

**FLEXERA SOFTWARE**  
**END-USER LICENSE AGREEMENT**

**IMPORTANT-READ CAREFULLY:** This End-User License Agreement (“**Agreement**”) is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the “**Licensee**”), and Flexera Software for the Software.

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

By clicking on the “I ACCEPT” button or by copying, downloading, accessing or otherwise using the Software, Licensee agrees to be bound by the terms of this Agreement and Licensee represents that Licensee is authorized to enter into this Agreement on behalf of Licensee’s corporate entity (if applicable). If Licensee does not wish to be bound by the terms of this Agreement, Licensee must click the “I DO NOT ACCEPT” button, and/or Licensee must not install, access or use the Software. If Licensee has a separately executed written software license agreement and order schedule with Flexera Software for the Software, then such separate agreement shall apply and this End User License Agreement shall be of no force or effect with respect to such Software.

**I. 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.

“**Cloud Site**” means the website hosted by Flexera Software through which Licensee may access Cloud Software.

“**Cloud Software**” means Software provided in a cloud-based software as a service delivery model.

“**Confidential Information**” means any business and/or technical information that is received by a party (“**Recipient**”) from the disclosing party (“**Discloser**”) that a) is in written, recorded, graphical or other tangible form and is marked “Confidential” or “Trade Secret” or similar designation; b) is in oral form and identified by the Discloser as “Confidential” or “Trade Secret” or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) could reasonably be construed to be confidential.

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

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

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

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

“**On-Premise Software**” means the object code form of the Software licensed to Licensee for installation at a Licensee site.

“**Order Confirmation**” means a confirmation document provided by Flexera Software specifying the Software and Support and Maintenance (if any) purchased by Licensee that are subject to the terms of this Agreement. An Order Confirmation may also be referred to as a “License Certificate” or “Licence Certificate”.

“**Schedule**” means the schedule attached to this End User License Agreement titled “Schedule” that outlines the terms and conditions applicable to the Software product(s) identified in such Schedule.

“**Services**” means professional consulting services. Services shall not include Support and Maintenance which is otherwise defined herein.

“**Software**” means the software products specified in an applicable Order Confirmation with which this Agreement was provided or referenced, including any Updates to the Software provided by Flexera Software to Licensee. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, Software does not include source code. The Software may include features that will limit use of the Software in excess of the License Level.

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

**“Support and Maintenance”** means the support and maintenance services set forth on the applicable Order Confirmation.

**“Updates”** means patches, additions, modifications, and new versions of the Software incorporating such patches, additions and modifications that are provided to Licensee by Flexera Software and that are not included in the initial delivery of the Software. Updates do not include 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”** means a period of ninety (90) days from initial delivery of the Software to Licensee pursuant to an Order Confirmation.

**“Work Product”** means anything created or provided by Flexera Software (or its agents) on behalf of Licensee as a part of Services, including, but not limited to, deliverables, work product, code or software and any derivative, enhancement or modification thereof.

## II. GENERAL TERMS

### 1. General Software Rights and Obligations.

- a. License. The specific license terms for the Software licensed by Licensee with which this Agreement was provided will be set forth in the applicable Schedule to this Agreement.
- b. License Term. An Order Confirmation will identify whether Licensee is purchasing a perpetual license or a subscription license and, if a subscription, the Subscription Period.
- c. Delivery. If Licensee licenses On-Premise Software, the On-Premise Software and associated Documentation shall be delivered by electronic means. If Licensee licenses Cloud Software, Licensee will receive access to the Cloud Software via the Cloud Site.
  - i. Cloud Site. The Cloud Site shall be part of a multi-tenant hosted environment and shall be provided subject to the Service Levels set forth in Schedule 7. Flexera Software will not materially diminish such Service Levels during the Subscription Period.
  - ii. Aggregate Usage Information. Flexera Software may aggregate information regarding Licensee’s use of the Cloud Site with information about use of the Cloud Site by Flexera Software’s other licensees, and may use such aggregated information to report on how the Cloud Site is used by Flexera Software’s licensees generally, for improvement and development of Flexera Software’s products, and for marketing purposes. In providing this aggregated information, Flexera Software shall not identify Licensee to any third party.
- d. Installation and Copies. Licensee may install On-Premise Software on Licensee's or Affiliates’ machines only and only at Licensee Sites as many instances of the Software as is designated in the applicable Order Confirmation. Licensee may not make copies of the Software unless otherwise set forth in an applicable Order Confirmation. Notwithstanding the foregoing, Licensee may make a copy of the Software for back-up purposes. Notwithstanding the foregoing, provided that Licensee, Contractor and Flexera Software execute an offsite contractor form, Licensee may allow a Contractor to install On-Premise Software on Contractor’s own premises.
- e. Use by Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Licensee’s Affiliates and Contractors may also use the licenses granted to Licensee, provided that (a) such use is only for Licensee’s or such Affiliate’s benefit, and (b) Licensee agrees to remain responsible for each such Affiliate’s and Contractor’s compliance with the terms and conditions of this Agreement. Use of the Software by the Affiliates, Contractors and Licensee in the aggregate must be within the License Level. The Affiliate rights granted in this section shall not apply to any unlimited License Level licenses unless Affiliate usage is specifically designated in the applicable Order Confirmation.
- f. License Restrictions. Licensee shall not (and shall not allow any third party to):
  - i. 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 limits reverse engineering restrictions, and then only with prior written notice to Flexera Software);
  - ii. distribute (except as expressly permitted herein), sell, sublicense, rent, lease or use the Software or Documentation (or any portion thereof) for time sharing, service bureau, hosting, service provider or like purposes;
  - iii. remove any product identification, proprietary, copyright or other notices contained in the Software, including but not limited to any such notices contained in the physical and/or electronic media or

Documentation, in the Setup Wizard dialog or “about” boxes, in any of the runtime resources and/or in any web-presence or web-enabled notices, code or other embodiments originally contained in or otherwise created by the Software, or in any archival or back-up copies, if applicable;

- iv. modify any part of the Software or Documentation, create a derivative work of any part of the Software or Documentation, or incorporate the Software into or with other software, except to the extent expressly authorized in writing by Flexera Software; or
  - v. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software or Documentation.
2. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera Software and its suppliers 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 and the Documentation and all copies thereof, modifications thereto, and derivative works based thereupon. Licensee acknowledges that it is obtaining only a limited license right to the Software and the Documentation 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.
3. **Support and Maintenance.**
- a. **Support and Maintenance.** Flexera Software shall provide the level of support and maintenance services (“**Support and Maintenance**”) set forth on the applicable Order Confirmation, if any, 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. Subscription license fees include Support and Maintenance for the duration of the Subscription Period.
  - b. **Exclusions.** Flexera Software will have no Support and Maintenance obligation to Licensee: (a) where the Software source code has been modified (except for Updates); or (b) for any Evaluation Software or Free Software.
  - c. **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 only within ninety (90) days from expiration of the Support and Maintenance term by paying Flexera Software an amount equal to (i) the then-applicable annual Support and Maintenance fee plus (ii) one-hundred fifty percent (150%) of the fees that would have been due had Licensee remained enrolled during the lapsed period. For perpetual licenses, Support and Maintenance may be renewed for the first renewal period (the duration of which may be no shorter than one year and no longer than the length of the initial maintenance period) for the same annual rate paid during the first Support and Maintenance Period.
4. **Services.** Services may be ordered by Licensee and will be provided by Flexera Software pursuant to this EULA. Unless otherwise agreed by the parties, Flexera Software will invoice Licensee for Services provided monthly.
- a. **Work Product.**
    - i. Flexera Software grants to Licensee a perpetual, non-transferable, non-sublicensable, non-exclusive, worldwide license right to import, export, execute, reproduce, distribute, modify, adapt, make derivative works of, and use Work Product for any purpose, provided such use is not competitive with Flexera Software.
    - ii. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera Software and its suppliers 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 Work Product. Licensee acknowledges that it is obtaining only a limited license right to the Work Product 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.
    - iii. Licensee acknowledges that any source code, design documents, strategy reports or other similar Work Product shall be considered Flexera Software Confidential Information.
    - iv. Work Product shall not include any materials provided to Flexera Software by or on behalf of Licensee in connection with the Services. Licensee will retain any ownership interest (including all intellectual property rights) in such materials and Flexera Software will make no ownership claim with respect to such materials.

