemnification), as well as any provision that by the very nature of which should survive shall survive any termination or expiration of this Agreement.

6. Limited Warranties and Disclaimer.

- 6.1. Limited Software Performance Warranty. Flexera Software warrants to Licensee that for a period of ninety (90) days from initial delivery of the Software to Licensee (the “**Warranty Period**”) the Software shall operate in substantial conformity with the Documentation. Flexera Software does not warrant that Licensee’s use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Flexera Software’s sole liability (and Licensee’s exclusive remedy) for any breach of this warranty shall be, in Flexera Software’s sole discretion, to use commercially reasonable efforts to provide Licensee with an error-correction or work-around which corrects the reported non-conformity, to replace the non-

conforming Software with conforming Software, or if Flexera Software determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund the license fee paid for the Software. Flexera Software shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period.

- 6.2. Additional Limited Warranties. Flexera Software represents and warrants to Licensee that:
- 6.2.1. Flexera Software has requisite power and authority to enter into and carry out the terms of this Agreement;
 - 6.2.2. Flexera Software uses commercially available anti-virus software to test the Software for viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; and
 - 6.2.3. Flexera Software will not exercise any form of electronic self-help unless and until Licensee is in breach of this Agreement, has failed to cure such breach within thirty (30) days of receiving notice from Flexera Software of Licensee's breach, and Flexera Software has provided Licensee with thirty (30) days advance written notice of its intent to exercise electronic self-help as a remedy.
- 6.3. Services Warranty. Services will be of a professional quality conforming to generally accepted industry standards and practices.
- 6.4. Exclusions. The limited warranties set forth in this Section 6 shall not apply: (a) if the Software is used with hardware or software not specified in the Documentation; (b) if any modifications are made to the Software by Licensee or any third party or by Flexera Software at Licensee's request; (c) to defects in the Software due to accident, abuse or improper use by Licensee; or (d) to items provided on a no charge or evaluation basis. As the purported owner of licenses for software which may be managed with the Software licensed hereunder, Licensee retains responsibility for compliance with licensing requirements, and carries the legal liabilities associated with those licenses. In particular, Flexera Software cannot and does not accept any responsibility or liability for the correctness or completeness of the Licensee license or purchase data, the validity of any license usage rights applied, or conclusions reached based on that data.
- 6.5. Disclaimer. THE WARRANTIES IN THIS SECTION 6 ARE LIMITED WARRANTIES AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SOFTWARE AND ALL SERVICES ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, NEITHER FLEXERA SOFTWARE NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.
- 6.6. Preproduction Releases. As an accommodation to Licensee, Flexera Software may provide Licensee with a preproduction release of the Software (often labeled a "beta release"). These releases are not suitable for production use. **SUCH RELEASES ARE PROVIDED ON AN "AS IS" BASIS. FLEXERA SOFTWARE DOES NOT WARRANT PREPRODUCTION RELEASES.**

7. Support & Maintenance.

- 7.1. Support and Maintenance. Flexera Software shall provide the level of support and maintenance services ("**Support and Maintenance**") set forth on the applicable Order Schedule during such period as Licensee has paid the applicable fee. Support and Maintenance will be provided in accordance with Flexera Software's then-current Support and Maintenance terms.
- 7.2. Supported Versions. Support and Maintenance is available in accordance with Flexera Software's Life Cycle and End of Life Policy, which may be found at <http://www.flexerasoftware.com/support/eol/end-of-life-policy.htm>.
- 7.3. Exclusions. Flexera Software will have no Support and Maintenance obligation to Licensee: (a) at the end of any annual Support and Maintenance period unless Licensee elects to obtain additional Support and Maintenance by paying an annual Support and Maintenance renewal fee for perpetual licenses or renewing a subscription license; (b) where Licensee is using a version of the Software that is not the then-current or previous major release or an otherwise unsupported version in accordance with Flexera Software's End of Life policy; (c) where the Software has been modified by Licensee or any third party or by Flexera Software at Licensee's request; or (d) for any evaluation, beta or other Software provided at no charge.

