

FLEXERA SOFTWARE
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12. Survival. Sections I.4 (Disclaimer), I.5 (Limitation of Liability), I.6 (Termination), II.2 (Payment and Delivery), II.3 (Taxes), II.4 (Support and Maintenance), II.5 (Warranty), II.6 (Limitation of Liability), II.7 (Termination), II.8 (Verification/Audits) (Disclaimer), II.7 (Limitation Liability), II.8 (Termination), and all of this Article III (General Terms), as well as any provision that by the very nature of which should survive shall survive any termination or expiration of this Agreement.
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- b. Validation of Use. In order to protect the Software from unauthorized use and in order to confirm Licensee's compliance with the license grants and restrictions set forth in this Agreement, the Software may contain validation procedures designed to detect and report to Flexera Software information identifying usage potentially violating the terms of this Agreement. This information does not contain any personally identifiable information of Licensee or the end user.

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- b. Protection of Confidential Information. The Recipient shall a) have the right to disclose the Confidential Information only to its employees, consultants and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Except as expressly authorized herein, for a period of three (3) years following the disclosure date of Confidential Information to the Recipient, the Recipient will hold in confidence and not make any unauthorized use or disclosure of any Confidential Information. No time limit shall apply to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret".
- c. Usage Data. Licensee understands that Flexera Software may utilize technology that gathers information about Licensee's computer system, however, such data is used solely for the purpose of understanding machine types and other system-oriented information and does not contain any personally identifiable information of Licensee.
- d. Exclusions. The Recipient's nondisclosure obligation shall not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).
- e. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

15. Publicity. Either party may include the other party's company name in a list of customers and/or suppliers without the other party's written consent. Any other use of the other party's name or logo is prohibited without such other party's written consent.

16. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

17. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Licensee will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

18. Construction and Interpretation. The original of this Agreement has been written in English. Licensee waives any rights it may have under the law of its country to have this Agreement written in the language of that country. The use of the terms “including,” “include” or “includes” shall in all cases herein mean “including without limitation,” “include without limitation” or “includes without limitation,” respectively. Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires. This Agreement shall be equally and fairly construed without reference to the identity of the party preparing this document 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.
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20. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.
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24. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
25. Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies to which the parties are entitled by law. The

exercise by either party of any right or remedy under this Agreement or under applicable law will not preclude such party from exercising any other right or remedy under this Agreement or to which such party is entitled by law.

26. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

**SCHEDULE 1
INSTALLATION TERMS AND CONDITIONS**

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5. **Vendor Daemon Substitutions.** The designated Vendor Daemon(s) may not be substituted unless the underlying vendor changes the Vendor Daemon. In such instances, there is no extra charge for exchanging the Vendor Daemon.

FLEXWRAP ON-PREMISE

1. “**FlexWrap Author**” means, in relation to FlexWrap, the individual within Licensee’s organization who accesses the FlexWrap application for preparing internal software applications to have FlexNet licensing capabilities that includes but is not limited to optional enforcement of concurrent limits on application usage. For the purpose of certification as set forth in the Agreement, the number of FlexWrap Authors includes all FlexWrap Authors who accessed FlexWrap at any point during the previous year. For the purpose of clarity, a single FlexWrap Author may not be more than one individual.
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WORKFLOW MANAGER ON-PREMISE

1. “**Device**” means any physical or virtual device for which any function is performed by the Software (including but not limited to delivering, installing, updating, migrating or repairing any computer program or data file; or monitoring, tracking, or reporting on the status or history of any software or hardware components or software licenses on or used by the device). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.
2. **Grant of License.** Subject to all of the terms and conditions of this Agreement and the applicable Order Confirmation, Flexera Software grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for internal purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation.

APP PORTAL ON-PREMISE

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EXHIBIT A TO SCHEDULE 3

CLOUD SOFTWARE SERVICE LEVELS

This Exhibit A is governed by and is a part of the End User License Agreement (the “**Agreement**”) to which this Exhibit is attached. Capitalized terms in this Exhibit will have the meanings given in the Agreement unless otherwise specified.

