Partner Terms and Conditions

Partner and Flexera (each a "**Party**" and together the "**Parties**") have entered into the Partner Authorization form, pursuant to which the Parties agree to be bound by these Partner Terms and Conditions (the "**Partner Authorization**"). These Partner Terms and Conditions (including all attachments, exhibits and terms referenced herein) along with the Partner Authorization (together the "**Agreement**") form a legal contract between the Parties identified on the Partner Authorization for Partner's participation in the Flexera Partner Program; by signing the Partner Authorization, Partner 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 Partner Authorization.

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

1. **Definitions**
    1.1. **Affiliate**: any entity under the control of a party to this Agreement (or the Customer) and for which such party has the legal or practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement.
    1.2. **Anonymized Data**: information that has been compiled and modified by Flexera in such a way that a data subject is not or no longer identifiable and cannot be re-identified when combined with other data.
    1.3. **Authorized Users**: a director, officer, employee, partner, agent, adviser, independent contractor and/or subcontractor of either Customer or Partner, or their respective Affiliates, who are thereby authorized to access to use the Products.
    1.4. **Background IP**: any intellectual property rights owned or created by or on their behalf of a Party and whether in existence prior to the Effective Date and/or created thereafter independently of this Agreement.
    1.5. **Business Day**: any day which is not a Saturday, Sunday, Friday (if in the Middle East), legal holiday or other day on which commercial banks are required or authorized by law to be closed in the appropriate jurisdiction.
    1.6. **Confidential Information**: any business and/or technical information that is received by the Recipient from the Discloser that a) is in written, recorded, graphical or other tangible form and is marked "Confidential" or "Trade Secret" or similar designation; b) is in oral form and identified by the Discloser as "Confidential" or "Trade Secret" or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality.
    1.7. **Customer:** means the third-party end customers for whose benefit Partner acquires Flexera Products or Services under the terms of this Agreement.
    1.8. **Customer Site:** any location owned or leased solely by Customer or a Customer Affiliate or that portion of any shared space, such as a shared data center, attributable solely to Customer or such Affiliate, or in the instance of an employee working remotely, that location from which such employee is working while using Customer or Affiliate-provided equipment on which the OPS may be installed.
    1.9. **Discloser**: the Party disclosing Confidential Information.
    1.10. **Documentation**: the technical specification documentation generally made available by Flexera to its customers with regard to the Products.
    1.11. **Flexera Subscription Agreement**: the then-current version of Flexera's standard terms for the applicable Product or Services found at https://www.flexera.com/sites/default/files/flexera-subscription-agreement.pdf.
    1.12. **License Level**: the allowed level of usage of the Products specified in an Order.
    1.13. **Managed Services License (or MSP License):** a license to use the Products in accordance with the Documentation solely for the delivery of certain IT services to Customer(s) identified in an Order.
    1.14. **OPS**: Flexera's object code of Flexera's on-premise software products (including any associated database content provided with or embedded within the software products) licensed for installation at Partner Sites or Customer Sites licensed on a subscription basis and specified in an applicable Order.
    1.15. **Order**: either (i) a written order document executed by Partner and Flexera referencing this Agreement and specifying the Products or Services purchased by Partner hereunder or (ii) a purchase order delivered by Partner for Products or Services, provided that such purchase order contains the requisite level of detail for the Parties to identify the specific Products or Services, License Level, and prices.
    1.16. **Output:** any data, results, reports, analyses, or other materials generated through the use of SaaS in conjunction with the Partner Data.
    1.17. **Partner Authorization:** means the Partner Authorization form, signed by an authorized representative of Partner, specifying the applicable parameters within which the Partner is authorized under the terms of this Agreement and the Partner Program.
    1.18. **Partner Data**: any data loaded by Partner into Flexera's SaaS Products.
    1.19. **Partner Hub:** means the Flexera online portal which includes the Partner Program Guide, Rules of Engagement and all technical documentation such as license metrics, support, and other important information related to the Products.
    1.20. **Partner Site:** any location owned or leased solely by Partner or a Partner Affiliate or that portion of any shared space, such as a shared data center, attributable solely to Partner or such Affiliate, or in the instance of an employee working remotely, that location from which such employee is working while using Partner or Affiliate-provided equipment on which the OPS may be installed.
    1.21. **Partner Program:** means the global Flexera partner framework as detailed in the Partner Program Guide.