5. Payment Terms. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made within thirty (30) days of the date of the applicable invoice. 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.
6. Taxes. Fees do not include taxes. If Flexera Software is required to pay any sales, use, GST, VAT, or other taxes in connection with Licensee's order, other than taxes based on Flexera Software's income, such taxes will be billed to and paid by Licensee. Licensee will make all payments of fees to Flexera Software free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Flexera Software will be Licensee's sole responsibility and consequently the amount of such fees will be increased such that the net fee received by Flexera Software will be the same as if such withholding taxes were not imposed, and Licensee will provide Flexera Software with official receipts issued by the appropriate taxing authority, or such other evidence as the Flexera Software may reasonably request, to establish that such taxes have been paid.
7. Termination. Licensee's license may be terminated by Flexera Software if (a) Licensee fails to make payment and/or (b) Licensee fails to comply with the terms of this Agreement within ten (10) days after receipt of written notice of such failure. Upon expiration of a subscription license or termination of any license, Licensee shall cease any and all use of the expired or terminated Software and destroy all copies of such Software and associated Documentation (including copies in storage media), and so certify to Flexera Software in writing. This requirement applies to all copies in any form, partial or complete.
8. Warranty.
  - a. Limited Software Performance Warranty. Flexera Software warrants to Licensee that during 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 in writing within the Warranty Period.
  - b. Exclusions. The limited warranties set forth in this Section shall not apply to warranty claims arising out of or relating to: (a) use of the Software with hardware or software not required in the Documentation; (b) modifications made to the Software source code; (c) defects in the Software due to accident, abuse or improper use by Licensee; or (d) Evaluation Software or Free Software.
  - c. Disclaimer. **THE WARRANTIES IN THIS SECTION ARE LIMITED WARRANTIES AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE IS PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, 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.**
9. Limitation of Liability.
  - a. **NEITHER FLEXERA SOFTWARE NOR ITS SUPPLIERS, IF ANY, SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGE TO SYSTEMS OR DATA, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FLEXERA SOFTWARE'S LIABILITY FOR ANY DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF LICENSE FEES THAT LICENSEE HAS PAID TO FLEXERA SOFTWARE.**
  - b. **FOR USERS WITHIN EUROPE, THE MIDDLE EAST, AFRICA, OR INDIA, NO PERSON WHO IS NOT A PARTY TO THIS AGREEMENT SHALL BE ENTITLED TO ENFORCE ANY TERMS OF THE SAME UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.**
  - c. **FLEXERA SOFTWARE DOES NOT LIMIT OR EXCLUDE ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**
  - d. **THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY EVEN IF ANY**

**LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.**

10. Assignment. Licensee may not, by operation of law or otherwise, transfer any license rights or other interests in Evaluation Software, Free Software, or Software labeled “Not for Resale” or “NFR.” Licensee may not assign this Agreement (or any part thereof) without the advance written consent of Flexera Software, except that Licensee may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Licensee’s assets or voting securities; provided that (i) Licensee must permanently and wholly transfer all of Licensee’s rights and obligations under this Agreement; (ii) Licensee must permanently and wholly transfer all of the Software (including component parts, media, printed materials, upgrades, prior versions, and authenticity certificates); (iii) Licensee may retain no instances or copies (whole or partial) of the Software, (iv) no assignment by Licensee shall be effective until Licensee (x) provides written notice of such assignment, including the assignee’s written agreement to the terms of this Agreement, (y) purchases additional license capacity and/or Support and Maintenance as may be required as a result of such assignment, and (z) pays any outstanding amounts invoiced by Flexera Software. Notwithstanding the foregoing, Licensee may not, in any event, assign any limitless License Level licenses. Any attempt by Licensee to transfer or assign this Agreement except as expressly authorized under this Section will be null and void. This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns.
11. Controlling Law. For Licensees in North America and Latin America, this Agreement shall be governed by the laws of the State of Illinois and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Europe, Middle East, or Africa, this Agreement shall be governed by the substantive laws of England and Wales, excluding that body of law known as conflicts of law and without regard to the United Nations Convention on Contracts for the Sale of Goods. For Licensees in Australia, this Agreement shall be governed by the laws of the State of Victoria, Australia without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Japan, this Agreement shall be governed by the laws of Japan without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in the Asia Pacific region other than Australia and Japan, this Agreement shall be governed by the laws of Special Administrative Region of Hong Kong without regard to conflicts of laws provisions thereof, and without regard to the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods.
12. Survival. Any provision that by the very nature of which should survive shall survive any termination or expiration of this Agreement.
13. Compliance.
  - a. Verification/Audits. Upon Flexera Software’s reasonable request, Licensee will furnish Flexera Software with a signed statement confirming whether the Software is being used by Licensee in accordance with this Agreement. Further, during the term of this Agreement and for a period of one (1) year thereafter, with prior reasonable notice of at least five (5) days, Flexera Software may audit Licensee for the purpose of verifying the information provided by Licensee under this Agreement, and for the purpose of verifying that Licensee is conforming to the terms of this Agreement. 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, (ii) Licensee materially breached this Agreement, or (iii) Licensee’s usage 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.
  - b. Validation of Use. In order to protect the Software from unauthorized use and in order to confirm Licensee’s compliance with the license grants and restrictions set forth in this Agreement, the Software may contain validation procedures designed to detect and report to Flexera Software information identifying usage potentially violating the terms of this Agreement. This information does not contain any personally identifiable information of Licensee or the end user.
14. Confidentiality.
  - a. 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 “Trade Secrets” of Flexera Software without any marking or further designation.

- b. Protection of Confidential Information. The Recipient shall a) have the right to disclose the Confidential Information only to its employees, consultants and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Except as expressly authorized herein, for a period of three (3) years following the disclosure date of Confidential Information to the Recipient, the Recipient will hold in confidence and not make any unauthorized use or disclosure of any Confidential Information. No time limit shall apply to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret".
  - c. Usage Data. Licensee understands that Flexera Software may utilize technology that gathers information about Licensee's computer system, however, such data is used solely for the purpose of understanding machine types and other system-oriented information and does not contain any personally identifiable information of Licensee.
  - d. Exclusions. The Recipient'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 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).
  - e. 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 shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.
- 15. Publicity. Either party may include the other party's company name in a list of customers and/or suppliers without the other party's written consent. Any other use of the other party's name or logo is prohibited without such other party's written consent.
  - 16. 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.
  - 17. 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 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.
  - 18. Construction and Interpretation. The original of this Agreement has been written in English. Licensee waives any rights it may have under the law of its country to have this Agreement written in the language of that country. The use of the terms "including," "include" or "includes" shall 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 vice-versa. Words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires. This Agreement shall be equally and fairly construed without reference to the identity of the party preparing this document. 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 shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.
  - 19. 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. Licensee acknowledges and agrees that the Software and Services may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera Software has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Software or Work Product; all actions taken or not taken by Licensee based on the output of the Software or Work Product shall be the responsibility of Licensee. Neither party will have the power to bind the other

or incur obligations on the other party's behalf without the other party's prior written consent.

20. 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.
21. 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).
22. 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) by 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.
23. 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.
24. 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.
25. Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies to which the parties are entitled by law. The exercise by either party of any right or remedy under this Agreement or under applicable law will not preclude such party from exercising any other right or remedy under this Agreement or to which such party is entitled by law.
26. Schedules. The following Schedules are attached to this End User License Agreement and are hereby incorporated by reference:
  - a. [Schedule 1](#) – Terms and Conditions for Installation Products
  - b. [Schedule 2](#) – Terms and Conditions for Application Readiness Products
  - c. [Schedule 3](#) – Terms and Conditions for Software License Optimization Products
  - d. [Schedule 4](#) – Terms and Conditions for Software Vulnerability Management Products
  - e. [Schedule 5](#) – Terms and Conditions for Evaluation and Free Software
  - f. [Schedule 6](#) – Terms and Conditions for Not for Resale Software
  - g. [Schedule 7](#) – Cloud Software Service Levels
27. Entire Agreement. This Agreement, including all Schedules, 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.

