

RESELLER
TERMS AND CONDITIONS

Reseller and Flexera have entered into a separate document containing all the relevant commercial details applicable to the resale of the Flexera Products (the “**Engagement Form**”). These Terms and Conditions along with the Engagement Form (together the “**Agreement**”) form a legal contract between the Reseller identified on the Engagement Form and Flexera for the resale of the Flexera products; by signing the Engagement Form, Reseller has agreed to be bound by the terms of the Agreement. The Effective Date of the Agreement is the last date of signature of the Engagement Form.

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

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Reseller and Flexera hereby agree as follows:

1. Reseller Appointment. Subject to all of the terms and conditions of this Agreement, during the Term set forth below, Flexera hereby appoints Reseller as an authorized, non-exclusive reseller of subscription-based software and SaaS as well as consulting and training services (“**Products**”) in the Territory (both as defined in the Engagement Form), and grants Reseller the revocable, non-exclusive, non-transferable, non-sublicensable right to market and distribute the Products directly to third party end customer(s) of the Reseller (each a “**Customer**”), solely for use by such Customer only and without any right of redistribution.

2. Reseller Obligations.

2.1. Plans and Reports.

- 2.1.1. Management Reviews. Reseller agrees to participate in regular management reviews, which may include, but not be limited to, discussion regarding each party’s financial progress under the Agreement, a review of training classes attended or required, support cases, and industry trends.
- 2.1.2. Business Plan. Within ninety (90) days of the execution of an Engagement Form, the parties shall agree to a jointly developed business plan related to Reseller’s efforts hereunder and consult with Flexera on a regular basis with respect to its efforts hereunder. Such business plan shall include forecasts and reports as specified below. Reseller’s failure to provide a business plan in accordance with this Section 2.1 shall constitute a material breach of the Agreement.
- 2.1.3. Required Reports and Forecasts. At least thirty (30) days prior to the start of the following periods, Reseller shall provide to Flexera the following reports and forecasts. Reseller shall provide the forecast to Flexera in the format reasonably requested by Flexera, including through input in a Web or application interface provided by Flexera.

Report Frequency:	Description:
Quarterly	Non-binding forecast of sales for each Product as predicted for the following two quarters.
Monthly	Update to the quarterly forecast report for the upcoming six months.
Quarterly	Report showing for each Customer: <ul style="list-style-type: none"> • Deployment Status (new deployments that period, and total deployments) • Number of licenses (new licenses that period, and total licenses) • Support & Maintenance status

2.2. Training. Reseller shall complete any e-learning related to the Products or otherwise at Flexera’s request, and shall use its best efforts to complete any additional e-learning for new versions of such Products. In addition, where requested by Flexera:

- 2.2.1. Within thirty (30) days of execution of an Engagement Form, Reseller shall have at least two (2) of its sales executives attend and successfully complete standard sales training for each of the Products.
- 2.2.2. Within ninety (90) days of execution of an Engagement Form, Reseller shall have at least two (2) of its sales engineers attend and successfully complete a Flexera Technical Product Training class for each of the Products.
- 2.2.3. All sales training, certification, and technical product classes will be held at Flexera’s facilities unless Flexera makes an online course available, and Reseller is responsible for travel expenses. Flexera’s standard fees for such training shall apply.
- 2.2.4. If any of Reseller’s employees who are trained are no longer employed by Reseller, or are moved to other job functions, Reseller shall promptly have replacement personnel trained to maintain the above number of trained individuals at all times during the term of the Agreement.

2.3. Deal Specific. Reseller shall provide ROI calculations, presales presentations, and implementation consulting services to each applicable Customer.