1.22. **Partner Program Guide:** means the specified terms of the Partner Program, including all financial incentives, training and certifications and other program requirements, as located in the Partner Hub, and updated by Flexera from time to time.

1.23. **Products**: OPS and/or SaaS.

1.24. **Qualifying Transaction:** means an agreed Order which meets the Eligibility Requirements for a Rebate as stated in the Partner Program Guide.

1.25. **Recipient**: the Party receiving Confidential Information

1.26. **Role**: the specific set of duties of Partner as described in the Partner Program Guide. Partner is authorized to act in each of the Roles specified on the Partner Authorization.

1.27. **Rebate** means a financial payment made by Flexera to the Partner after the completion of a Qualifying Transaction as further detailed in the Partner Program Guide. Rebates do not reduce the purchase price of any Products and are separate from discounts or upfront credits applied at the point of Order.

1.28. **Rules of Engagement** means the Flexera rules of engagement applicable per Role, and as further detailed in the Partner Hub.

1.29. **SaaS**: a software application (including any associated database content provided with or embedded within the software application as well as the software to be deployed on physical and/or virtual resources) licensed on a subscription basis that is owned, delivered, and managed remotely by Flexera as part of a multi-tenant hosted environment, and specified in an applicable Order.

1.30. **Services**: professional consulting services to be provided pursuant Section 6 of these Terms and Conditions.

1.31. **Subscription Term**: the duration of a license to use the Products as agreed in the applicable Order.

1.32. **Support**: the support and maintenance services for the Products provided in accordance with Flexera's then-current support terms found at https://www.flexera.com/legal

1.33. **Territory**: the geographic or market territory specified in the Partner Authorization.

1.34. **Tier:** means the specific tier assigned to the Partner and stated in the Partner Hub. Discounts, Rebates and other incentives are applicable to each Partner based on their assigned Tier.

1.35. **Trademarks:** each Party's name, logo, service marks and other trademarks

1.36. **Work Product**: any custom deliverable created exclusively for Partner or a Customer in the performance of the Services.

2. **Partner Hub**. Upon the execution of this Agreement, Flexera will provide Partner with access to the Partner Hub.

3. **Roles**. This Agreement establishes the core set of rights and obligations for all Roles. Descriptions of each Role type and eligibility requirements can be found in the Partner Program Guide and are hereby incorporated by reference. Subject to the terms of the Partner Program Guide and specifically meeting any Role specific training or certification criteria, Partner is hereby authorized to act in the Roles as stated on the Partner Authorization.

4. **Affiliates**. Each Party's Affiliates may execute Orders hereunder with the other Party or its Affiliates. Each such Order shall reference, and be subject to the terms and conditions of this Agreement; provided, however, that if an Order is executed by an Affiliate, (i) such Affiliate shall be deemed "Partner" or "Flexera" (as applicable) for purposes of this Agreement (except where a provision of this Agreement expressly excludes the applicability of that provision to Affiliates), but solely with respect to such Order, (ii) such Affiliate shall be severally liable with respect to such Order and this Agreement (as it relates to such Order), and (iii) neither Partner or Flexera (each separate from an Affiliate) nor any other Affiliate of Partner or Flexera shall have any liability hereunder with respect any matter hereunder for which such Affiliate is liable.

5. **Price List.** The pricing for Products in an applicable geographic region is detailed at Flexera's choice, either in Flexera's then-current partner facing price list available by request in the Partner Hub or via email ("**Price List**") and may vary for each Role. The applicable geographic region for a Price List is determined by the location of the Customer. Flexera may update the Price List by providing advance notice to Partner. The price in a specific quote is valid for the length of time identified on the quote irrespective of updates to the Price List. If the price for certain Products or Services is not included in the Price List, the price will be determined by Flexera on a case-by-case basis based on the scope and type of Products or Services requested. The Price List access is granted on an individual basis, and Partner shall ensure that each individual who receives access to the Price List shall not share the Price List with (i) any other Partner employee, agent or representative, or (ii) third party, and shall use its best efforts to ensure that the login credentials to the Price List are kept strictly confidential. For the avoidance of doubt any Price Lists shared prior to the Effective Date of this Agreement will no longer be valid and new Price Lists will be issued by Flexera in accordance with this Section 5.