**SCHEDULE 1**  
**TERMS AND CONDITIONS FOR INSTALLATION PRODUCTS**

The terms of this Schedule 1 shall apply to all Installation products licensed by Flexera Software to Licensee. Any terms not defined in this Schedule 1 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 1 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 1 and the terms of the main body of the Agreement, the terms included in this Schedule 1 shall control. As of October 2015, the following products are considered "Installation products" and such list may be updated time to time by Flexera Software in its sole discretion without amending this Schedule 1:

|                                                 |
|-------------------------------------------------|
| InstallShield Express                           |
| InstallShield Professional                      |
| InstallShield Premier                           |
| InstallShield Standalone Build                  |
| InstallShield Collaboration                     |
| InstallShield Limited Edition for Visual Studio |
| InstallAnywhere Professional                    |
| InstallAnywhere Premier                         |
| InstallAnywhere Standalone Build                |
| InstallAnywhere Virtualization and Cloud        |

**I. DEFINITIONS**

**"Build System"** means a machine or group of machines dedicated to compiling code via automated or scheduled tasks.

**"Internal Purposes"** means distribution of installation programs of Licensee products both internally within Licensee and externally to Licensee's customers.

**"Upgrade"** means a new version of Software made available by Flexera Software, and identified in an invoice, Order Confirmation, or SKU as an "Upgrade".

**"User"** means the individuals who access the Software for the purposes of designing and developing software installations.

**II. INSTALLSHIELD LIMITED EDITION FOR VISUAL STUDIO**

***The use of InstallShield Limited Edition for Visual Studio will be governed by the terms set forth in this Article II, in addition to the terms set forth in the Agreement. Each individual User may only register for a single instance of the Limited Edition Software. In the event of a conflict between the terms of this Article II and the rest of the Agreement, the terms of this Article II shall prevail.***

- Grant of License.** InstallShield Limited Edition for Visual Studio is a functionally limited version of the InstallShield software and is intended specifically for use with Visual Studio. Subject to all of the terms and conditions of this Agreement, Flexera Software grants Licensee a limited, internal use, non-exclusive, non-transferable license to use the Software solely for Licensee's Internal Purposes at Licensee's site(s) only. Flexera Software grants Licensee the right to install and use the software on a single computer to be used exclusively with Visual Studio and the right to install and use up to two (2) additional instances for use within a Team Foundation Server environment. For the purposes of this Section, Software shall also include any Documentation of the Software product provided to Licensee under this Agreement.
- Disclaimer of Warranty.** **THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. 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 SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.**
- Limitation of Liability.** **IN NO EVENT WILL FLEXERA SOFTWARE BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA SOFTWARE'S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US \$50).**

### III. LICENSE RIGHTS AND OBLIGATIONS

#### 1. License.

- a. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use Software for Internal Purposes at Licensee's site(s) only, but only in accordance with (a) the Documentation, (b) this Agreement and (c) the License Level. For the purposes of this Section, Software shall also include any Documentation and any Updates provided to Licensee under this Agreement. For Software that will be used in a service provider role, the terms of Article IV shall apply; licenses not identified as "Service Provider" licenses on an Order Confirmation may not be used in a service provider capacity and shall be governed by this Article III. Distribution of installation programs of non-Licensee products shall require a service provider license as governed by the terms of Article IV below.
  - b. License Models. Licensee may be licensed pursuant to one of the following license models, which will be identified on the applicable Order Confirmation.
    - i. Node-Locked Licenses. If Licensee has licensed Software on a node-locked basis, Licensee may install and use one instance of the Software on a single computer either physically installed or on a virtual image on that computer only at Licensee's site(s) for Licensee's Internal Purposes only in accordance with the License Level. A node-locked license is limited to use by a single User on a single computer or virtual image; Licensee may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited.
    - ii. Concurrent Licenses. If Licensee has licensed on a concurrent basis, Licensee may install the Software on any machine at Licensee's site(s) for Licensee's Internal Purposes only in accordance with the License Level. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. For the purpose of certification as set forth in the Agreement, the number of concurrent Users is the highest number of Users that accessed the Software at any single point during the previous year.
  - c. Standalone Build Licenses: In addition to the use rights for the Software, Standalone Build Licenses may also be run on a separate Build System but only if run by automated processes or by a User. If Licensee has licensed the InstallAnywhere Standalone Build Node-Lock Software, Licensee may install and use one copy of the Software on a single computer residing on Licensee's premises only for Licensee's Internal Purposes.
  - d. Upgrades. Upgrades, if provided to Licensee, may be licensed to Licensee by Flexera Software with additional or different terms and conditions. Upgrades may be used only by the User of the original version of the Software that is being upgraded. After installation of an Upgrade, such User may continue to use the prior version(s) of the Software in accordance with the terms and conditions applicable to such version, provided that (i) the prior version(s) may only be used by the same User of the Upgrade; (ii) Licensee acknowledges that any obligation Flexera Software may have to support the prior version(s) may be ended upon the availability of the Upgrade.
  - e. Dual-Media Software. Licensee may receive the Software in more than one medium (electronic and on a DVD, for example). Receipt of the Software in more than a single manner (electronic or on a DVD, for example) does not expand the license rights granted to Licensee hereunder. Licensee's use of the Software is limited to the number of licenses (instances) that Licensee has acquired overall, regardless of number or type of media on which it has been provided.
  - f. Transfers. Transfers of licenses that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than annually.
2. Redistributable Files. The Software component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as "redistributables" and redistribute such files to Licensee's end users of Licensee's products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee's end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee's products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademarks and copyright notices that accompany the Software, but Licensee may not use Flexera Software's name, logos or trademarks to market Licensee's products.

#### **IV. SERVICE PROVIDER USE LICENSE RIGHTS AND OBLIGATIONS**

This Article IV sets forth the terms and conditions under which Licensee has licensed quantities of the Software for use in the delivery of Software Engineering Services to its Customers, as those terms are defined below.

1. Definitions.

1.1. **“Customers”** means the customers of Licensee for which Licensee has purchased a service provider license to use the Software to provide Software Engineering Services. Licensee may not be its own Customer. Licensee shall be solely responsible for the Customer relationship; Flexera Software shall have no obligations whatsoever to Customers.

1.2. **“Software Engineering Services”** means those services that Licensee provides to Customers utilizing the Software for the purpose of creation or modification of installation programs of Customer products.

2. Grant of License. Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for the sole purpose of providing Software Engineering Services to Customers, (i) Software, in accordance with the Documentation, and (ii) Documentation.

3. Installation. In addition to the installation rights set forth in the Agreement, Licensee may install and operate the Software at a Customer location.

4. License Models.

4.1. Node-Locked Licenses. If Licensee has licensed Software on a node-locked basis, Licensee may install and use one instance of the Software on a single computer either physically installed or on a virtual image on that computer only at Licensee’s site(s) for delivery of Software Engineering Services only in accordance with the License Level. A node-locked license is limited to use by a single User on a single computer or virtual image; Licensee may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited.

4.2. Concurrent Licenses. If Licensee has licensed on a concurrent basis, Licensee may install the Software on any machine at Licensee’s site(s) for delivery of Software Engineering Services only in accordance with the License Level. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. For the purpose of certification as set forth in the Agreement, the number of concurrent Users is the highest number of Users that accessed the Software at any single point during the previous year.

5. License Restrictions.

5.1. Software may not be left behind at Customer’s site or on Customer’s systems once the Software Engineering Services are completed. If computers, servers or networks on which the Software is installed are no longer owned or leased by Licensee, Licensee must remove the Software from such computers, servers or networks.

5.2. Licensee may not use the Software for its own Internal Purposes.

6. Licensee Obligations.

6.1. Representations. Licensee shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Software which are in addition to or inconsistent with those set forth in the product descriptions or promotional materials delivered by Flexera Software to Licensee hereunder. In no event shall Licensee make any representation, warranty or guarantee by or on behalf of Flexera Software. Licensee shall represent Flexera Software and its Software in a positive and professional manner at all times. Licensee shall not re-brand or otherwise represent the software as anything other than [Product Name] by Flexera Software LLC without express written approval from Flexera Software. This shall include, but not be limited to, reports, splash screens, documentation and all other intellectual property.

