

PROCUREMENT PARTNER RESALE
TERMS AND CONDITIONS

Procurement Partner 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 Procurement Partner identified on the Engagement Form and Flexera for the resale of the Flexera products; by signing the Engagement Form, Procurement 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 Engagement Form.

As used herein, Flexera will mean the relevant entity listed in the Global Appendix attached hereto (“**Flexera**”).

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

1. **Procurement Partner Appointment.** Subject to all of the terms and conditions of this Agreement, during the Term set forth below, Flexera hereby appoints Procurement Partner as an authorized, non-exclusive Procurement Partner 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 Procurement Partner the revocable, non-exclusive, non-transferable, non-sublicensable right to market and distribute the Products directly to third party end customer(s) of the Procurement Partner (each a “**Customer**”), solely for use by such Customer only and without any right of redistribution.
2. **Procurement Partner Obligations.**
 - 2.1. **Due Diligence Questionnaire.** Procurement Partner may be required to complete the Due Diligence Questionnaire on request from Flexera. Procurement Partner agrees to complete the Due Diligence Questionnaire within two (2) weeks of Flexera’s request, and Flexera may require Procurement Partner to update the Due Diligence Questionnaire on an annual basis. Procurement Partner represents that the answers it provides in the Due Diligence Questionnaire are complete and accurate in all material respects.
 - 2.2. **Marketing.** Procurement Partner 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.
 - 2.3. **Procurement Partner 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.
 - 2.4. **Representations.** Procurement Partner 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 Procurement Partner hereunder. In no event shall Procurement Partner make any representation, warranty or guarantee by or on behalf of Flexera. Procurement Partner 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.
 - 2.5. **Business Practices.** Procurement Partner 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. Procurement Partner further agrees to notify Flexera in advance if Procurement Partner intends to sell, represent or promote any products competitive with the Products.
 - 2.6. **Conflicts of Interest.** Procurement Partner agrees to notify Flexera immediately upon notice of a conflict of interest relating to Procurement Partner’s obligations hereunder.
 - 2.7. **Records and Audit.** Procurement Partner 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, Procurement Partner shall permit Flexera or its representative to review such records and any other books and records of Procurement Partner which relate to Procurement Partner’s performance under the Agreement to ensure Procurement Partner’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 Procurement Partner’s ordinary business activities. Procurement Partner shall maintain all records required under this Agreement for at least three (3) years following expiration or termination of the Agreement.
 - 2.8. **Indemnity.** Procurement 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) any breach or alleged breach by Procurement Partner of any term of this Agreement, (b) the issuance by Procurement Partner of any warranty or representation not authorized in writing by Flexera or (c) any other act or omission of Procurement Partner in connection with the marketing or distribution of the Products under this Agreement.

- 2.9. Training. Procurement Partner 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.
- 2.10. Subscription Agreement; Enforcement. Procurement Partner 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 Procurement Partner becomes aware of any unauthorized use of the Products or of any failure by a Customer to comply with a Subscription Agreement, Procurement Partner 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.
- 2.11. Customer Claims. If a Customer brings a claim to Procurement Partner regarding a warranty issued by Flexera, Procurement Partner shall direct the Customer to contact Flexera directly. To the extent Flexera’s warranty to the Customer specifies refund as a remedy, Procurement 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 Procurement Partner the corresponding fees paid by Procurement Partner to Flexera.
- 2.12. Notice of Infringement. Procurement 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; and (ii) any claim that the Products or the use, sale or other disposal of any of the Products or Trademarks, infringes the rights of any third party.

3. Ordering; Deal Registration; Renewal.

- 3.1. Deal Registration. Prior to entering into an Order, Procurement Partner agrees that for each opportunity with a Customer, Procurement Partner shall submit a deal registration form (provided by Flexera or through the Flexera partner portal), 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.
- 3.2. Ordering. Once a deal registration form is accepted, Procurement Partner 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 Procurement Partner 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.
- 3.3. Renewals. Licenses will automatically renew for additional periods of three (3) years at a time at the end of the term set forth in an Order (each a “**Renewal Term**”). Fees for each Renewal Term will be equal to the fees payable during the immediately preceding year plus an uplift of 8% thereon applicable to each year of the Renewal Term, unless agreed otherwise in writing. At any point, either party may give written notice of its election not to renew, provided such notice is provided no later than ninety (90) days prior to the end of the current subscription term. 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.