6. **Services**. Where Partner wishes for Flexera to provide Services directly to Partner, Flexera will deliver such Services in accordance with the Services terms and conditions found at https://www.flexera.com/legal/professional-services-terms-conditions .

7. **Payments; Taxes.**

   7.1. Invoicing. Unless otherwise agreed in an Order, Flexera will invoice Partner as follows:
      a) for all Products and subscription-based Services, annually in advance; and/or
      b) for time and materials Services and associated expenses, monthly in arrears; and/or
      c) for fixed fee Services and associated expenses, as agreed in a quote or Order.

   7.2. Payment. Partner agrees to pay Flexera the fees indicated in each applicable Order within thirty (30) days of Partner's receipt of the

invoice for the applicable Order. All payments are non-refundable (except as expressly set forth in this Agreement). All fees are pre-tax, and Partner will be responsible for all taxes, withholdings, duties, and levies arising from the Order (excluding taxes based on the real property, personal property, or net income of Flexera). Any late payments will be subject to a service charge equal to 1% per month of the amount due or the maximum amount allowed by law, whichever is less. If Partner is required to withhold and pay any withholding tax imposed at source on any amount payable to Flexera under this Agreement, then Partner will deliver to Flexera the original tax receipt or other proof of payment, and Partner's payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Partner to Flexera and Partner will assist Flexera in recovering any withholding tax from the relevant tax authority. If Flexera is required by Partner to use any invoicing portal or similar service to issue invoices, receive purchase orders, or otherwise contract with Partner, then any fees incurred by Flexera for Flexera's use of such portal or service will be billed back to Partner.

7.3. <u>Purchase Orders</u>. If Partner requires a purchase order to be issued to Flexera for Flexera to invoice Partner, Partner shall provide such purchase order within five (5) Business Days of its receipt of the license keys from Flexera. If Partner fails to provide a purchase order within this timeframe, Partner's signed Order (if applicable) shall serve as Partner's authorization for Flexera to invoice Partner. For multi-year Subscription Terms, Partner must provide a purchase order for either (i) the total fees due for the entire Subscription Term, or (ii) one (1) year at a time, provided that the initial purchase order clearly indicates it relates to the first year of a committed multi-year Subscription Term. Partner's failure to provide subsequent purchase orders for a multi-year Subscription Term does not relieve Partner of its obligation to pay the fees due for all remaining years. All Orders are binding and non-cancelable. Regardless of the purchase-order form selected, Partner is obligated to pay the full fees for the Subscription Term as stated in the applicable Order. The Parties agree that any additional or conflicting terms included in a Partner purchase order shall have no force or effect and are expressly rejected.

7.4. <u>Customer Payments</u>. Except with respect to referrals, Partner bears all risk of non-payment by Customers, and Partner is solely responsible for all of Partner's costs and expenses. Partner may not terminate an Order with, or receive any refunds from, Flexera due to non-payment by a Customer. If Flexera is required to provide a refund to a Customer under the Flexera Subscription Agreement, then Flexera, in its discretion, will refund the applicable amounts either directly to the Customer or to Partner for distribution to the Customer.

7.5. <u>Rebates</u>.
   a) <u>Calculation.</u> Rebates are provided in accordance with the terms of the Partner Program Guide and will be calculated annually based on the net invoiced amount of a Qualifying Transaction, excluding all applicable taxes.
   b) <u>Eligibility Verification and Claims Process</u>. Flexera will report to Partner on a quarterly basis, the net invoiced amounts applicable in the previous quarter ("**Rebate Report**"). Within 30 days of receipt of the Rebate Report, Partner must request a Rebate in writing from Flexera. Flexera will verify Partner's compliance with the Partner Program Guide requirements and shall have final discretion in determining eligibility of a Qualifying Transaction prior to issuing any Rebate.
   c) <u>Payment Timing</u>. Subject to Section 7.5.b), Flexera shall pay approved Rebates within 45 days of approval. Payments will be made by electronic funds transfer to the Partner's designated account. For the avoidance of doubt Flexera shall not be obliged to pay any Rebate to Partner until all applicable fees for the Qualifying Transactions have been paid to Flexera in accordance with the terms of this Agreement.
   d) <u>Adjustment</u>s. Flexera reserves the right to adjust or reclaim any Rebate amounts in the event of errors, misreporting, or non-compliance with Partner Program terms.