6.2. Business Practices. Licensee agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Flexera Software or its Software and agrees to comply with all applicable federal, state and local laws and regulations (including, without limitation, data protection, privacy and import and export compliance laws and regulations) in connection with its performance under this Agreement. Licensee further agrees to notify Flexera Software sixty (60) days in advance if Licensee intends to sell, represent or promote any

products competitive with the Software.

- 6.3. Licensee Indemnity. Licensee will defend, indemnify and hold harmless Flexera Software from and against any loss, cost, liability or damage, including attorneys' fees, for which Flexera Software becomes liable arising from or relating to: (a) any breach by Licensee of any term of this Agreement, (b) the issuance by Licensee of any warranty or representation not authorized in writing by Flexera Software or (c) any other act or omission of Licensee in connection with the marketing or distribution of the Software under this Agreement.
- 6.4. Software Engineering Services Site. Licensee shall identify, upon Flexera Software's request, the Customer and the site of the performance of the Software Engineering Services for such Customer for each applicable license.
- 6.5. Notice of Termination of Software Engineering Services for Named Customer. In the event Software Engineering Services expire or are terminated for a particular Customer, Licensee may be required to notify Flexera Software of such expiration or termination within thirty (30) days of the effective date of such expiration or termination.
- 6.6. Flow-Through of Terms. Licensee shall enter into an agreement with a Customer that is equally as protective of the Software as this Agreement. Licensee shall notify Flexera Software of any uncured breach of any terms related to the Software of which it becomes aware. Licensee will enforce the agreement it has with its Customer as it relates to the Software in the same manner as Licensee enforces such agreement with respect to Licensee's own intellectual property, which shall be at least in a reasonable manner. In any event, Flexera Software and Licensee will reasonably cooperate on actions to be taken to enforce breaches of Flexera Software's intellectual property rights against a Customer.
7. Expiration.
  - 7.1. Expiration of Licenses. Upon completion or termination of the Software Engineering Services for a Customer (the "Expiration Date"), Licensee will cease using the applicable licenses for such Customer. If the Software was installed and used at Customer's site, Licensee will uninstall the Software from any equipment used for the provision of Software Engineering Services to such Customer, and will provide Flexera Software with certification thereof. For the purpose of clarity, Licensee may not transfer licenses to Customers without Flexera Software's prior written consent, which may be withheld in Flexera Software's sole discretion.
  - 7.2. Effect of Termination. In no event will Licensee be entitled to receive a refund of any licensee fees paid prior to the applicable termination date, and Licensee shall be responsible for the fees applicable for the remainder of the license term as if such license had not been terminated or expired.
8. Support and Maintenance. Flexera Software shall have no support or maintenance obligations whatsoever to Customers.
9. Marketing and Trademarks.
  - 9.1. Marketing Materials. All marketing materials, demonstration copies of the Software (if applicable), and other materials provided by Flexera Software hereunder will remain the property of Flexera Software, and upon termination or expiration, such materials will be returned to Flexera Software within thirty (30) days.
  - 9.2. Trademarks. Licensee may use Flexera Software's trademarks in connection with the Software. All displays of Flexera Software's trademarks that Licensee intends to use will conform to reasonable guidelines provided from time to time by Flexera Software. Flexera Software will have the right to approve all usage by Licensee of its trademarks. Licensee will not use any of Flexera Software's trademarks in conjunction with another trademark.

**[END OF SCHEDULE 1]**

**SCHEDULE 2**  
**TERMS AND CONDITIONS FOR APPLICATION READINESS PRODUCTS**

The terms of this Schedule 2 shall apply to all Application Readiness products licensed by Flexera Software to Licensee. Any terms not defined in this Schedule 2 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 2 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 2 and the terms of the main body of the Agreement, the terms included in this Schedule 2 shall control. As of October 2015, the following products are considered “Application Readiness products” and such list may be updated time to time by Flexera Software in its sole discretion without amending this Schedule 2:

|                                           |
|-------------------------------------------|
| AdminStudio Standard                      |
| AdminStudio Professional                  |
| AdminStudio Enterprise                    |
| AdminStudio Virtual Desktop Assessment    |
| AdminStudio Application Compatibility     |
| AdminStudio Mobile                        |
| AdminStudio Virtualization                |
| AdminStudio Limited Edition               |
| AdminStudio Inventory and Rationalization |
| Workflow Manager                          |
| WiseScript Editor                         |

**I. DEFINITIONS**

1. **“Administrator”** means the individuals within Licensee’s organization who access the software for the purpose of packaging, re-packaging, evaluating compatibility or suitability of, or creating any workflows for the purpose of deploying a software application or any administrative function related to the Software. Each Administrator license may be installed on one computer and used solely by an individual Administrator within Licensee’s organization. Software licensed on a per Administrator model is node-locked and is limited to use by a single individual on a single computer or virtual image; Licensee may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited. For the purpose of clarity, a single Administrator license may not be used by more than one individual. For the purpose of certification as set forth in this Agreement, the number of Administrators includes all Administrators that accessed the Software at any point during the previous year.
2. **“Device”** means any physical or virtual 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). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year. A “Device” may have also been referred to in legacy license models as **“Desktop”** or **“Endpoint Device”**.
3. **“Internal Purposes”** means distribution of packages to Licensee’s own systems and employees.
4. **“User”** means any individual in Licensee’s organization that may request, have deployed to, or otherwise receive any application, package, or other software prepared using the Software. For the purpose of certification as set forth in this Agreement, the number of Users includes the highest number of Users that were in place at any point during the previous year. The Software may be installed and used by Licensee on computers only at Licensee’s site(s) solely for the benefit of some or all of the Users within Licensee’s organization, and only if that total number of Users within Licensee’s organization does not exceed the License Level.

**II. ADMINSTUDIO LIMITED EDITION**

***The use of AdminStudio Limited Edition will be governed by the terms set forth in this Article II, in addition to the terms set forth in the Agreement. In the event of a conflict between the terms of this Article II and the rest of the Agreement, the terms of this Article II shall prevail. Each individual User may only register for a single instance of AdminStudio Limited Edition.***

1. Grant of License. AdminStudio Limited Edition is a functionally limited version of the AdminStudio software and is intended specifically for use with third party client management software. Subject to all of the terms and conditions of this

Agreement, Flexera Software grants Licensee a limited, internal use, non-exclusive, non-transferable license to use AdminStudio Limited Edition solely for Licensee's Internal Purposes at Licensee's site(s) only. Flexera Software grants Licensee the right to install and use AdminStudio Limited Edition. For the purposes of this Section, AdminStudio Limited Edition shall also include any Documentation of AdminStudio Limited Edition provided to Licensee under this Agreement.

2. **Disclaimer of Warranty.** ADMINSTUDIO LIMITED EDITION IS PROVIDED ON AN "AS IS" BASIS. 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 SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.
3. **Limitation of Liability.** IN NO EVENT WILL FLEXERA SOFTWARE BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE ADMINSTUDIO LIMITED EDITION OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA SOFTWARE'S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US \$50).

### **III. INTERNAL USE LICENSE RIGHTS AND OBLIGATIONS**

This Article III sets forth the terms and conditions under which Licensee desires to license quantities of the Software for its internal use.

1. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. For Software that will be used in a service provider role, the terms of Article III shall apply; licenses not identified as "Service Provider" licenses on an Order Confirmation may not be used in a service provider capacity and shall be governed by this Article II. Distribution of packages to any third party customer of Licensee shall require a service provider license as governed by the terms of Article IV below.
2. **Redistributables.** The Software component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as "redistributables" and redistribute such files to Licensee's end users of Licensee's products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee's end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee's products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademarks and copyright notices that accompany the Software, but Licensee may not use Flexera Software's name, logos or trademarks to market Licensee's products.
3. **Transfers.** Transfers of Administrator licenses that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than annually.

### **IV. SERVICE PROVIDER USE LICENSE RIGHTS AND OBLIGATIONS**

This Article IV sets forth the terms and conditions under which Licensee has licensed quantities of the Software for use in the delivery of Packaging Services to its Customers, as those terms are defined below.

1. **Definitions.**
  - 1.1. **"Customers"** means the customers of Licensee for which Licensee has purchased a service provider license to use the Software to provide Packaging Services. Licensee may not be its own Customer. Licensee shall be solely responsible for the Customer relationship; Flexera Software shall have no obligations whatsoever to Customers.
  - 1.2. **"Packaging Services"** means those services that Licensee provides to Customers utilizing the Software for the purpose of rationalizing and/or creating application packages for deployment within Customer's internal organization.
2. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for the sole purpose of providing Packaging Services to Customers for such Customers' internal purposes, (i) Software, in accordance with the Documentation, and (ii) Documentation.