- 7.4. **Renewals.** For perpetual licenses, in the event Licensee elects not to obtain or renew Support and Maintenance, Licensee may retain the Software and Documentation but will have no further right to Support and Maintenance for the Software. If Licensee wishes to reinstate lapsed Support and Maintenance for a perpetual license, Licensee may do so by paying Flexera Software an amount equal to the then-applicable annual fee plus one-hundred fifty percent (150%) of the fees that would have been due had Licensee remained enrolled during the lapse period. For perpetual licenses, Support and Maintenance may be renewed for the first annual renewal period for the same amount paid in the first year.
8. **Services.** Flexera Software shall provide the number of hours of Services purchased in the applicable Statement of Work. Licensee shall have a license right to use anything delivered as part of the Services for its internal use subject to the terms of its license to use the Software, but Flexera Software shall retain all right, title and interest in and to any such deliverable, work product, code or software and any derivative, enhancement or modification thereof created by Flexera Software (or its agents). Services may be ordered by Licensee pursuant to an applicable SOW attached describing the work to be performed, fees, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before Flexera Software will commence work under such SOW. All fees for Services will be billed on actual hours spent providing such Services. Flexera Software will not be obligated to work any overtime hours unless expressly agreed to in a SOW. Any overtime hours agreed to by Flexera Software will be billed to Licensee at 1.5x the standard rates agreed upon in the applicable SOW. Licensee will reimburse Flexera Software for reasonable travel and lodging expenses as incurred. Flexera Software will adhere to the more stringent of either Flexera Software's or Licensee's travel policy (as provided by Licensee and agreed to by Flexera Software).
9. **Limitation of Remedies and Damages.**
- 9.1. EXCEPT FOR A BREACH OF A PARTY'S INDEMNIFICATION OBLIGATIONS OR A CLAIM BY ONE PARTY AGAINST THE OTHER RELATING TO SUCH PARTY'S INTELLECTUAL PROPERTY RIGHTS (COLLECTIVELY, THE "EXCLUDED CLAIMS"), NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), 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. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR THE EXCLUDED CLAIMS, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA SOFTWARE DURING THE 12 MONTH PERIOD PRECEDING A CLAIM.
- 9.3. The parties agree that the limitations specified in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.
10. **Flexera Software's Indemnification.** Flexera Software shall defend and indemnify Licensee from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Licensee by a third party based upon Licensee's use of the Software in accordance with the terms of this Agreement, provided that Flexera Software shall have received from Licensee: (i) prompt written notice of such claim (but in any event notice in sufficient time for Flexera Software 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 reasonable necessary cooperation of Licensee. If Licensee's use of any of the Software is, or in Flexera Software's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Flexera Software may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (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 the license fee paid by Licensee as reduced to reflect a five year straight-line depreciation from the applicable license purchase date. The foregoing indemnification obligation of Flexera Software shall not apply: (1) if the Software is modified by Licensee, a third party, or Flexera Software at Licensee's request; (2) if the Software is combined with other non-Flexera Software products or process not specifically identified in the Documentation; (3) to any unauthorized use of the Software; or (4) to any unsupported release of the Software. THIS SECTION 10 SETS FORTH FLEXERA SOFTWARE'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.
11. **Confidential Information.** Each party agrees that all business and/or technical information that is received by a party ("Receiving Party") from the disclosing party ("Disclosing Party") 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) the nature of which could reasonably be construed to be confidential shall be considered the confidential property of the Disclosing Party ("**Confidential Information**"). Any software, documentation or technical information provided by Flexera Software (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of Flexera Software without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall 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 Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party 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 Disclosing Party). The Receiving Party 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 Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