8. Term.
   8.1. <u>Agreement Term</u>. This Agreement is effective as of the Effective Date and shall continue in full force until terminated as provided herein ("**Term**").
   8.2. <u>Termination for Cause</u>. Either Party may terminate this Agreement if the other Party commits a material breach of this Agreement and does not cure such breach within (30) calendar days after receipt of written notice.
   8.3. <u>Termination for Convenience</u>. Either Party may terminate this Agreement, and Flexera may terminate Partner's authority to act in a particular Role, at any time without cause, upon thirty (30) days prior written notice to the other Party. For the purpose of clarity, termination of this Agreement or a Role authorization for convenience alone does not terminate any Orders placed hereunder or any licenses granted pursuant thereto.
   8.4. <u>Effect of Termination</u>. Upon any expiration or termination of this Agreement, Partner 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, and (iii) immediately pay Flexera any amounts then due and outstanding. Other than payment of already approved Rebates, Flexera shall have no liability to Partner of any type arising from termination of this Agreement. Notwithstanding the foregoing, (i) any licenses granted to Customers prior to the termination of the Agreement shall survive in accordance with the terms of the applicable Order and the Flexera Subscription Agreement, provided that in no event may such licenses be extended or renewed by Partner without the prior written consent of Flexera, and (ii) any licenses granted on an MSP basis will survive expiration or termination of this Agreement and/or the MSP Role for the duration of the Subscription Term. 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.
   8.5. <u>Survival</u>. Any provision that by the very nature of which should survive, shall survive any termination or expiration of this Agreement.

9. Proprietary Rights.

9.1. <u>Intellectual Property Rights.</u> Flexera or its licensors will retain exclusive ownership of all rights, title, and interest in and to the Products and Documentation. Partner or its Customer will own the Output, provided that any Background IP included in the Output will remain the property of Flexera. All data or other information in any medium that is generated or processed (including by way of machine learning, predictive analytics, natural language processing or other forms of analysis) in connection with Products, Documentation, or the Services will be owned by Flexera.

9.2. <u>Anonymized Data</u>. Flexera shall have the right to access, compile, and aggregate Partner Data and Output into Anonymized Data. Flexera shall own all Anonymized Data and may use or distribute such Anonymized Data for any lawful purpose, including without limitation, analytics, benchmarking, development and offering of new products or services, and research purposes.

9.3. <u>License Restrictions</u>. Where Partner has access to and use of Flexera Products, Partner undertakes not to:
   a) modify, distribute (except as expressly permitted herein), sell, sublicense, rent, lease the Products or Documentation (or any part thereof) or use the same for any reason other than internal business purposes, provided that Partner may use Products to manage the IT estate of a Customer (other than Affiliates) for whose benefit it purchases an MSP license as expressly set forth in an Order;
   b) remove any product identification, proprietary, copyright, or other notices contained in the Documentation.
   c) modify any part of the Documentation or create a derivative work of any part of the Documentation, except for Partner's own internal use, or for supporting Customers, or otherwise expressly authorized in writing by Flexera.
   d) conduct vulnerability scanning or penetration testing of Flexera systems or SaaS.
   e) reverse engineer, decompile, or otherwise interrogate any libraries, data or databases incorporated or provided with the Products to create or improve a similar product.
   f) access any libraries, data or databases incorporated or provided with the Products via any mechanism other than the Products.
   g) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Products or Documentation; or
   h) use Products and/or Flexera's data (including any data arising in connection with or derived from Flexera's data even if it has been de-identified or anonymized) for machine learning, predictive analytics, nature language processing or other forms of analysis.
   i) use any of the Products in any manner that does not comply with this Agreement or applicable laws and regulations.

9.4. <u>Notice of Infringement</u>. Partner shall promptly give notice in writing to Flexera in the event that it becomes aware of: (i) any infringement or suspected infringement of Flexera's Trademarks or any of the intellectual property rights in or relating to the Products or Documentation; and (ii) any claim that the Products or Documentation, or the use, sale or other disposal of any of the Products, Documentation or Trademarks, infringes the rights of any third party.

9.5. <u>Customer Claims</u>. If a Customer brings a claim to Partner regarding a warranty issued by Flexera, Partner shall direct the Customer to contact Flexera directly. To the extent Flexera's warranty to the Customer specifies refund as a remedy, Partner 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 Partner the corresponding fees paid by Partner to Flexera.