- 2.4. Due Diligence Questionnaire. Reseller may be required to complete the Due Diligence Questionnaire on request from Flexera. Reseller agrees to complete the Due Diligence Questionnaire within two (2) weeks of Flexera's request, and Flexera may require Reseller to update the Due Diligence Questionnaire on an annual basis. Reseller represents that the answers it provides in the Due Diligence Questionnaire are complete and accurate in all material respects.
- 2.5. Marketing. Reseller shall actively promote and market the Products and shall use reasonable commercial efforts to participate in the activities set forth in any joint marketing guidelines agreed between the parties.
- 2.6. Reseller Acknowledgement. Each party agrees that the other party may publicly disclose the other as its partner, including the other party's logo on its partner website. Either party may include the other party's company name in a list of partners 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. Any use by a party of the other party's marks, name or logo shall be in accordance with the directions and guidelines provided by the owner of the mark, name, or logo.
- 2.7. Skills and Training Requirements. At all times, Resellers must follow the training requirements outlined in Flexera's partner program as communicated to Reseller from time to time.
 - 2.7.1. Newly onboarded Resellers or Resellers that require upskilling will be required to deliver at least 3 projects by shadowing Flexera Professional Services.
 - 2.7.2. Only Flexera Certified professionals can and should do delivery work on Flexera Products. In cases where Resellers have global delivery centers, and only have Flexera Certified professionals in the global delivery center, Reseller employees in country that are not certified should not be allowed to do the delivery work until the certification is obtained and successfully passed.
 - 2.7.3. To ensure that we are driving customer success and creating transparency within the market, Flexera will be releasing average Customer Satisfaction Score ("**CSAT**") and Customer Health Scores received by the Reseller across all our joint Customers. For more information on how Flexera Collects CSAT and Customer Health Score, please review the information provided in the Partner Portal. Additionally, Flexera will also be sharing information such as but not limited to partner certification status and number of people certified, number of successful implementations and more.
 - 2.7.4. To ensure that Flexera is able to accurately collect the data necessary to create the CSAT and Customer Health Score, Flexera requires full collaboration from the Reseller, and an ability to reach out to the Customers directly with regular surveys.
- 2.8. Representations. Reseller shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Products which are in addition to or inconsistent with those set forth in the product descriptions or promotional materials delivered by Flexera to Reseller hereunder. In no event shall Reseller make any representation, warranty or guarantee by or on behalf of Flexera. Reseller acknowledges that its promotion of Flexera and the Products in a professional and positive manner consistent with the materials provided by Flexera, is essential to Flexera's goodwill in the Products, and agrees that its failure to do so shall be a material breach of this Agreement.
- 2.9. Business Practices. Reseller agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Flexera or its Products 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. Reseller further agrees to notify Flexera in advance if Reseller intends to sell, represent or promote any products competitive with the Products.
- 2.10. Conflicts of Interest. Reseller agrees to notify Flexera immediately upon notice of a conflict of interest relating to Reseller's obligations hereunder.
- 2.11. Records and Audit. Reseller agrees to maintain complete, clear and accurate records of all orders, customers and transactions completed with respect to this Agreement. Upon ten (10) days advance written notice, Reseller shall permit Flexera or its representative to review such records and any other books and records of Reseller which relate to Reseller's performance under the Agreement to ensure Reseller's compliance with its obligations to Flexera. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on Reseller's ordinary business activities. Reseller shall maintain all records required under this Agreement for at least three (3) years following expiration or termination of the Agreement.
- 2.12. Indemnity. Reseller will defend, indemnify and hold harmless Flexera from and against any loss, cost, liability or damage, including attorneys' fees, for which Flexera becomes liable arising from or relating to: (a) any breach by Reseller of any term of this Agreement, (b) the issuance by Reseller of any warranty or representation not authorized in writing by Flexera or (c) any other act or omission of Reseller in connection with the marketing or distribution of the Products under this Agreement.
- 2.13. Training. Reseller personnel selling Products shall complete any e-learning related to the Products and shall use its best efforts to complete any additional e-learning for new versions of such Products.
- 2.14. Subscription Agreement; Enforcement. Reseller agrees that it will: (i) notify each Customer that the Products are subject to the terms and conditions of the applicable Subscription Agreement ("Subscription Agreement") at <https://www.flexera.com/legal> prior to the earlier to occur of acceptance of the applicable Customer's order or delivery of the Product; (ii) include either a copy of or link to the Subscription Agreement in each quotation and order form issued to each Customer; and (iii) not modify, remove, obscure the Subscription Agreement or in any manner interfere with each Customer's review and acceptance of the Subscription Agreement. If Reseller becomes aware of any unauthorized use of the Products or of any failure by a Customer to comply with a Subscription Agreement, Reseller shall immediately notify Flexera in writing and use its best efforts, at Flexera's direction, to