1. **Equipment.** Flexera Software will host Cloud Software using servers, switches, routers, cabling and other equipment and infrastructure (“**Equipment**”) provided by Flexera Software.
2. **Environment.** Flexera Software will maintain the Equipment in a data center (“**Data Center**”) that has the following features:
 - Physical access to the Data Center will be restricted to authorized personnel only.
 - Equipment will be securely mounted using racks and/or fixtures.
 - Electrical power for Equipment will be supplemented by an uninterruptible power supply (“**UPS**”) and generator. The UPS and generator will be tested at least once per month.
 - The Data Center will be protected by a fire suppression system appropriate for a data center environment.
3. **Access.** Each party will adopt precautions in accordance with recognized industry standards, including but not limited to password protection, to prevent access to the Cloud Site by parties other than Licensee, Flexera Software and their respective authorized end users.
4. **Network Connectivity.** Flexera Software will manage network connectivity from the Equipment into the hub or switch at the Data Center, to the points where Flexera Software's wide area network (“**WAN**”) (including the Data Center backbone and other high-speed links leased for the Data Center) terminates at designated exchange points with other IP backbone carriers. Such network connectivity will encompass fully redundant dedicated connections to the Internet.
5. **Firewall.** Flexera Software will employ firewall security protection modules that are designed to prevent unauthorized access to Flexera Software's network. The firewall modules will be controlled through a management system, which also provides for the storage, management and analysis of firewall log files. Firewall configurations, security policies, and authentication policies will be routinely backed up through a secure process.
6. **Backup and Restoration.** Flexera Software will provide full and incremental backups for Cloud Software. Incremental backups will normally be performed 6 days per week and full backups will normally be performed 1 day a week. Incremental backups will be kept for a minimum of 6 days, while full backups will be kept for a minimum of 6 weeks. The full backups will be stored off-site in a secure fire-resistant facility. Upon termination or expiration of a Cloud Software subscription, Flexera Software will retain Licensee's data in the active Cloud Site for ninety (90) days after such expiration or termination of the subscription and Licensee will have access to a limited Cloud Site for the sole purpose of accessing such data. After such ninety (90) day period, Licensee's access to the limited Cloud Site will expire and Flexera Software will delete Licensee's data from the Cloud Site; provided, however, that any prior backups that have been performed for disaster recovery or failover will not be deleted, until such backup is overwritten by other data or destroyed in accordance with Flexera Software's record retention policy.
7. **System Monitoring.** Flexera Software will monitor the performance characteristics of system and network components in real-time. Flexera Software will perform system-level polling of the hardware, operating system and applications of each server to identify abnormal system-level conditions. Flexera Software will perform

network-level monitoring on the hardware interface of each component of the Equipment necessary to the network component of the Cloud Site.

8. Support of Cloud Software.

- 8.1. General. Flexera Software will provide a combination of email-based and telephone-based support on issues related to Cloud Software and the Cloud Site. Licensee may contact Flexera Software support by email or telephone at any time, 24 X 7 X 365. Flexera Software support staff will be available for live-answer telephone and email support between the hours of 6:00 p.m. Sunday and 6:00 p.m. Friday Pacific time (for the purpose of this Exhibit, “**Business Hours**”). Target timeframes for responding to calls are set forth in Section 8.4. Support will be provided in English.
- 8.2. Staffing and Escalation. Support requests that are not resolved during the initial contact with a Flexera Software technical support analyst will be escalated to Flexera Software internal technical experts based upon severity level. The support staff will manage escalated support requests according to the terms contained herein.
- 8.3. Support Request Tracking. Support requests will be entered into the support request tracker system and assigned to a support representative who will track and report on each support request via the support request tracker.
- 8.4. Target Times for Responding to Support Requests. Flexera Software will reasonably prioritize support requests from Licensee according to the severity levels set forth below. After receiving a support request from Licensee, Flexera Software will make commercially reasonable efforts to respond to Licensee via telephone or email within the Target Response Times corresponding to the appropriate Severity Levels shown below.