9.6. <u>Evaluation Licenses</u>**.** If Flexera provides a Product as a trial, evaluation, beta version, or proof of concept, or otherwise at no charge, then the following terms shall apply to such Product and take precedence in the event of any inconsistency between this Section 9.5 and any other term or condition in this Agreement: (a) Flexera grants Partner a worldwide, nonexclusive, revocable, nontransferable, non-sublicensable license to use the Product during the term and within the usage limits identified by Flexera solely for Partner's internal evaluation purposes; (b) Flexera may revoke Partner's Product license at any time for any reason; (c) the following Sections of this Agreement shall not apply: (i) "Indemnities", and (ii) "Flexera's Representations and Warranties"; (d) to the maximum extent permitted by applicable law, the Products are provided "as is" and Flexera disclaims all obligations or liability, including any statutory or implied warranty obligations, and in any event, Flexera's aggregate liability shall not exceed US $100.00, and (e) in addition to (a) to (d) above for any Product or feature made available as a beta version (i) the beta Product is not an official product and has not been commercially released for sale by Flexera; (ii) the beta Product may not operate properly, be in final form or fully functional; (iii) the beta Product may contain errors, design flaws or other problems; (iv) Flexera is under no obligation to release a commercial version of the beta Product, (v) Partner's use of the beta Product shall be for evaluation and feedback purposes only.

9.7. <u>Trademarks; References</u>. Each Party grants the other Party a non-exclusive, revocable, license during the Term to use the Party's Trademarks for the promotion of the Products. Such use must be in accordance with each Party's usage guidelines for the Trademarks. Each Party may not register any domain name that is similar to any of the other Party's Trademarks. Partner must also ensure that they comply with Flexera's marketing guidelines for use of Flexera's logo.

10. Partner Obligations.

10.1. <u>General</u>. Partner agrees that it will not (a) represent itself as an agent or employee of Flexera, (b) make any representations regarding Flexera or its Products or Services that are inconsistent with the Products or Services, (c) engage in any deceptive, misleading, illegal, or unethical practices. Partner agrees that (a) it will comply with all applicable federal, state and local laws and regulations while operating in relation to this Agreement; (b) employ a sufficient number of suitably qualified personnel to ensure the proper fulfillment of the Partner's obligations under this Agreement; (c) within 14 days of a written request from Flexera at any time, and from time to time, provide such information as is reasonably requested by Flexera about the Partner's processes and controls to

support compliance with this Agreements (d) keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Products and allow Flexera, on reasonable notice and at its own costs (unless it finds a shortfall of 5% between amount paid by the Partner and the amount due by the Partner for the relevant period of time), access to all accounts and records relating to the Products for the purpose of inspection; (e) have relevant contractual rights within Partner's agreements with Customers to allow Partner to verify Customer's compliance with the License Level and charge the Customers in the event of a discrepancy (in the event of a discrepancy, Partner must inform Flexera, and Flexera may issue an invoice to Partner (which the Partner shall pay) for the additional usage), and (f) inform Flexera immediately of any changes in ownership or control of the Partner and of any change in its organization or method of doing business which might affect the performance of the Partner's duties in this Agreement.

10.2. <u>Rules of Engagement</u>. Partners must follow Flexera's Rules of Engagement as made available in the Partner Hub to comply with key requirements.

10.3. <u>Skills and Training Requirements</u>. At all times, Partners must follow the training requirements outlined in the Partner Program Guide or as otherwise communicated to Partner from time to time.

10.4. <u>Subscription Agreement Enforcement</u>. Partner acknowledges that all use of the Products by Authorized Users is subject to the terms of the Flexera Subscription Agreement, and Partner further agrees to take the following enforcement actions, applicable to each authorized Role.

a) <u>For Resale and Influence Roles:</u>
Partner agrees that it will: (i) notify each Customer that the Products are subject to the terms and conditions of the Flexera Subscription Agreement 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 Flexera Subscription Agreement in each quotation and order form issued to each Customer; and (iii) not modify, remove, obscure the Flexera Subscription Agreement or in any manner interfere with each Customer's review and acceptance of the Flexera Subscription Agreement. If Partner becomes aware of any unauthorized use of the Products or of any failure by a Customer to comply with the Flexera Subscription Agreement, Partner shall promptly notify Flexera in writing, and provide Flexera will all necessary support and cooperation to enforce Customer compliance with the terms of the Flexera Subscription Agreement.