3. Installation. In addition to the installation rights set forth in the Agreement, Licensee may install and operate the Software at a Customer location.
4. License Models.
  - 4.1. Concurrent Licenses. Service Provider licenses may be provided on a concurrent Administrator basis. Notwithstanding the definition of “Administrator”, if Licensee has licensed Service Provider licenses on a concurrent Administrator basis, the Software may be used by any individuals within Licensee’s organization, up to the License Level. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. For the purpose of certification as set forth in the Agreement, the number of Administrators is the highest number of Administrators that accessed the Software at any single point during the previous year.
  - 4.2. Multiple Customer. If Licensee purchases licenses based on a multiple Customer model, Licensee is acquiring licenses to be used for any of Licensee’s Customers. Licenses not identified as “Multiple Customer” or “Package Factory” licenses on an Order Confirmation may not be used for multiple Customers and shall be governed by Section 4.3 below.
  - 4.3. Named Customer. If Licensee purchases licenses based on a named Customer model, Licensee may use the Software for the named Customer identified in the applicable Order Confirmation, provided that Licensee may not use the Software for any Customer other than the Customer identified in the applicable Order Confirmation.
5. License Restrictions.
  - 5.1. Software may not be left behind at Customer’s site or on Customer’s systems once the Packaging Services are completed. If computers, servers or networks on which the Software is installed are no longer owned or leased by Licensee, Licensee must remove the Software from such computers, servers or networks.
  - 5.2. Licensee may not use the Software for the purpose of creating installation packages for distribution outside of Customer’s organization.
  - 5.3. Licensee may not use the Software for its own Internal Purposes.
6. Licensee Obligations.
  - 6.1. Representations. Licensee shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Software which are in addition to or inconsistent with those set forth in the product descriptions or promotional materials delivered by Flexera Software to Licensee hereunder. In no event shall Licensee make any representation, warranty or guarantee by or on behalf of Flexera Software. Licensee shall represent Flexera Software and its Software in a positive and professional manner at all times. Licensee is not to re-brand or otherwise represent the software as anything other than [Product Name] by Flexera Software LLC without express written approval from Flexera Software. This shall include, but not be limited to, reports, splash screens, documentation and all other intellectual property.
  - 6.2. Business Practices. Licensee agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Flexera Software or its Software and agrees to comply with all applicable federal, state and local laws and regulations (including, without limitation, data protection, privacy and import and export compliance laws and regulations) in connection with its performance under this Agreement. Licensee further agrees to notify Flexera Software sixty (60) days in advance if Licensee intends to sell, represent or promote any products competitive with the Software.
  - 6.3. Licensee Indemnity. Licensee will defend, indemnify and hold harmless Flexera Software from and against any loss, cost, liability or damage, including attorneys’ fees, for which Flexera Software becomes liable arising from or relating to: (a) any breach by Licensee of any term of this Agreement, (b) the issuance by Licensee of any warranty or representation not authorized in writing by Flexera Software or (c) any other act or omission of Licensee in connection with the marketing or distribution of the Software under this Agreement.
  - 6.4. Packaging Services Site. Licensee shall identify, upon Flexera Software’s request, the Customer and the site of the performance of the Packaging Services for such Customer for each applicable license.
  - 6.5. Notice of Termination of Packaging Services for Named Customer. In the event Packaging Services expire or are terminated for a particular Customer, Licensee may be required to notify Flexera Software of such expiration or termination within thirty (30) days of the effective date of such expiration or termination.

- 6.6. Flow-Through of Terms. Licensee shall enter into an agreement with a Customer that is equally as protective of the Software as this Agreement. Licensee shall notify Flexera Software of any uncured breach of any terms related to the Software of which it becomes aware. Licensee will enforce the agreement it has with its Customer as it relates to the Software in the same manner as Licensee enforces such agreement with respect to Licensee's own intellectual property, which shall be at least in a reasonable manner. In any event, Flexera Software and Licensee will reasonably cooperate on actions to be taken to enforce breaches of Flexera Software's intellectual property rights against a Customer.
7. Expiration.
- 7.1. Expiration of Licenses. Upon completion or termination of the Packaging Services for a Customer (the "Expiration Date"), Licensee will cease using the applicable licenses for such Customer. If the Software was installed and used at Customer's site, Licensee will uninstall the Software from any equipment used for the provision of Packaging Services to such Customer, and will provide Flexera Software with certification thereof. For the purpose of clarity, Licensee may not transfer licenses to Customers without Flexera Software's prior written consent, which may be withheld in Flexera Software's sole discretion.
- 7.2. Effect of Termination. In no event will Licensee be entitled to receive a refund of any licensee fees paid prior to the applicable termination date, and Licensee shall be responsible for the fees applicable for the remainder of the license term as if such license had not been terminated or expired.
8. Support and Maintenance. Flexera Software shall have no support or maintenance obligations whatsoever to Customers.
9. Marketing and Trademarks.
- 9.1. Marketing Materials. All marketing materials, demonstration copies of the Software (if applicable), and other materials provided by Flexera Software hereunder will remain the property of Flexera Software, and upon termination or expiration, such materials will be returned to Flexera Software within thirty (30) days.
- 9.2. Trademarks. Licensee may use Flexera Software's trademarks in connection with the Software. All displays of Flexera Software's trademarks that Licensee intends to use will conform to reasonable guidelines provided from time to time by Flexera Software. Flexera Software will have the right to approve all usage by Licensee of its trademarks. Licensee will not use any of Flexera Software's trademarks in conjunction with another trademark.

**[END OF SCHEDULE 2]**

**SCHEDULE 3**  
**TERMS AND CONDITIONS FOR SOFTWARE LICENSE OPTIMIZATION PRODUCTS**

The terms of this Schedule 3 shall apply to all Software License Optimization products licensed by Flexera Software to Licensee. Any terms not defined in this Schedule 3 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 3 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 3 and the terms of the main body of the Agreement, the terms included in this Schedule 3 shall control. As of October 2015, the following products are considered “Software License Optimization products” and such list may be updated time to time by Flexera Software in its sole discretion without amending this Schedule 3:

|                                                     |                               |
|-----------------------------------------------------|-------------------------------|
| <b>FlexNet Manager Suite</b>                        |                               |
|                                                     | FlexNet Manager Platform      |
|                                                     | FlexNet Manager for IBM       |
|                                                     | FlexNet Manager for Microsoft |
|                                                     | FlexNet Manager for Oracle    |
|                                                     | FlexNet Manager for SAP       |
|                                                     | FlexNet Manager for Symantec  |
|                                                     | FlexNet Manager for VMware    |
| <b>FlexNet Manager for Engineering Applications</b> |                               |
|                                                     | FlexWrap                      |
| <b>Workflow Manager</b>                             |                               |
| <b>App Portal</b>                                   |                               |

**FLEXNET MANAGER SUITE**

1. **“Device”** means any physical or virtual 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). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
2. **“Internal Purposes”** means management of Devices located within Licensee’s own systems.
3. **“User”** means the individuals within Licensee’s organization who access any software application or database on an SAP system or SAP may deem as a user. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed any such software application or database at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
4. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of Devices of any third party shall require a service provider license.
5. **IBM Cognos.** Licensee may have 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://support.installshield.com/kb/view.asp?articleid=Q203636>.
6. **Acceptable Use Policy.** The Software is provided subject to the Acceptable Use Policy (“AUP”) set forth in Exhibit A to this Schedule 3.