ensure that such Customer complies with the provisions of the Subscription Agreement or otherwise assist Flexera in the enforcement of the Subscription Agreement.

- 2.15. Customer Claims. If a Customer brings a claim to Reseller regarding a warranty issued by Flexera, Reseller shall direct the Customer to contact Flexera directly. To the extent Flexera's warranty to the Customer specifies refund as a remedy, Reseller agrees to refund the fees paid by the applicable Customer for the non-conforming Product promptly following notice from Flexera and Flexera will refund to Reseller the corresponding fees paid by Reseller to Flexera.

3. **Opportunity Registration**. Opportunity registration is fundamental in outlining the rules of engagement between Flexera and Reseller. Reseller must register opportunities through the Partner Portal or directly with the Flexera account manager assigned to Reseller, and Reseller will only qualify for discounts, fees, or rebates for opportunities with an Opportunity Registration Form ("**ORF**") approved in writing by Flexera.

- 3.1. Expiration of ORF. Flexera will have no payment obligation to Reseller upon expiration of the ORF or if more than six (6) months have elapsed from the execution of the ORF.
- 3.2. Scope of ORF. The ORF applies only to the exact account and project specified therein and shall not apply to any other sale (including, without limitation, any sale to any related party, alternate department, organization or affiliate, or any subsequent, additional or renewal sale to the same party). For the purpose of clarity, if the project expands in size, the ORF applies only to the originally scoped transaction identified in the ORF and not to the expanded project.

4. **Ordering; Deal Registration; Renewal**.

Deal Registration. Prior to entering into an Order, Reseller agrees that for each opportunity with a Customer, Reseller shall submit a deal registration form (provided by Flexera), which may be accepted or rejected in Flexera's discretion. The deal registration form will detail the discount offered for the Products in scope (to the extent this is different than as stated in the Engagement Form), the obligations and level of effort required by each party in fulfillment of the opportunity and any other commercial terms relevant to the applicable opportunity with the Customer.

Ordering. Once a deal registration form is accepted, Reseller may resell to Customer by either (i) delivering a purchase order to Flexera referencing a valid Flexera quote outlining the applicable Products, quantities, and pricing or (ii) executing a written order with Flexera referencing this Agreement and specifying the Products, quantities, and pricing (in either case, an "**Order**"). Any entity for which Reseller has the legal or practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement (an "**Affiliate**") may submit an Order in accordance with this section.

- 4.1. Renewals. Licenses will automatically renew for additional periods of one (1) year or three (3) years at the end of the term set forth in an Order (the "**Renewal Term**"). Fees for each Renewal Term will be equal to the fees payable during the immediately preceding 12-month term plus an uplift of the greater of CPI or 8% thereon for each year of the Renewal Term, unless agreed otherwise in writing. At any point, either party may give written notice of its election not to renew, provided such notice is provided no later than sixty (60) Business Days prior to the end of the current term. Notwithstanding the foregoing, Flexera may sell renewals directly to the Customer(s). Notwithstanding anything in this Agreement, Flexera reserves the right to engage directly with the Customer on any Renewals and/or may, in Flexera's sole discretion, pursue the Customer for any unpaid renewal fees.

5. **Invoicing and Payment**.