b) <u>For MSP Partner Role:</u>
Parter will remain liable to Flexera for all use of the Products and compliance with the Flexera Subscription Agreement by the Authorized Users. If Partner provides access to the Products directly to a Customer, Partner agrees that it will notify each Customer that the Products are subject to the terms of the Flexera Subscription Agreement (prior to providing any access to the Products to such Customer). If Partner becomes aware of any unauthorized use of the Products or of any failure by Customer to comply with such terms, Partner shall promptly notify Flexera in writing and use its best efforts, at Flexera's direction, to ensure that such Customer complies with such terms or otherwise assist Flexera in enforcement of the Flexera Subscription Agreement.

11. **Deal Registration.** Deal Registration is fundamental in outlining the Rules of Engagement between Flexera and Partner. Partners must register all opportunities through the Partner Hub or directly with the Flexera Business Partner Manager "**Deal Registration**". Flexera may accept or reject the Deal Registration in its sole discretion. Partner will only qualify for certain financial incentives as set out in the Partner Program Guide where there is an approved Deal Registration in place.

11.1. <u>Expiration of Deal Registration</u>. Flexera will have no payment obligation to Partner upon expiration of the Deal Registration. Flexera reserves the right to extend the expiration date of a Deal Registration in its sole discretion.

11.2. <u>Scope</u>. The approved Deal Registration applies only to the named Customer, Products and License Level 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, Flexera approval applies only to the originally scoped transaction identified in the Deal Registration and not to the expanded project.

12. **Ordering and Renewals**

12.1. <u>Ordering.</u> Once a Deal Registration is approved by Flexera, Partner or its Affiliates may purchase Product licenses by submitting an Order to Flexera within the scope of the approved Deal Registration. The Order will specify the specific Product offering(s), License Level and license model purchased by Partner.

12.2. Unless otherwise stated, all licenses are to be used solely for the benefit of the Customer named in the Order and are non-transferable or sublicensable without Flexera's explicit written consent.

12.3. <u>Renewals</u>. Partner acknowledges and agrees that all Product licenses will automatically renew for additional periods of 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 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 ninety (90) days prior to the end of the current term. 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. Partner further agrees to ensure that there is a reciprocal renewal provision, aligned to the terms of this Section 12.3 in its agreement with the Customer.

13. **Mutual Confidentiality.**

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

   13.2. <u>Exclusions</u>. 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).

   13.3. <u>Pricing</u>. Notwithstanding anything to the contrary in this Section 13, Partner may not share any pricing provided to it by Flexera with any third party without Flexera's prior written consent.

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

14. **Data Privacy**. Where personal data is being processed, the Parties will comply with their respective obligations as a data processor and a data controller under the relevant Data Protection Law(s). The Data Processing Agreement ("**DPA**") located at https://www.flexera.com/legal/data-processing-agreement as of the Effective Date will apply to the Processing of Personal Data (as each is defined in the DPA), unless the Parties execute (or have already executed) a different DPA, in which case the executed DPA will apply. For the avoidance of doubt the SaaS does not require Flexera to have access to any sensitive or special categories of personal data. Flexera will conduct annual SSAE 16 SOC audits during any Subscription Term for SaaS. Flexera will, upon request, provide Partner a SSAE 16 SOC Type I and/or II audit report covering the SaaS. Partner agrees that the foregoing fulfills Flexera's audit obligations under applicable Data Protection Laws, except for any additional audits required by an applicable data protection authority or regulatory body with authority over Flexera and Partner.

15. **Security**. Flexera will perform its obligations under this Agreement in accordance with the information security terms located at https://www.flexera.com/legal.

16. **Indemnification**. Partner shall indemnify, hold harmless and (at Flexera's option) defend Flexera from and against any third party claim and related liability, damages, and expenses (including reasonable attorneys' fees) which arise from: (a) Partner's breach, or alleged breach, of any term of this Agreement, (b) Partner's issuance of any warranty or representation regarding Flexera or its Products or Services, or (c) Partner's acts or omissions in connection with the marketing, resale, or provision of the Products or Services under this Agreement.