4. Invoicing and Payment.

- 4.1. Invoicing. Unless otherwise agreed in an Order, Flexera will invoice Procurement Partner as follows:
 - 4.1.1. for Products, annually in advance; and/or
 - 4.1.2. 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.
- 4.2. Payment. Procurement Partner 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 Procurement Partner’s receipt of the invoice for the applicable Order (unless another term is stated in the Engagement Form). All fees are pre-tax and Procurement Partner 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 Procurement Partner is required to withhold and pay any withholding tax imposed at source on any amount payable to Flexera under this Agreement, then Procurement Partner shall deliver to Flexera the original tax receipt or other proof of payment, and Procurement Partner’s payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Procurement Partner to Flexera and Procurement Partner will assist Flexera in recovering any withholding tax from the relevant tax authority. If Flexera is required by Procurement Partner to use any invoicing portal or similar service to issue invoices, receive purchase orders, or otherwise contract with Procurement Partner, then any fees incurred by Flexera for Flexera’s use of such portal or service will be billed back to Procurement Partner.

- 4.3. **Purchase Orders.** If the parties execute a written Order and Procurement Partner requires a separate purchase order to be provided to Flexera for Flexera to invoice Procurement Partner in addition to the executed Order, Procurement Partner commits to providing a purchase order within three (3) business days of the effective date of the Order. In the event Procurement Partner fails to deliver a purchase order within such timeframe, Procurement Partner's signed Order will constitute Procurement Partner's approval for Flexera to invoice Procurement Partner. For subscription based Products with multi-year subscription terms, Procurement Partner 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 Procurement Partner licenses a Product for a multi-year subscription, the license is non-cancelable and Procurement Partner shall be obligated to pay for the total value of the subscription term. The Parties agree that any additional or conflicting terms and conditions included in a Procurement Partner purchase order shall have no force and effect and are hereby rejected.
- 4.4. **Customer Payments.** Procurement Partner bears all risk of non-payment by Customers, and Procurement Partner is solely responsible for all of Procurement Partner's costs and expenses. Procurement Partner may not terminate an Order with, or receive any refunds from, Flexera due to non-payment by a Customer. If Flexera provides any refund to a Customer under the Subscription Agreement, Flexera, at its option, will refund the applicable amounts either directly to the Customer or to Procurement Partner for distribution to the Customer.

5. Confidential Information.

- 5.1. **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.
 - 5.2. **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.
 - 5.3. **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).
 - 5.4. **Pricing.** Notwithstanding anything to the contrary in this Section, Procurement Partner may not share any pricing provided to it by Flexera with any third party without Flexera's prior written consent.
 - 5.5. **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.
6. **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 www.flexera.com/legal/dpa 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 Procurement Partner a SSAE 16 SOC Type I and/or II audit report covering the SaaS. Procurement 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 Procurement Partner.
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 Products and the Documentation and all copies thereof, modifications thereto, and derivative works based thereupon. Procurement Partner acknowledges that it is obtaining only a limited license right to

the 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 Procurement Partner under this Agreement or otherwise.

- 8. Trademarks.** Each party grants the other party a non-exclusive, revocable, license during the Term to use the party’s name, logo, service marks and other trademarks (“**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. Procurement Partner must also ensure that they comply with Flexera’s marketing guidelines for use of Flexera’s Logo contained in the latest Partner Program Guide (“**Partner Program Guide**” is the guidelines for Partner activities as compiled and updated intermittently by Flexera) located on the Flexera partner portal.

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 (the “**Term**”).
- 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, Procurement 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 (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 Procurement Partner 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 Procurement Partner 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 LOST PROFITS, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND , 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.
- 11.2. GENERAL LIABILITY CAP. EXCEPT AS SET FORTH BELOW, , EACH PARTY’S ENTIRE LIABILITY TO THE OTHER PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY PROCUREMENT PARTNER TO FLEXERA DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.
- 11.3. UNLIMITED LIABILITY. 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.
- 11.4. FOR PROCUREMENT PARTNERS 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. Procurement Partner may not assign or transfer this Agreement, in whole or in part, without Flexera's prior written consent. Any attempt by Procurement Partner 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. PROCUREMENT 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 PROCUREMENT PARTNER 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 to be given under this Agreement, must be in writing for the attention of Legal Dept. to the address given in the preamble to this Agreement, by the following methods only and will be deemed to have been validly given (a) on the date of delivery if delivered by hand; (b) upon transmission if delivered by email to Flexera at legal@flexera.com and to Procurement Partner at the email address on file; and (c) two (2) Business Days after posting with an internationally recognized overnight courier. 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 of providing notice to the partner on any substantial changes to legal, commercial or other business terms fulfilled.
- 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 Procurement Partner 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. Procurement 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" 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) the Order (with respect to the subject matter of such Order), (ii) Engagement Form, and (iii) Agreement.
- 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. Procurement Partner acknowledges that the Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Procurement Partner 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 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. Procurement Partner 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. Procurement Partner 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, Procurement Partner agrees that it will not hire or attempt to hire, on behalf of Procurement Partner or any other organization, any employee of Flexera unless Procurement Partner has first obtained Flexera's written consent. Notwithstanding the foregoing, Procurement Partner 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 Procurement Partner 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 Procurement Partner entity executing this Agreement:

Flexera entity	Procurement 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
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]