- 5.1. Invoicing. Unless otherwise agreed in an executed Order, Flexera will invoice Reseller as follows:

- 5.1.1. for Products, annually in advance; and/or

- 5.1.2. for all other consulting and training services which are delivered on a time and materials basis (as identified in an Order) and associated expenses, monthly in arrears.

- 5.2. Payment. Reseller agrees to pay Flexera the fees indicated in each applicable Order. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made within thirty (30) days of Reseller's receipt of the invoice for the applicable Order (unless another term is stated in the Engagement Form). All fees are pre-tax and Reseller shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the real property, personal property, or net income of Flexera). Any late payments will be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less. If Reseller is required to withhold and pay any withholding tax imposed at source on any amount payable to Flexera under this Agreement, then Reseller shall deliver to Flexera the original tax receipt or other proof of payment, and Reseller's payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Reseller to Flexera and Reseller will assist Flexera in recovering any withholding tax from the relevant tax authority.

- 5.3. Purchase Orders. If the parties execute a written Order and Reseller requires a separate purchase order to be provided to Flexera for Flexera to invoice Reseller in addition to the executed Order, Reseller commits to providing a purchase order within three (3) business days of the effective date of the Order. In the event Reseller fails to deliver a purchase order within such timeframe, Reseller's signed Order will constitute Reseller's approval for Flexera to invoice Reseller. For subscription based Products with multi-year subscription terms, Reseller must provide a purchase order for either (i) the total payable for the entire subscription term, or (ii) one (1) year at a time, provided that the first purchase order must indicate that it is for the first year of a committed three (3) year term; regardless of the purchase order form selected, if Reseller licenses a Product for a multi-year subscription, the license is non-cancelable and Reseller shall be obligated to pay for the total value of the subscription term.

6. Confidential Information.

- 6.1. Confidential Information. “**Confidential Information**” means any business and/or technical information that is received by a party (“**Recipient**”) from the disclosing party (“**Discloser**”) that a) is in written, recorded, graphical or other tangible form and is marked “Confidential” or “Trade Secret” or similar designation; b) is in oral form and identified by the Discloser as “Confidential” or “Trade Secret” or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality.
- 6.2. Protection of Confidential Information. The Recipient shall a) have the right to disclose the Confidential Information only to its employees, consultants and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser’s Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser’s option return or destroy any or all Confidential Information upon the Discloser’s demand. Confidential Information will remain confidential for a period of three (3) years from disclosure. No time limit will apply to Confidential Information marked or otherwise identified as or deemed to be a “Trade Secret”. Any software, documentation or technical information provided by Flexera (or its agents), performance information relating to the Product, and the terms of this Agreement will be deemed “Trade Secrets” of Flexera without any marking or further designation.
- 6.3. Exclusions. The Recipient’s nondisclosure obligation does not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).
- 6.4. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

7. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera 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 NFR Products and the Documentation and all copies thereof, modifications thereto, and derivative works based thereupon. Reseller acknowledges that it is obtaining only a limited license right to the NFR Products and Documentation and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Reseller under this Agreement or otherwise.

8. **Trademarks.** Flexera hereby grants Reseller a nonexclusive, limited license to use Flexera’s name and the applicable Product trademarks (“**Trademarks**”) solely in its distribution, marketing and advertising of the Products in accordance with the terms of this Agreement. Reseller’s use of the Trademarks shall conform to Flexera’s then-current trademark use policies. All use of the Trademarks shall be subject to the review and approval of Flexera. Reseller shall not remove any trademarks or other proprietary notices incorporated in, marked on, or fixed to the Products. All goodwill arising from the use of the Trademarks shall be vested in and inure to the benefit of Flexera. Reseller agrees that it will not register, or attempt to register, any domain name containing the word “Flexera”, “Flexera Software” or any product name of a Flexera product, and if Reseller has, to immediately effect transfer of such domain name to Flexera without charge.