17. **Liability**.

   17.1. <u>GENERAL LIABILITY CAP</u>. EXCEPT AS SET FORTH BELOW, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY PARTNER (OR WITH RESPECT TO FEES DUE, PAYABLE) TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.

   17.2. <u>UNLIMITED LIABILITY</u>**.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO LIMIT OF LIABILITY WILL APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, OR FOR DAMAGES ARISING FROM DEATH OR BODILY INJURY CAUSED BY A PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR FOR PAYMENT OF FEES, OR FOR ANY OTHER LOSS THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

   17.3. <u>DAMAGES WAIVER</u>**.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY (i) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR (ii) LOST PROFITS, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, OR INTERRUPTION OF BUSINESS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

   17.4. No person who is not a party to this Agreement is entitled to enforce any terms of the same under the Contracts (Rights of Third Parties) Act 1999.

17.5. Flexera's liability to Partner regarding the Flexera Products or Services is as set out in the Flexera Subscription Agreement.

18. Miscellaneous.

18.1. <u>Assignment</u>. This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns. Neither Party may assign this Agreement (or any part thereof) without the advance written consent of the other Party, except that either Party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such Party's assets or voting securities. No assignment will be effective until the assigning Party provides written notice of such assignment, including the assignee's written agreement to the terms of this Agreement. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 18.1 will be null and void.

18.2. <u>Subcontracting</u>. Flexera may engage a subcontractor to perform its obligations hereunder provided that Flexera remains responsible for the compliance of such subcontractor with the terms of this Agreement.

18.3. <u>Severability</u>. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

18.4. <u>Governing Law</u>. 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. PARTNER 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 PARTNER KNEW, OR SHOULD HAVE KNOWN AFTER REASONABLE INVESTIGATION, OF THE FACTS GIVING RISE TO THE CLAIM(S).

18.5. <u>Amendments; Waivers</u>. Unless expressly stated otherwise in this Agreement, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each Party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the Party claimed to have waived. Where this Agreement provides for a specific remedy to be provided by Flexera, such remedy will be the sole and exclusive remedy for Partner. No provision of any purchase order or other business form employed by Partner will add to or supersede the Terms and Conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

18.6. <u>Construction and Interpretation</u>. The original of this Agreement has been written in English. Partner waives any rights it may have under the law of its country to have this Agreement written in the language of that country. The use of the terms "including," "include" or "includes" will in all cases herein mean "including without limitation," "include without limitation" or "includes without limitation," respectively. Unless the context otherwise requires, words importing the singular include the plural and words importing the masculine include the feminine and vice versa. This Agreement will be equally and fairly construed without reference to the identity of the Party preparing this document as the Parties have agreed that each participated equally in negotiating and preparing this Agreement or have had equal opportunity to do so. To the maximum extent permitted by applicable law, the Parties waive the benefit of any statute, law, or rule providing that in cases of uncertainty, contract language should be interpreted most strongly against the Party who caused the uncertainty to exist. The headings and titles to the articles and sections of this Agreement are inserted for convenience only and will not be deemed a part of or affect the construction or interpretation of any provision of this Agreement.

18.7. <u>Independent Contractors</u>. The Parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the Parties. Partner acknowledges and agrees that the Products may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Products; all actions taken or not taken by Partner based on the Output are the responsibility of Partner. 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.

18.8. <u>Force Majeure</u>. Neither Party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such Party and could not be avoided through the exercise of reasonable care and diligence, including but not limited to a Force Majeure Event. If a Force Majeure Event occurs and continues for a period of thirty (30) days, Partner may terminate this Agreement by providing written notice to Flexera. In the event Flexera's performance hereunder is the subject of a Force Majeure Event, the fees to be paid by Partner will be equitably adjusted to reflect the period of non-performance.

18.9. <u>Export Compliance</u>. Each Party will comply with all applicable export laws and regulations of the United States and any other country with jurisdiction over the Products and/or either Party.