#### **FLEXNET MANAGER FOR ENGINEERING APPLICATIONS AND FLEXWRAP**

1. **“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 the purpose of certification as set forth in the Agreement, the number of FlexWrap Authors includes all FlexWrap Authors who accessed FlexWrap at any point during the previous year. For the purpose of clarity, a single FlexWrap Author may not be more than one individual.
2. **“Internal Purposes”** means management of applications located within Licensee’s own systems.
3. **“User”** means the individuals within Licensee’s organization who access a license server for which FlexNet Manager for Engineering Applications is providing reporting services. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed such license server at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
4. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of applications of any third party shall require a service provider license.
5. **FlexNet Manager for Engineering Applications.** Each license for FlexNet Manager for Engineering Applications permits the management and administration of license servers and processing of reports associated with the licensed number of Users within Licensee’s organization who access the software application identified by a distinct vendor daemon name(s) (“Vendor Daemon”). FlexNet Manager for Engineering Applications may be installed on a single named server identified by a distinct server identification (“HostID”). A set of redundant servers is considered a “single named server” for purposes of this license.
  - a. **HostID Changes.** The designated HostID may be changed only once during the Support and Maintenance period while Licensee is under a maintenance contract without additional cost to Licensee. Additional changes may require an additional fee.
  - b. **Vendor Daemon Substitutions.** The designated Vendor Daemon(s) may not be substituted unless the underlying vendor changes the Vendor Daemon. In such instances, there is no extra charge for exchanging the Vendor Daemon.
6. **FlexWrap.** Each license for FlexWrap permits the “wrapping” of an unlimited number of internally used applications to provide FlexNet licensing capabilities for such applications and a license server to manage license check-ins and check-outs for these applications. FlexWrap provides application usage management and optional enforcement of concurrent limits on application usage. The license server may be installed on a single named server identified by a HostID. A set of redundant servers is considered a “single named server” For the purpose of this license. This license does not permit applications to be wrapped and distributed externally to any other parties. FlexWrap 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 this Order Schedule.

#### **WORKFLOW MANAGER**

1. **“Device”** means any physical or virtual 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). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
2. **“Internal Purposes”** means management of Devices located within Licensee’s own systems.
3. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of Devices of any third party shall require a service provider license.

#### **APP PORTAL**

1. **“User”** means any individual that may request, have deployed to, or otherwise receive any application, package, or other software, or other IT or corporate resource or service, prepared using the Software. For the purpose of certification as set forth in this Agreement, the number of Users includes the highest number of Users that were in place at any point during the previous year.

2. **"Internal Purposes"** means management of applications located within Licensee's own systems.
3. Grant of License. Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of applications of any third party shall require a service provider license.

#### **APP PORTAL LIMITED EDITION**

1. **"Internal Purposes"** means management of applications located within Licensee's own systems.
2. Grant of License. App Portal Limited Edition is a functionally limited version of the App Portal software and is intended specifically for use with Flexera Software's AdminStudio software. Subject to all of the terms and conditions of this Agreement, Flexera Software grants Licensee a limited, internal use, non-exclusive, non-transferable license to use App Portal Limited Edition solely for Licensee's Internal Purposes at Licensee's site(s) only. Flexera Software grants Licensee the right to install and use App Portal Limited Edition for up to five (5) applications. For the purposes of this Section, App Portal Limited Edition shall also include any Documentation of App Portal Limited Edition provided to Licensee under this Agreement.
3. Disclaimer of Warranty. **APP PORTAL LIMITED EDITION IS PROVIDED ON AN "AS IS" BASIS. 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 SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.**
4. Limitation of Liability. **IN NO EVENT WILL FLEXERA SOFTWARE BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE APP PORTAL LIMITED EDITION OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA SOFTWARE'S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US \$50).**

**EXHIBIT A TO SCHEDULE 3**  
**ACCEPTABLE USE POLICY**  
**FLEXNET MANAGER SUITE**

**Summary**

The following describes the conditions under which Licensee must, and must not, use FlexNet Manager Suite. If Licensee does not agree to this acceptable use policy, please do not use FlexNet Manager Suite.

Flexera Software disclaims all liability for information Licensee provides or authorize which is outside the scope of its intended purpose. This includes, but is not limited to, the following categories of information, which Licensee hereby agrees not to provide or allow to be collected:

- Protected Health Information ("PHI") as defined under the Health Insurance Portability and Accountability of 1996 Act as amended ("HIPAA").
- Payment card information.
- Copyrighted content, whether copyrighted by Licensee or others.
- Information about Licensee's customers, account holders, subscribers, or business partners.
- Personally Identifiable Information of the employees of the vendors from which Licensee purchased use rights.

Further, unless Licensee is a member of the FlexNet Manager Suite partner program who has arranged to apply the intended purpose of FlexNet Manager Suite to others, Licensee agrees:

- not to provide information which identifies Licensee's customers, account holders, subscribers, or business partners.
- not to provide account information of Licensee's customers, account holders, subscribers, or business partners.

**Personally Identifiable Information ("PII")**

To use FlexNet Manager Suite, Licensee will need to supply PII to it. If Licensee does not use FlexNet Manager Suite for a software product that is licensed on a per user basis, then the only PII that Licensee will need to supply is for the small number of administrators that establish accounts on FlexNet Manager Suite.

The PII supplied by Licensee's administrators of FlexNet Manager Suite must only include the information necessary to establish an account and for Licensee to identify that administrator should Licensee need to contact them for any reason, or to terminate their account.

Any PII supplied by Licensee that is included with Licensee's software usage information must only be provided if that identification is necessary to help FlexNet Manager Suite achieve its intended purpose.

The PII Licensee supplies must relate only to the business persona of Licensee's employees, and only to the extent the PII is necessary for FlexNet Manager Suite to achieve its intended purpose.

Since the following do not relate to a business persona, Licensee agrees not to provide:

- home addresses
- home phone numbers
- private mobile phone numbers
- private email addresses
- any identifier of a computer or device owned by an employee that is not covered by Licensee's BYOD policy (including, but not limited to, identifiers such as IP address, Ethernet MAC Address, computer name, or device name)
- any other information that can identify an employee's private persona

Since the following are not necessary for FlexNet Manager to achieve its intended purpose, Licensee agrees not to provide:

- national identification numbers (including, but not limited to, social security numbers, or even the last 4 digits of such numbers)
- state/province identification numbers (including, but not limited to, driver's license numbers)
- passport numbers
- alien registration numbers
- biometric identifiers
- financial account numbers or other non-public financial information

- other sensitive information, such as medical information, citizenship or immigration status, ethnic background, political affiliation, religious affiliation, sexual orientation, organizational memberships, date of birth, age, criminal history, mother's maiden name

#### **Clarification of Roles**

When Licensee is using FlexNet Manager Suite, Licensee agrees that it is the PII controller and Flexera Software is the PII processor, per the definitions of these terms ISO 29100.

#### **Providing Too Much Information**

Licensee agrees not to provide, or allow to be collected, information about more users, computers, or devices than are necessary for FlexNet Manager Suite's intended purpose.

#### **Logical Separation of Usage versus Content**

Licensee agrees not to provide information generated, processed, or stored by the software products supported by FlexNet Manager Suite, except for any information generated, processed, or stored by those software products that is necessary for FlexNet Manager to achieve its intended purpose.

#### **Gold Master Use Rights Information**

FlexNet Manager Suite is not intended to be used as the sole source of Licensee's use rights information. Licensee must retain the original copies of use rights information in the same form and with the same completeness in which Licensee provided those copies to FlexNet Manager Suite.

#### **Testing of FlexNet Manager Suite Cloud**

If Licensee uses the Cloud deployment of FlexNet Manager Suite, Licensee agrees not to perform the following tests.

Licensee agrees to not conduct Denial of Service testing against FlexNet Manager Suite Cloud.

Licensee agrees to not exploit any security vulnerabilities in FlexNet Manager Suite Cloud, even if Licensee discovers these vulnerabilities through Licensee's own use of FlexNet Manager Suite Cloud.

Licensee agrees to not conduct vulnerability scanning or penetration testing ("pen testing") without prior written consent of Flexera Software. Even if given prior written consent, Flexera Software may revoke that consent at any time if the scanning or testing is determined, or suspected, to have negative effects on FlexNet Manager Suite Cloud, other FlexNet Manager Suite Cloud customers, or Flexera Software, either because of the scanning or testing itself or because of the current state of or load on FlexNet Manager Suite Cloud. Flexera Software's consent to allow Licensee to conduct scanning or testing does not constitute Flexera Software's agreement to take any action based on the results of Licensee's scanning or testing.

