



## MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**") is made and entered into as the date signed by Company below ("**Effective Date**"), by and between Flexera and \_\_\_\_\_, having its principal place of business located at \_\_\_\_\_ ("**Company**"). As used herein, if *Company is located in Europe, Middle East, Africa, or India*, "**Flexera**" means Flexera Software Limited, a private company limited by shares and incorporated in England and Wales with company number 6524874; if *Company is located in any other region*, "**Flexera**" means Flexera Software LLC, a Delaware limited liability company.

The parties contemplate entering into business and/or technical discussions regarding the exploration and evaluation of a potential business opportunity of mutual interest (the "**Purpose**"), and it is anticipated that either party may from time-to-time disclose (in that capacity, the "**Discloser**") to the other party (in that capacity, the "**Recipient**") certain business and/or technical information which the Discloser regards as proprietary and/or confidential. This Agreement sets forth the terms under which the Recipient shall retain such information in confidence. In consideration of the mutual covenants contained herein, the parties agree as follows:

- Confidential Information.** "**Confidential Information**" means business and/or technical information which, in furtherance of the Purpose, is conveyed by the Discloser to the Recipient following the Effective Date and 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. Notwithstanding (a) and (b), information shall be treated by Recipient as confidential if such information should reasonably be understood to be confidential whether or not such information is marked or otherwise identified as confidential by the Discloser.
- Term and Termination.** This Agreement commences on the Effective Date and continues until thirty (30) days after the date either party notifies the other of its intention to terminate (the "**Disclosure Period**"). For a period of three (3) years following the disclosure date of Confidential Information to the Recipient (the "**Protection Period**"), the Recipient shall maintain such Confidential Information in confidence, make no unauthorized uses of such Confidential Information and not disclose such Confidential Information to any third party without the Discloser's prior written authorization. The Protection Period for Confidential Information marked or otherwise identified as "Trade Secret" shall be for so long as such information remains a trade secret. Each party shall have the right to terminate this Agreement, with or without cause, upon written notice to the other. Agreement termination shall terminate the Disclosure Period but not the Protection Period. The provisions of this Agreement, including the obligation to protect Confidential Information, shall survive and continue after expiration or termination of this Agreement to the end of the Protection Period.
- Use 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 for the Purpose unless otherwise agreed to in advance and in writing by the Discloser; and d) at Discloser's option return or destroy any or all Confidential Information upon Discloser demand. For the purposes of this Agreement, "**Affiliate**" means any company controlling, controlled by, or under common control with, Recipient.
- Confidential Information Exceptions.** Nothing in this Agreement shall in any way restrict or impair the Recipient's right to use, disclose or otherwise deal in Confidential Information which a) at the time of disclosure to the Recipient is in the public domain, as evidenced by written publication; b) after disclosure to the Recipient becomes part of the public domain by written publication through no fault of the Recipient; c) the Recipient can demonstrate was in its possession prior to the time of disclosure to the Recipient, was not acquired improperly and was not acquired directly or indirectly from the Discloser or any person, firm or corporation acting on its behalf; d) the Recipient can show was acquired by the Recipient independently, after disclosure hereunder, from a third party without breach of agreement or violation of law; or e) the Recipient can show was independently developed without use of or reference to the Confidential Information. Disclosure of Confidential Information shall not be precluded if such disclosure is in response to a valid court or other governmental body order or is otherwise required to be disclosed by law; provided, however, that the Recipient shall first have given written notice to the Discloser.
- No Rights.** No right, title or interest, either express or implied, in either party's Confidential Information is granted to the other party under this Agreement. Neither party has an obligation to enter into any business relationship with the other

party. No agency or partnership relationship is created by this Agreement. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND WITHOUT WARRANTY INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE RECIPIENT USES CONFIDENTIAL INFORMATION AT ITS OWN RISK.

6. **Integration, Assignment and Amendment.** This Agreement constitutes the entire agreement between the parties concerning the exchange of Confidential Information in furtherance of the Purpose, superseding and replacing all prior and contemporaneous confidentiality agreements and related understandings, offers and communications, both written and oral, between the parties. This Agreement is not transferable or assignable without the parties' prior written agreement, except that a party may assign this Agreement to a successor pursuant to a merger, consolidation or sale, or to an entity which acquires all or substantially all of such party's assets or business. This Agreement shall be binding upon an assigning party's successors and assigns. No Agreement modifications or waiver of any of its terms will be effective unless set forth in writing signed by the party against whom it is sought to be enforced. Failure by either party to require the other party's performance of any of this Agreement's terms, or waiver by either party of any Agreement breach by the other party shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach thereof.
7. **Governing Law and Injunctive Relief.** *If Company is located in Europe, Middle East, Africa, or India*, this Agreement will be governed by the laws of England and Wales and Company shall submit to the jurisdiction of the courts of England and Wales; *if Company is located Company in any other region*, this Agreement will be governed by the laws of the State of Illinois and the United States without regard to conflicts of laws provisions thereof. This Agreement is not subject to the United Nations Convention on Contracts for the Sale of Goods. The parties acknowledge that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief without being required to post any bond or other security in addition to all other available remedies.
8. **General Provisions.** No agency or partnership relationship shall be created between the parties by this Agreement. In any dispute or litigation between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to have its attorneys' fees, reasonable expenses, related litigation costs and costs of suit (if any) paid by the non-prevailing party. Each party agrees to comply with all export laws and regulations applicable to any Confidential Information disclosed hereunder. Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. The invalidity or unenforceability of any Agreement provision shall not affect the validity or enforceability of any other provision.

This Agreement may be executed in separate counterparts, each of which will be deemed an original, and when executed, separately or together, will constitute a single original instrument, effective in the same manner as if the parties had executed one and the same instrument.


**By signing below, the parties agree to be bound by the terms and conditions set forth herein.**

**AGREED:**

**Company:**

**Flexera**

\_\_\_\_\_  
(Authorized Signature)

  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

Kraig Washburn  
(Printed Name)

\_\_\_\_\_  
(Title)

General Counsel  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(E-Mail Address)