12. Co-Marketing.

- 12.1. Company Name and Logo. Flexera Software may include Licensee's company name and logo in a list of Flexera Software customers and/or partners.
- 12.2. Reference. On Flexera Software's reasonable request, Licensee will speak to analysts, members of the press and/or prospective Flexera Software customers to discuss how Licensee is using Flexera Software's products.
- 12.3. Press Release. Licensee agrees to work with Flexera Software on a mutually agreeable press release. The press release will include a quote from Licensee's executives (director title or above) regarding Flexera Software's products.
- 12.4. Webinar. Licensee agrees to participate in an external facing webinar that will be posted on the Flexera Software website and featured in a Flexera Software newsletter. Licensee will provide Flexera Software details of its product(s) and services offerings and how the Software is being used and the benefits therefrom.
- 12.5. Testimonial. Licensee agrees to work with Flexera Software on the publication of an external facing customer story. Licensee will provide a quote and details on how the Software helps Licensee solve a business problem.

13. General.

- 13.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party shall assign this Agreement (or any part thereof) without the advance written consent of the other party, except that Flexera Software may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Flexera Software's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 13.1 will be null and void.
- 13.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- 13.3. Governing Law. This Agreement shall be governed by the laws of the State of California 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.
- 13.4. Arbitration. Except for claims regarding ownership or infringement of the Software or claims with respect to confidentiality, any dispute between Licensee and Flexera Software arising out of or relating to this Agreement that cannot be resolved amicably shall be submitted to the American Arbitration Association (AAA) for binding and confidential arbitration, to be held in Santa Clara County, California, USA. The parties will assemble a panel of three arbitrators consisting of one arbitrator nominated by each party and a chairperson selected by those two arbitrators.
- 13.5. Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

- 13.6. Audit Rights. During the term of this Agreement and for a period of one (1) year thereafter, with prior reasonable notice of at least 10 days, Flexera Software may audit Licensee for the purpose of verifying the information provided by Licensee under this Agreement or any applicable Order Schedule, and for the purpose of verifying that Licensee is conforming to the terms of this Agreement or any applicable Order Schedule. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. If an audit reveals an underpayment or that the Licensee's usage is greater than the License Level, then the Licensee shall immediately pay the difference in License fees and, if applicable, Support and Maintenance fees to bring the License Level into compliance. If an audit reveals that (i) Licensee has intentionally misrepresented its usage of the Software on an Order Schedule, certification, or otherwise, or (ii) Licensee materially breached this Agreement or any applicable Order Schedule or (iii) the Usage Level is more than 5% over the License Level, then Licensee shall pay Flexera Software's reasonable costs of conducting the audit in addition to any fees due to Licensee's misrepresentation or material breach. Audits shall be conducted no more than once annually.
- 13.7. Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth below and shall be deemed given: (a) upon receipt if by personal delivery; (b) one Business Day following deposit for delivery to the party for delivery within the United States or two (2) Business Days following deposit for delivery to the party for delivery outside of the United States, with Federal Express or any other internationally recognized overnight courier; or (c) via confirmed facsimile in which case it shall 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 in San Francisco, California, USA or London, England are required or authorized by law to be closed. 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.
- For Flexera Software:
Flexera Software LLC
1000 E Woodfield Road Suite 400
Schaumburg, IL 60173
USA
Fax: +1 847-619-0788
- 13.8. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall 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 a 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 shall be for administrative purposes only and shall have no legal effect.
- 13.9. Choice of Language. 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.
- 13.10. Order of Precedence. In the event of a conflict between the terms of this Agreement and the terms of any applicable Order Schedule, the terms of the applicable Order Schedule will prevail.
- 13.11. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. 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.
- 13.12. Force Majeure. Neither party shall 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, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.
- 13.13. U.S. Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition

Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited. Licensee shall flow-down this provision to any of its authorized sublicensees (including but not limited to any Licensee Products, as applicable).