Severity Level	Description	Target Response Time
1 Critical	Production use of the Cloud Site is stopped or so severely impacted that authorized end users cannot reasonably use it. Flexera Software will work continuously to resolve the support request until the support request is closed. Severity Level 1 issues must be reported by telephone.	30 minutes
2 Significant	Major Cloud Site documented features are unavailable with no workaround. Use of the Cloud Site can continue; however, productivity is significantly decreased. Flexera Software will work continuously to resolve the support request until the support request is closed. Severity Level 2 issues must be reported by telephone.	2 Hours
3 Impaired	Major Cloud Site documented features are unavailable, but a workaround is available, or less significant Cloud Site documented features are unavailable with no reasonable workaround.	4 Hours
4 Minimal	Authorized end user requests information about the Cloud Site or an enhancement to the existing Cloud Software specifications. Use of the Cloud Site is available without being materially and adversely impeded.	1 Business Day

- 9. **Scheduled Outages**. “**Scheduled Outages**” mean planned interruptions in the Cloud Site to make changes to Flexera Software’s systems. Flexera Software regularly evaluates web site traffic patterns in order to determine low usage times in which to perform Scheduled Outages. If Licensee’s Cloud Site is located in Flexera Software’s US data center, Scheduled Outages of 2 hours or less in duration will be conducted Monday through Thursday between 5:00 p.m. and 3:00 a.m., or between 6:00 a.m. Saturday and 12:00 p.m. Sunday, Pacific time

and Scheduled Outages that exceed 2 hours will be conducted between 6:00 a.m. Saturday and 12:00 p.m. Sunday Pacific time. If Licensee’s Cloud Site is located in Flexera Software’s European data center, Scheduled Outages of 2 hours or less in duration will be conducted Monday through Thursday between 7:00 p.m. and 5:00 a.m., or between 6:00 a.m. Saturday and 12:00 p.m. Sunday Central European time and Scheduled Outages that exceed 2 hours will be conducted between 6:00 a.m. Saturday and 12:00 p.m. Sunday Central European time. Flexera Software will not perform Scheduled Outages on the last 2 business days of any calendar month. For Scheduled Outages of 2 hours or less in duration Flexera Software will notify Licensee no later than 48 hours prior to the Schedule Outage. For Scheduled Outages of more than 2 hours in duration Flexera Software will notify Licensee no later than 120 hours prior to the Schedule Outage. Notice for the purpose of this Section may be a message be placed on the login page to the Cloud Site.

- 10. Monthly Uptime.** Flexera Software will maintain systems and controls designed to maximize Monthly Uptime, minimize unscheduled outages, and enable the most prompt notification possible in the event of any unscheduled outage. Flexera Software will credit to Licensee the percentage specified below of the total Monthly Fee paid by Licensee to Flexera Software, for any calendar month in which Monthly Uptime for the month falls within the range specified below.

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

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

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

EXHIBIT B TO SCHEDULE 3

ACCEPTABLE USE POLICY **FLEXNET MANAGER SUITE**

Summary

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

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

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

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

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

Personally Identifiable Information ("PII")

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

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

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

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

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

- home addresses
- home phone numbers
- private mobile phone numbers
- private email addresses

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

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

- national identification numbers (including, but not limited to, social security numbers, or even the last 4 digits of such numbers)
- state/province identification numbers (including, but not limited to, driver’s license numbers)
- passport numbers
- alien registration numbers
- biometric identifiers
- financial account numbers or other non-public financial information
- other sensitive information, such as medical information, citizenship or immigration status, ethnic background, political affiliation, religious affiliation, sexual orientation, organizational memberships, date of birth, age, criminal history, mother’s maiden name

Clarification of Roles

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

Providing Too Much Information

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

Logical Separation of Usage versus Content

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

Gold Master Use Rights Information

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

Testing of FlexNet Manager Suite Cloud

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

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

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

Licensee agrees to not conduct vulnerability scanning or penetration testing (“pen testing”) without prior written consent of Flexera Software. Even if given prior written consent, Flexera Software may revoke that consent at any time if the scanning or testing is determined, or suspected, to have negative effects on FlexNet Manager Suite Cloud,

other FlexNet Manager Suite Cloud customers, or Flexera Software, either because of the scanning or testing itself or because of the current state of or load on FlexNet Manager Suite Cloud. Flexera Software's consent to allow Licensee to conduct scanning or testing does not constitute Flexera Software's agreement to take any action based on the results of Licensee's scanning or testing.

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