9. Term and Termination.

- 9.1. Term of Agreement. This Agreement is effective as of the Effective Date and shall terminate upon the earlier termination in accordance with this Section.
- 9.2. Termination for Cause. Either party may terminate this Agreement immediately if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days).
- 9.3. Termination for Convenience. Either party may terminate this Agreement at any time for its convenience upon thirty (30) days prior written notice to the other party. For the purpose of clarity, termination of this Agreement alone does not terminate any Orders placed pursuant to this Agreement.
- 9.4. Effect of Termination. Upon any expiration or termination of this Agreement, Reseller shall (i) have no right to market, distribute or sublicense the Products, (ii) cease use of and destroy any and all copies of the Products (including without limitation any evaluation or demo products provided by Flexera), and (iii) immediately pay Flexera any amounts then due and outstanding. Flexera shall have no liability to Reseller of any type arising from termination of this Agreement. Notwithstanding the foregoing, any licenses granted to Customer prior to the termination of the Agreement shall survive in accordance with the terms of the applicable Subscription Agreement, provided that in no event may such licenses be extended or renewed by Reseller without the prior written consent of Flexera. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.
- 9.5. Survival. Any provision that by the very nature of which should survive, shall survive any termination or expiration of this Agreement.



10. Representations and Warranties.

- 10.1. Each party represents and warrants to the other party that, as of the Effective Date:
 - 10.1.1. it is duly incorporated and validly existing under applicable laws and in good standing in applicable business locations as required; and
 - 10.1.2. it is duly authorized to enter into and to perform its obligations under this Agreement; and
 - 10.1.3. it is in compliance with all applicable laws related to the performance of its obligations under this Agreement.
- 10.2. Disclaimer of Warranties. The only warranty for the Products shall be the limited warranty directly between Flexera and each Customer, if any, as set forth in the applicable Subscription Agreement. EACH PRODUCT AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER FLEXERA NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

11. Liability.

- 11.1. DAMAGES WAIVER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THIS WAIVER SHALL NOT APPLY TO LIABILITY FOR FRAUD, DEATH OR PERSONAL INJURY, OR A CLAIM BY ONE PARTY AGAINST THE OTHER RELATING TO SUCH PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 11.2. LIMIT OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY RESELLER TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM. THIS LIMITATION SHALL NOT APPLY TO LIABILITY FOR FRAUD, DEATH OR PERSONAL INJURY, A PARTY'S CONFIDENTIALITY OBLIGATIONS, A PARTY'S INDEMNIFICATION OBLIGATIONS OR A CLAIM BY ONE PARTY AGAINST THE OTHER RELATING TO SUCH PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 11.3. FOR RESELLERS LOCATED OUTSIDE NORTH OR LATIN AMERICA: 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.

12. General

- 12.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Flexera may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Flexera's assets or voting securities. Reseller may not assign or transfer this Agreement, in whole or in part, without Flexera's prior written consent. Any attempt by Reseller to transfer or assign this Agreement without such written consent will be null and void.
- 12.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- 12.3. Governing Law. This Agreement is governed, without reference to applicable conflicts of law principles, by the laws of the jurisdiction as set forth in the Global Appendix attached hereto ("Governing Law"), which is incorporated herein by reference. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The language of any litigation or legal proceeding shall be English. The prevailing Party in arbitration or litigation is entitled to recover its reasonable attorneys' fees and costs from the other Party. RESELLER MUST INITIATE ANY CAUSE OF ACTION FOR ANY CLAIM(S) ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ITS SUBJECT MATTER WITHIN 1 YEAR FROM THE DATE WHEN RESELLER KNEW, OR SHOULD HAVE KNOWN AFTER REASONABLE INVESTIGATION, OF THE FACTS GIVING RISE TO THE CLAIM(S).
- 12.4. Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth in the preamble to this Agreement (for Flexera, a mandatory copy shall always be sent to: Flexera Software LLC, 300 Park Boulevard Suite 500, Itasca, IL 60143, Attention Legal Department) and shall be deemed given: (a) upon receipt if by personal delivery; (b) two (2) Business Days following deposit for delivery to the party with an internationally recognized overnight courier; or (c) via confirmed facsimile in which case it shall be deemed received on the date of the transmission as evidenced by a valid receipt of confirmation. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this Section 11.3.
- 12.5. 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 Reseller 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.
- 12.6. Construction and Interpretation. The original of this Agreement has been written in English. Reseller 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 words importing the masculine include the feminine and vice versa. This Agreement shall be equally and fairly construed without reference to the identity of the party preparing this document as the parties have agreed that each