- 13.14. Export Compliance. Licensee acknowledges that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Licensee shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) any end user who has been prohibited from participating in United States export transactions by any federal agency of the United States government; (c) to 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 at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Licensee agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.
- 13.15. Third-Party Code. The Software may contain or be provided with components subject to the terms and conditions of “open source” software licenses (“**Open Source Software**”). Open Source Software may be identified in the Documentation, or Flexera Software shall provide a list of the Open Source Software for a particular version of the Software to Licensee upon Licensee’s written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.
- 13.16. 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 Software unless Licensee has first obtained Flexera Software’s written consent. Notwithstanding the foregoing, Licensee shall not be in breach of this provision if an employee of Flexera Software responds to a general advertisement for employment.
- 13.17. Insurance. Flexera Software 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 Software, its employees or agents, if any; and (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 Software, its employees or agents, if any.
- 13.18. Equal Opportunity. Flexera Software agrees that it does not and will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, handicap, national origin, or sexual orientation.
- 13.19. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
- 13.20. 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.

SIGNATURE PAGE TO FOLLOW

By signing below, the parties agree to be bound by the terms and conditions set forth herein. These terms shall apply to any Order Schedule entered into between the parties hereunder.

LICENSEE: _____

FLEXERA SOFTWARE LLC

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____

ATTACHMENT A
PRODUCT SPECIFIC TERMS AND CONDITIONS
FLEXNET MANAGER

The following terms and conditions contained in this Attachment A apply to the following products to the extent Licensee has acquired a license to the applicable product:

- a) FlexNet Manager Platform
- b) FlexNet Manager for Microsoft
- c) FlexNet Manager for Symantec
- d) FlexNet Manager for Adobe
- e) FlexNet Manager for IBM
- f) FlexNet Manager for SAP Business Suite
- g) FlexNet Manager for Engineering Applications
- h) Workflow Manager
- i) FlexWrap

1 *Definitions.*

“Managed Device” means any device for which any function is performed by the Software (including but not limited to delivering, installing, updating, migrating or repairing any computer program or data file; or 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 Managed Device can be a personal computer, desktop computer, laptop computer, netbook computer, server, kiosk computer, point of sale terminal, virtual machine, or handheld computing device such as a smart phone or PDA. Managed Device does not include peripheral equipment such as printers, routers or switches. As used in this definition, a “server” is any physical computer or virtual machine whose primary function is to provide services, resources, or information to other computers, including without limitation web servers, file servers, database servers, and network servers. For purposes of certification as set forth in this Agreement, the number of Managed Devices includes all Managed Devices that were in place at any point during the previous year.

“SAP Basic User” means, in relation to FlexNet Manager® for SAP® Business Suite, a user license for which Licensee was charged less than \$250 per user by SAP. For purposes of certification as set forth in this Agreement, the number of SAP Basic Users includes all SAP Basic Users that were in place at any point during the previous year.

“SAP Enterprise User” means, in relation to FlexNet Manager® for SAP® Business Suite, a user license for which Licensee was charged equal to or greater than \$250 per user by SAP. For purposes of certification as set forth in this Agreement, the number of SAP Enterprise Users includes all SAP Enterprise Users that were in place at any point during the previous year.

“User” means, in relation to FlexNet Manager for Engineering Applications, the individuals within Licensee’s organization who access the software applications for management and administration of supported license servers and the processing of reports. For purposes of certification as set forth in this Agreement, the number of Users includes all Users who accessed FlexNet Manager for Engineering Applications at any point during the previous year.

“FlexWrap Author” means, in relation to FlexWrap, the individual within Licensee’s organization who accesses the FlexWrap application for preparing internal software applications to have FlexNet licensing capabilities that includes but is not limited to optional enforcement of concurrent limits on application usage. For purposes of certification as set forth in this Agreement, the number of FlexWrap Authors includes all FlexWrap Authors who accessed FlexWrap at any point during the previous year.

2 *License Models.*

2.1 Per Managed Device. For Software licensed on a per Managed Device basis, the Software may be installed and used by Licensee solely for the benefit of some or all of the Managed Devices (as defined above) within Licensee’s organization, and only if that total number of Managed Devices within Licensee’s organization does not exceed the License Level set forth in the applicable Order Schedule.