**[END OF SCHEDULE 3]**

**SCHEDULE 4**  
**TERMS AND CONDITIONS FOR SOFTWARE VULNERABILITY MANAGEMENT PRODUCTS**

The terms of this Schedule 4 shall apply to all Software Vulnerability Management products licensed by Flexera Software to Licensee. Any terms not defined in this Schedule 4 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 4 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 4 and the terms of the main body of the Agreement, the terms included in this Schedule 4 shall control. As of October 2015, the following products are considered "Software Vulnerability Management products" and such list may be updated time to time by Flexera Software in its sole discretion without amending this Schedule 4:

|                                           |
|-------------------------------------------|
| <b>Corporate Software Inspector</b>       |
| <b>Vulnerability Intelligence Manager</b> |

**CORPORATE SOFTWARE INSPECTOR**

1. **"Host"** means servers, workstations, mobile devices or other network end points such as firewalls, routers, switches, and phone systems, that have one or more IP Addresses restricted to what the software can scan from time to time. Licensee must inform Flexera Software of any change in IP addresses used in relation to the Software.
2. **"Internal Purposes"** means reporting of vulnerabilities related to applications located within Licensee's own systems.
3. **"User"** means any natural person authorized by Flexera Software to use the Software being either an employee of Licensee or a third-party consultant working for Licensee at Licensee's site.
4. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Reporting on applications of any third party is prohibited.
5. **Vulnerability Tracking Database.** Licensee is not entitled to use the vulnerability tracking database (vuln\_track) outside of the user interface of the Software.
6. **Copies.** Notwithstanding Section II.1.d. of the Agreement, Licensee may not make copies of the Software without prior written approval from Flexera Software.
7. **Support and Maintenance.** Support and Maintenance will be provided in accordance with the terms and conditions set forth at <http://media.flexerasoftware.com/documents/Support-CSI-SLA.pdf>. Notwithstanding Section II.1.c.i. of the Agreement, Schedule 7 shall not apply to Corporate Software Inspector.
8. **Disclaimer.** While the Software is intended to detect and disclose vulnerabilities in Licensee's system, Flexera Software makes no representation or warranty that the Software will detect all vulnerabilities.

**VULNERABILITY INTELLIGENCE MANAGER**

1. **"Internal Purposes"** means reporting of vulnerabilities related to applications located within Licensee's own systems.
2. **"Recipient"** means any natural person being either an employee of Licensee or a third-party consultant working for Licensee at Licensee's site registered to receive advisories or vulnerability updates from the Software. Licensee must inform Flexera Software of any change in IP addresses used in relation to the Software.
3. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Reporting on applications of any third party is prohibited.
4. **Vulnerability Tracking Database.** Licensee is not entitled to use the vulnerability tracking database (vuln\_track) outside of the user interface of the Software.
5. **Copies.** Notwithstanding Section II.1.d. of the Agreement, Licensee may not make copies of the Software without prior written approval from Flexera Software.

6. Support and Maintenance. Support and Maintenance will be provided in accordance with the terms and conditions set forth at <http://media.flexerasoftware.com/documents/Support-VIM-SLA.pdf>. Notwithstanding Section II.1.c.i. of the Agreement, Schedule 7 shall not apply to Vulnerability Intelligence Manager.
7. Disclaimer. While the Software is intended to detect and disclose vulnerabilities in Licensee's system, Flexera Software makes no representation or warranty that the Software will detect all vulnerabilities.

**[END OF SCHEDULE 4]**

**SCHEDULE 5**  
**TERMS AND CONDITIONS FOR EVALUATION AND FREE SOFTWARE**

The use of Software received by Licensee for purposes of evaluation ("**Evaluation Software**"), regardless of how labeled, or any Software provided at no charge ("**Free Software**") will be governed by the terms set forth in this Schedule 5. Any terms not defined in this Schedule 5 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 5 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 5 and the terms of the main body of the Agreement, the terms included in this Schedule 5 shall prevail.

1. **Grant of License.** Subject to all of the terms and conditions of this Agreement, Flexera Software grants Licensee:
  - a. ***For Evaluation Software:*** during the Evaluation Period, a limited, internal use, non-exclusive, non-transferable license to use the Software solely to evaluate its suitability for Licensee's internal business requirements at Licensee's site(s) only. Without limiting the foregoing, Licensee may not use the Software during the Evaluation Period to create or deploy any application, package, or other software or for any other purpose. This license may be terminated by Flexera Software at any time upon notice to Licensee and will automatically terminate, without notice, upon the first to occur of the following: (a) the completion of Licensee's evaluation of the Software or (b) the expiration of the Evaluation Period. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, the license does not include source code.
  - b. ***For Free Software:*** a limited, internal use, non-exclusive, non-transferable license to use the Software for Licensee's internal business requirements at Licensee's site(s) only. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, the license does not include source code.
2. **Evaluation Period.** If Licensee has received the Software for purposes of evaluation, regardless of how labeled, the use of the Software is limited to a specified period of time, as detailed in the email accompanying the download instructions, or if not specified in such email, twenty one (21) days from Licensee's acceptance of this Agreement (the "Evaluation Period").
3. **Limited Use.** Portions of the full-use version of the Software may be withheld or unusable. Full use of the Software may be restricted by technological protections.
4. **No Maintenance.** Flexera Software will have no Support and Maintenance obligation to Licensee for Evaluation Software or for Free Software, unless otherwise agreed by the parties.
5. **Disclaimer of Warranty.** **THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. NEITHER FLEXERA SOFTWARE NOR ITS SUPPLIERS MAKE ANY 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 SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.**
6. **Limitation of Liability.** **IN NO EVENT WILL FLEXERA SOFTWARE BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA SOFTWARE'S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US \$50).**
7. **Termination.** Licensee's license may be terminated by Flexera Software at any time immediately upon notice to Licensee. In the event of termination, Licensee must cease using the Software, destroy all copies of the Software (including copies in storage media), if applicable, and certify such destruction to Flexera Software. This requirement applies to all copies in any form, partial or complete. Upon the effective date of any termination, Licensee relinquishes all rights granted under this Agreement.

**[END OF SCHEDULE 5]**

**SCHEDULE 6**  
**TERMS AND CONDITIONS FOR NOT FOR RESALE SOFTWARE**

The use of Software received by Licensee that is identified as a “Not for Resale” or “NFR” license, (“NFR Software”), such NFR Software will be governed by the terms set forth in this Schedule 6. Any terms not defined in this Schedule 6 shall have the meanings ascribed to them in the Agreement. The provisions of this Schedule 6 shall be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 6 and the terms of the main body of the Agreement, the terms included in this Schedule 6 shall prevail.

1. Grant of License. Subject to all of the terms and conditions of this Agreement, Flexera Software grants Licensee a temporary, limited, internal use, non-exclusive, non-transferable license to use NFR Software solely for the purposes of training, education, and support for Licensee’s internal personnel. Without limiting the foregoing, Licensee may not use NFR Software to create or deploy any application, package, or other software, manage any device, or for any other purpose. This license may be terminated by Flexera Software at any time upon notice to Licensee.
2. No Maintenance. Unless otherwise agreed by the parties, Flexera Software will have no Support and Maintenance obligation to Licensee for NFR Software.
3. Disclaimer of Warranty. **NFR SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. NEITHER FLEXERA SOFTWARE NOR ITS SUPPLIERS MAKE ANY 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 SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE’S ACCEPTANCE OF THIS AGREEMENT.**
4. Limitation of Liability. **IN NO EVENT WILL FLEXERA SOFTWARE BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE NFR SOFTWARE OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA SOFTWARE’S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US \$50).**
5. Termination. Licensee’s license to NFR Software may be terminated by Flexera Software at any time immediately upon notice to Licensee. In the event of termination, Licensee must cease using the NFR Software, destroy all copies of the NFR Software (including copies in storage media), if applicable, and certify such destruction to Flexera Software. This requirement applies to all copies in any form, partial or complete. Upon the effective date of any termination, Licensee relinquishes all rights granted under this Agreement.