participated equally in negotiating and preparing this Agreement, or have had equal opportunity to do so. The parties waive the benefit of any statute, law or rule providing that in cases of uncertainty, contract language should be interpreted most strongly against the party who caused the uncertainty to exist. The headings and titles to the articles and sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.

- 12.7. Order of Precedence. In the event of a conflict between the terms of this Agreement, the Engagement Form, and an Order, the following order of precedence shall apply (i) Engagement Form, (ii) Agreement (iii) Order.
- 12.8. Independent Contractors. Notwithstanding the use of the term “partner” within this Agreement or otherwise, the parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party’s behalf without the other party’s prior written consent.
- 12.9. 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 and could not be avoided through the exercise of reasonable care and diligence, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, or failure or diminishment of power or of telecommunications or data networks or services.
- 12.10. Export Compliance. Reseller acknowledges that the Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Reseller 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 Product or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) any end user who has been prohibited from participating in United States export transactions by any federal agency of the United States government; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such licensor approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Reseller 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.
- 12.11. Anti-Bribery. Reseller represents and warrants that (i) in connection with this Agreement, it has not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any foreign government or any agency or instrumentality thereof and (ii) it will comply in all respects with the Foreign Corrupt Practices Act and UK Bribery Act 2010.
- 12.12. Non-Solicitation. During the term of this Agreement and for a period of one year thereafter, Reseller agrees that it will not hire or attempt to hire, on behalf of Reseller or any other organization, any employee of Flexera unless Reseller has first obtained Flexera’s written consent. Notwithstanding the foregoing, Reseller shall not be in breach of this provision if an employee of Flexera responds to a general advertisement for employment.
- 12.13. Equal Opportunity. Flexera agrees that it does not and will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin, or sexual orientation.
- 12.14. Execution. These terms are effective upon execution of the Engagement Form by Reseller and Flexera and may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one document. The parties consent to the use of a third party service for electronically executing the Agreement.
- 12.15. Entire Agreement. These terms and the Engagement Form are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.



Global Appendix

Governing Law, and Venue of Disputes

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

Flexera entity	Reseller Location	Governing Law
Flexera Software GmbH , having its registered office at Regus Hamburg Altona, Hahnenkamp 1, 22765 Hamburg, Germany (company number HRB 205690).	Germany, Austria and Switzerland (DACH region)	English
Flexera Software Limited , a private company limited by shares and incorporated in England and Wales with company number 6524874, having its principal office located at Level 2 401 Faraday Street, Birchwood Park, Warrington, Cheshire, WA3 6GA, United Kingdom.	EMEA (except for DACH region) and India	English
Flexera Software Pty Limited , ABN 40 052 412 156, having its principal place of business located at 990 Whitehorse Road, Level 4, Box Hill, VIC 3128, Australia.	Australia and New Zealand	Australian
Flexera Software Canada Corporation , having its principal place of business at 1000 Innovation Drive, Suite 513, Kanata, ON, K2K 3E7, Canada.	Canada	USA, State of Illinois
Snow Software Assessoria E Representações LTDA , having its registered office at Rua das Olimpíadas, 205, 4º andar, cj 41, Vila Olímpia 04551-000 São Paulo/SP, Brazil	Brazil	USA, State of Illinois
Flexera Software LLC , a Delaware limited liability company having its principal office located at 300 Park Blvd., Suite 400, Itasca, IL 60143, USA.	Countries outside of those listed above	USA, State of Illinois

[END OF GLOBAL APPENDIX]