2.2 Per User. For Software licensed on a per User basis, each license may be installed on one computer and used solely by an individual User within Licensee’s organization. For purposes of clarity, a single User license may not be used

by more than one individual. Notwithstanding the foregoing, a copy of the Software installed on a single common machine may be shared for internal use by employees and Contractors of Licensee's business only, provided that a license has been purchased for each individual User.

- 2.3 Per SAP User. For Software licensed on a per SAP User basis, the Software may be used by the total number of SAP Basic Users and SAP Enterprise Users within Licensee's organization, and only if that total number of SAP Basic Users and SAP Enterprise Users does not exceed the License Level set forth in the applicable Order Schedule.
 - 2.4 Per FlexWrap Author. For Software licensed on a per FlexWrap Author basis, the Software may be used by the total number of FlexWrap Authors within Licensee's organization, and only if that total number of FlexWrap Authors does not exceed the License Level set forth in the applicable Order Schedule. For purposes of clarity, a FlexWrap Author license may not be used by more than one individual.
- 3 *IBM Cognos*. Licensee has the rights to use the following IBM Cognos programs embedded within the Software solely in conjunction with the Software: Business Intelligence Advanced Business Author, Business Intelligence Professional Author, Business Intelligence Web Administrator, and Business Intelligence Enhanced Consumer. In addition to Licensee's obligations hereunder, Licensee shall also comply with the terms and conditions contained at <http://kb.flexerasoftware.com/selfservice/microsites/search.do?cmd=displayKC&docType=kc&externalId=Q203636>.

ATTACHMENT B
PRODUCT SPECIFIC TERMS AND CONDITIONS
ADMINSTUDIO

The following terms and conditions in this Attachment B apply to the following products to the extent Licensee has acquired a license to the applicable product:

- a) AdminStudio
- b) Workflow Manager
- c) Virtualization Pack
- d) Application Compatibility Pack
- e) Web Application Compatibility
- f) App Portal
- g) Virtual Desktop Assistant

1 *Definitions.*

“**Administrative User**” means the individuals within Licensee’s organization who access the software for purposes 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 AdminStudio. For purposes of certification as set forth in this Agreement, the number of Users includes all Users that accessed the Software at any point during the previous year.

“**End User**” means any individual or device in Licensee’s organization that may request, have deployed to, or otherwise receive any application, package, or other software prepared using the Software.

“**Endpoint Device**” means any device for which any function is performed by the Software (including but not limited to delivering, installing, updating, migrating or repairing any computer program or data file; or monitoring, tracking, or reporting on the status or history of any software or hardware components or software licenses on or used by the device). An Endpoint Device can be a personal computer, desktop computer, laptop computer, netbook computer, server, kiosk computer, web terminal, point of sale terminal, virtual machine, or handheld computing device such as a smart phone or PDA. Endpoint Device does not include peripheral equipment such as printers, routers or switches. As used in this definition, a “server” is any physical computer or virtual machine whose primary function is to provide services, resources, or information to other computers, including without limitation web servers, file servers, database servers, and network servers.

2 *License Models.* AdminStudio Software may be licensed on a per User basis or a per Endpoint Device basis.

2.1 Per Administrative User. For AdminStudio Software licensed on a per Administrative User basis, each license may be installed on one computer and used solely by an individual Administrative User within Licensee’s organization. For purposes of clarity, a single Administrative User license may not be used by more than one individual. Notwithstanding the foregoing, a copy of the Software installed on a single common machine may be shared for internal use by employees and contractors of Licensee’s business only, provided that a license has been purchased for each individual Administrative User.

2.2 Per End User. For AdminStudio Software licensed on a per End User basis, the Software may be installed and used by Licensee solely for the benefit of some or all of the End Users within Licensee’s organization, and only if that total number of End Users within Licensee’s organization does not exceed the License Level set forth in the applicable Order Schedule.