**[END OF SCHEDULE 6]**

**SCHEDULE 7**  
**CLOUD SOFTWARE SERVICE LEVELS**

1. **Equipment.** Flexera Software will host Cloud Software using servers, switches, routers, cabling and other equipment and infrastructure ("**Equipment**") provided by Flexera Software.
2. **Environment.** Flexera Software will maintain the Equipment in a data center ("**Data Center**") that has the following features:
  - Physical access to the Data Center will be restricted to authorized personnel only.
  - Equipment will be securely mounted using racks and/or fixtures.
  - Electrical power for Equipment will be supplemented by an uninterruptible power supply ("**UPS**") and generator. The UPS and generator will be tested at least once per month.
  - The Data Center will be protected by a fire suppression system appropriate for a data center environment.
3. **Access.** Each party will adopt precautions in accordance with recognized industry standards, including but not limited to password protection, to prevent access to the Cloud Site by parties other than Licensee, Flexera Software and their respective authorized end users.
4. **Network Connectivity.** Flexera Software will manage network connectivity from the Equipment into the hub or switch at the Data Center, to the points where Flexera Software's wide area network ("**WAN**") (including the Data Center backbone and other high-speed links leased for the Data Center) terminates at designated exchange points with other IP backbone carriers. Such network connectivity will encompass fully redundant dedicated connections to the Internet.
5. **Firewall.** Flexera Software will employ firewall security protection modules that are designed to prevent unauthorized access to Flexera Software's network. The firewall modules will be controlled through a management system, which also provides for the storage, management and analysis of firewall log files. Firewall configurations, security policies, and authentication policies will be routinely backed up through a secure process.
6. **Backup and Restoration.** Flexera Software will provide full and incremental backups for Cloud Software. Incremental backups will normally be performed 6 days per week and full backups will normally be performed 1 day a week. Incremental backups will be kept for a minimum of 6 days, while full backups will be kept for a minimum of 6 weeks. The full backups will be stored off-site in a secure fire-resistant facility. Upon termination or expiration of a Cloud Software subscription, Flexera Software will retain Licensee's data in the active Cloud Site for ninety (90) days after such expiration or termination of the subscription and Licensee will have access to a limited Cloud Site for the sole purpose of accessing such data. After such ninety (90) day period, Licensee's access to the limited Cloud Site will expire and Flexera Software will delete Licensee's data from the Cloud Site; provided, however, that any prior backups that have been performed for disaster recovery or failover will not be deleted, until such backup is overwritten by other data or destroyed in accordance with Flexera Software's record retention policy.
7. **System Monitoring.** Flexera Software will monitor the performance characteristics of system and network components in real-time. Flexera Software will perform system-level polling of the hardware, operating system and applications of each server to identify abnormal system-level conditions. Flexera Software will perform network-level monitoring on the hardware interface of each component of the Equipment necessary to the network component of the Cloud Site.
8. **Support of Cloud Software.**
  - 8.1. General. Flexera Software will provide a combination of email-based and telephone-based support on issues related to Cloud Software and the Cloud Site. Licensee may contact Flexera Software support by email or telephone at any time, 24 X 7 X 365. Flexera Software support staff will be available for live-answer telephone and email support between the hours of 6:00 p.m. Sunday and 6:00 p.m. Friday Pacific time (for the purpose of this Schedule 7, "**Business Hours**"). Target timeframes for responding to calls are set forth in Section 8.4. Support will be provided in English.
  - 8.2. Staffing and Escalation. Support requests that are not resolved during the initial contact with a Flexera Software technical support analyst will be escalated to Flexera Software internal technical experts based upon severity level. The support staff will manage escalated support requests according to the terms contained herein.
  - 8.3. Support Request Tracking. Support requests will be entered into the support request tracker system and assigned to a support representative who will track and report on each support request via the support request tracker.
  - 8.4. Target Times for Responding to Support Requests. Flexera Software will reasonably prioritize support requests from Licensee according to the severity levels set forth below. After receiving a support request from Licensee, Flexera

Software will make commercially reasonable efforts to respond to Licensee via telephone or email within the Target Response Times corresponding to the appropriate Severity Levels shown below.

| Severity Level   | Description                                                                                                                                                                                                                                                                                                                       | Target Response Time |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1<br>Critical    | Production use of the Cloud Site is stopped or so severely impacted that authorized end users cannot reasonably use it. Flexera Software will work continuously to resolve the support request until the support request is closed. Severity Level 1 issues must be reported by telephone.                                        | 0.5 Business Hours   |
| 2<br>Significant | Major Cloud Site documented features are unavailable with no workaround. Use of the Cloud Site can continue; however, productivity is significantly decreased. Flexera Software will work continuously to resolve the support request until the support request is closed. Severity Level 2 issues must be reported by telephone. | 2 Business Hours     |
| 3<br>Impaired    | Major Cloud Site documented features are unavailable, but a workaround is available, or less significant Cloud Site documented features are unavailable with no reasonable workaround.                                                                                                                                            | 4 Business Hours     |
| 4<br>Minimal     | Authorized end user requests information about the Cloud Site or an enhancement to the existing Cloud Software specifications. Use of the Cloud Site is available without being materially and adversely impeded.                                                                                                                 | 8 Business Hours     |

9. **Scheduled Outages.** “**Scheduled Outages**” mean planned interruptions in the Cloud Site to make changes to Flexera Software’s systems. Flexera Software regularly evaluates web site traffic patterns in order to determine low usage times in which to perform Scheduled Outages. If Licensee’s Cloud Site is located in Flexera Software’s US data center, Scheduled Outages of 2 hours or less in duration will be conducted Monday through Thursday between 5:00 p.m. and 3:00 a.m., or between 6:00 a.m. Saturday and 12:00 p.m. Sunday, Pacific time and Scheduled Outages that exceed 2 hours will be conducted between 6:00 a.m. Saturday and 12:00 p.m. Sunday Pacific time. If Licensee’s Cloud Site is located in Flexera Software’s European data center, Scheduled Outages of 2 hours or less in duration will be conducted Monday through Thursday between 7:00 p.m. and 5:00 a.m., or between 6:00 a.m. Saturday and 12:00 p.m. Sunday Central European time and Scheduled Outages that exceed 2 hours will be conducted between 6:00 a.m. Saturday and 12:00 p.m. Sunday Central European time. Flexera Software will not perform Scheduled Outages on the last 2 business days of any calendar month. For Scheduled Outages of 2 hours or less in duration Flexera Software will notify Licensee no later than 48 hours prior to the Schedule Outage. For Scheduled Outages of more than 2 hours in duration Flexera Software will notify Licensee no later than 120 hours prior to the Schedule Outage. Notice for the purpose of this Section may be a message be placed on the login page to the Cloud Site.
10. **Monthly Uptime.** Flexera Software will maintain systems and controls designed to maximize Monthly Uptime, minimize unscheduled outages, and enable the most prompt notification possible in the event of any unscheduled outage. Flexera Software will credit to Licensee the percentage specified below of the total Monthly Fee paid by Licensee to Flexera Software, for any calendar month in which Monthly Uptime for the month falls within the range specified below that results in Licensee being unable to access the Cloud Site.

| Monthly Uptime % | % Monthly Fee Credited |
|------------------|------------------------|
| 99.50% - 100%    | 0%                     |
| 97.5% - 99.49%   | 5%                     |
| 95% - 97.49%     | 10%                    |
| 90% - 94.99%     | 15%                    |

Flexera Software will employ automated tools to monitor Monthly Uptime. If Monthly Uptime falls below 99.5% for any 3 consecutive months, or falls below 95% in any single month, Licensee may terminate the Agreement in accordance with the Agreement. “**Monthly Uptime**” means the amount of time in any given month that the Cloud Site is operational and functional in all material respects, as a percentage of the total amount of time in such month, excluding Scheduled Outages. “**Monthly Fee**” means the amount of the recurring license fee paid by Licensee under the Agreement that is allocable to 1 month (does not include implementation, configuration, professional or other nonrecurring fees). The remedies in this Section are the sole and exclusive remedies available to Licensee for any failure by Flexera Software to maintain the required Monthly Uptime. The Monthly Uptime commitment only applies to the portion of the Cloud Site that is hosted in a Flexera Software Data Center. Components located on Licensee’s network or systems are not covered under the Monthly Uptime.

- 11. Third-Party Contractors.** Flexera Software may retain third party contractors to provide facilities, equipment and/or services for which Flexera Software is responsible, provided Flexera Software will be solely responsible to Licensee for such contractors' performance in accordance with this Schedule 7 and their compliance with any applicable provisions of the Agreement, including but not limited to confidentiality provisions.

**[END OF SCHEDULE 7]**