18.10. <u>Notices and Reports</u>. Any notice or report to be given under this Agreement, must be in writing for the attention of Legal Dept. to the address given in the preamble to this Agreement, by the following methods only and will be deemed to have been validly given (a) on the date of delivery if delivered by hand; (b) upon transmission if delivered by email to Flexera at <u>legal@flexera.com</u> and to Partner at the email address on file; and (c) two (2) Business Days after posting with an internationally recognized overnight courier. Where any provision of this Agreement requires Partner to object in writing, such objection must be based on Partner's

reasonable opinion that Flexera (or its subcontractor) would be incapable of meeting the requirements of this Agreement. Each Party to this Agreement may change its location for notice under this Agreement by giving notice to the other Party in accordance with the notice provisions contained in this Section. Flexera will also utilize Partner Portal as another route of formal communication which can be used solely or as a supplement to other means of communication like email. Once the notification is shared via the Partner Portal, Flexera considers its legal obligation to provide notice to the partner on any substantial changes to legal, commercial or other business terms fulfilled

18.11. <u>Insurance</u>. Flexera is responsible for maintaining insurance to protect itself from the following: (a) claims and/or workers compensation or state disability acts; (b) claims for damages because of bodily injury, sickness, or death of any of its employees or any other person which arise out of any negligent act or omission of Flexera, its employees or agents, if any; (c) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, which arise from any negligent act or omission of Flexera, its employees or agents, if any; and (d) claims for damages because of Flexera's professional liability. Flexera will maintain insurance with the following limits for the duration of this Agreement:

- Workers Compensation Insurance in compliance with applicable Federal and State laws and Employer's Liability coverage with a minimum $1,000,000 limit of liability.
- Commercial General Liability Insurance with $1,000,000 bodily injury and property damage combined single limit of coverage,
- Automobile bodily injury and property damage liability insurance covering owned, non-owned and hired automobiles, the limits of which will not be less than $1,000,000 combined single limit per occurrence.
- Professional Liability insurance covering acts, errors, mistakes, omissions arising out of the work or services performed by Flexera, or any subcontractor, agent or person employed by Flexera, with a limit of not less than $1,000,000 per claim.
- Cyber Insurance with a policy limit of $10,000,000.

Upon Partner's request, Flexera will provide Partner with a certificate of insurance completed by its insurance carrier certifying that minimum insurance coverage as required above are in effect.

18.12. <u>Anti-Bribery</u>. Each Party represents and warrants that (i) in connection with this Agreement, it has not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any government or any agency or instrumentality thereof and (ii) it will comply in all respects with the Foreign Corrupt Practices Act, UK Bribery Act 2010, or any similar local laws.

18.13. <u>Equal Opportunity</u>. 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.

18.14. <u>Partner Contact Information.</u> Partner is responsible for ensuring that Flexera has at all times updated and accurate Partner contact information for Flexera to notify Partner regarding any security and products related issues.

18.15. <u>Execution</u>. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will constitute together but one document. In addition, the Parties consent to the use of a third-party service for electronically executing this Agreement.

18.16. <u>Order of Precedence</u>. In the event of a conflict between the terms of this Agreement and any Order, or other terms referenced herein, the following order of precedence will apply.
   a) Terms of an Order
   b) Flexera Subscription Agreement (as it relates to the use of Flexera Products or Services)
   c) These Terms and Conditions
   d) Partner Program Guide
   e) Rules of Engagement

18.17. <u>Entire Agreement</u>. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

Global Appendix

Governing Law, and Venue of Disputes

In accordance with and subject to the Section titled "Governing Law" of the Agreement, the following table sets forth the Governing Law that corresponds with the location of the Partner identified in the Partner Authorization:

Flexera entity	Partner Location	Governing Law
Flexera Software GmbH, having its registered office at Regus Hamburg Altona, Hahnenkamp 1, 22765 Hamburg, Germany (company number HRB 205690).	Germany, Austria and Switzerland (DACH region)	English
Flexera Software Limited, a private company limited by shares and incorporated in England and Wales with company number 6524874, having its principal office located at 2nd Floor, The Capitol Building, Oldbury, Bracknell, Berkshire, RG12 8FZ.	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
Flexera Software Brazil Ltda, having its registered office at Rua das Olimpíadas, 205, 4º andar, cj 41, Vila Olímpia | 04551-000 São Paulo/SP, Brazil	Brazil	USA, State of Illinois
Flexera Software LLC, a Delaware limited liability company having its principal office located at 300 Park Blvd., Suite 400, Itasca, IL 60143, USA.	Countries outside of those listed above	USA, State of Illinois

[END OF GLOBAL APPENDIX]