2.3 Per Endpoint Device. For Software licensed on a per Endpoint Device basis, the Software may be installed and used by Licensee solely for the benefit of some or all of the Endpoint Devices within Licensee’s organization, and only if that total number of Endpoint Devices within Licensee’s organization does not exceed the License Level.

- 3 *AdminStudio Redistributables.* The Software component parts may not be separated for use on more than one computer, except as set forth in this Agreement or an applicable Order Schedule. Licensee may copy the files specifically identified in the printed or electronic documentation as “redistributables” and redistribute such files to Licensee’s End Users, 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 its 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 the Licensee products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademark and copyright notices that accompany the Software and/or redistributables, but Licensee may not use Flexera Software’s name, logos or trademarks to market Licensee’s products.

ATTACHMENT C

**FLEXERA SOFTWARE
SAMPLE ORDER SCHEDULE**

This Order Schedule is for the purchase of the Flexera Software software licenses set forth below. The use of all software provided for herein shall be subject to the Master Software License and Services Agreement between Licensee and Flexera Software. The effective date of this Order Schedule shall be as of the date last executed (the “**Effective Date**”).

| PRODUCT: | <u>LICENSE TERM:</u> | <u>CURRENT LICENSE LEVEL</u> | <u># OF ADDITIONAL LICENSES</u> | <u>NEW LICENSE LEVEL:</u> | <u>FEE:</u> |
|-----------------|-----------------------------|-------------------------------------|--|-----------------------------------|--------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Total Fees for This Order: | |

STATED MAINTENANCE
Support and Maintenance as outlined above may be renewed for the first annual renewal period for the same amount paid in the first year.

CERTIFICATION
For this order, Licensee hereby asserts and certifies that its good-faith estimated annual usage for the proceeding remainder of Licensee’s fiscal year for perpetual licenses or twelve (12) months for subscription licenses will be within the License Level.

TECHNICAL SUPPORT, BUSINESS CONTACTS, AND MARKETING CONTACT
Technical Contacts: Licensee names the following individuals to act as the Central Distribution Contact and Technical Contact(s):
Central Distribution Contact:
 Name: _____ Title: _____
 Telephone/FAX: _____ E-mail: _____
Technical Support Contacts: *Note it is highly recommended that the Central Distribution Contact be named as one of the two Technical Support Contacts.*
 Name: _____ Title: _____
 Telephone/FAX: _____ E-mail: _____
 Fax: _____
 Name: _____ Title: _____
 Telephone/FAX: _____ E-mail: _____
 Fax: _____
Business Contact:
 Name: _____ Title: _____

Telephone/FAX: _____ E-mail: _____

Marketing Contact: Licensee appoints the following individual to act as the marketing point person (the “**Key Marketing Contact**”):

Name: _____ Title: _____

Telephone/FAX: _____ E-mail: _____

The Key Marketing Contact will be responsible for the implementation of the marketing commitments outlined in the Agreement and will act as the primary liaison with Flexera Software’s marketing department.

[To be included only if purchasing FlexNet Manager for SAP Business Suite] **SOFTWARE LOCATION, SAP INSTALLATION NUMBER, USER TYPE**

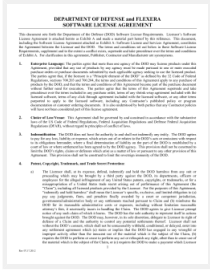
The software will be used at the following location:

Master SAP Installation Number: _____ (10 digits)

Basic User Type: _____

Accepted and agreed to as of the Effective Date by the authorized representative of each party:

| | |
|------------------------|-----------------------------|
| LICENSEE: _____ | FLEXERA SOFTWARE LLC |
| Signature: _____ | Signature: _____ |
| Print Name: _____ | Print Name: _____ |
| Print Title: _____ | Print Title: _____ |
| Date: _____ | Date: _____ |











Department of Defense - ESI Contract - 18July12

EchoSign Document History

July 26, 2012

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