

**Oracle® Hospitality Simphony First Edition**

Licensing Information User Manual

Release 1.7.1

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Oracle® Hospitality Simphony First Edition  
Licensing Information User Manual  
Version 1.7.1

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# Preface

This document contains licensing information for Oracle Hospitality Simphony First Edition.

## Audience

This document is intended for users of Oracle Hospitality Simphony First Edition.

## Customer Support

To contact Oracle Customer Support, access My Oracle Support at the following URL:  
<https://support.oracle.com>

When contacting Customer Support, please provide the following:

- Product version and program/module name
- Functional and technical description of the problem (include business impact)
- Detailed step-by-step instructions to re-create
- Exact error message received and any associated log files
- Screen shots of each step you take

## Documentation

Oracle Hospitality product documentation is available on the Oracle Help Center at  
<http://docs.oracle.com/en/industries/hospitality/>

## Revision History

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Date	Description of Change
September 2016	<ul style="list-style-type: none"><li>• Initial publication</li></ul>
October 2017	<ul style="list-style-type: none"><li>• Added prerequisite products, entitled products, and restricted use licenses details to the Simphony Cloud Service products and subproducts.</li></ul>
August 2018	<ul style="list-style-type: none"><li>• Added Oracle Hospitality Technology Foundation for Food &amp; Beverage as a hospitality product in Chapter 2 - Licensing Information.</li></ul>

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# 1      **Introduction**

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This document does not address infrastructure technology requirements.

## 2 Licensing Information

This chapter provides the following licensing information for Oracle Hospitality Simphony First Edition:

- Description of products.
- Prerequisite products.
- Entitled products and restricted use licenses.

Prerequisite products, entitles products, and restricted use licenses do not apply to Oracle Hospitality Cloud products.

Hospitality Product	Subproduct	Licensing Information
Oracle Hospitality Simphony First Edition	Oracle Hospitality Simphony First Edition Foundation  Part Number: 009790-100	<p><b><u>Product Editions and Permitted Features</u></b> Base license purchased once for the entire Simphony First Edition system.</p> <p><b><u>Prerequisite Products</u></b> N/A</p> <p><b><u>Entitled Products and Restricted Use Licenses</u></b> A license for Simphony First Edition Foundation contains a restricted-use license for Pentaho. Use of Pentaho is limited to use with Simphony First Edition Foundation and may not be used or deployed for other purposes.</p>
	Oracle Hospitality Simphony First Edition Point-of-Sale  Part Number: 009783-100	<p><b><u>Product Editions and Permitted Features</u></b> Required for each Simphony First Edition Point-of-Sale (POS) client connected to the system. Devices that only operate shared services (for example, Check and Posting, Kitchen Display Controller, and Printing) are not counted toward the POS license total.</p> <p><b><u>Prerequisite Products</u></b> A license to use the following products are a prerequisite to license and use Simphony First Edition POS.</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Foundation</li> <li>• Oracle Hospitality Technology Foundation for Food &amp; Beverage</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b> A license for Simphony First Edition contains a restricted-use license for Oracle Hospitality</p>

		Reporting and Analytics Advanced Cloud Service and Oracle Hospitality Labor Management Cloud Service. Use of Oracle Hospitality Reporting and Analytics Advanced Cloud Service and Oracle Hospitality Labor Management Cloud Service is limited to use with Simphony First Edition and may not be used or deployed for other purposes.
	Oracle Hospitality Simphony First Edition Kitchen Display System Part Number: 009780-100	<p><b><u>Product Editions and Permitted Features</u></b> Required for each Simphony First Edition Kitchen Display System (KDS) client connected to the Simphony First Edition system. This license is required even if the customer is using a non-Oracle KDS client solution.</p> <p><b><u>Prerequisite Products</u></b></p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Foundation</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b> N/A</p>
	Oracle Hospitality Simphony First Edition Transaction Services Part Number: 009710-403	<p><b><u>Product Editions and Permitted Features</u></b> Allows third-party solutions to obtain and post transaction data to Simphony First Edition.</p> <p><b><u>Prerequisite Products</u></b></p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Foundation</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b> N/A</p>
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	Oracle Hospitality Simphony First Edition	<p><b><u>Product Editions and Permitted Features</u></b> Allows third-party solutions to obtain and post transaction data from devices that guests use</p>

	<p>Guest Facing Transaction Services Part Number: L102929</p>	<p>(for example, a tabletop ordering device or kiosk). Use of this part to integrate an employee facing solution is not permitted.</p> <p><b>Prerequisite Products</b></p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Foundation</li> </ul> <p><b>Entitled Products and Restricted Use Licenses</b></p> <p>N/A</p>
	<p>Oracle Hospitality Simphony First Edition Credit Card Interface Part Number: 009798-100</p>	<p><b>Product Editions and Permitted Features</b></p> <p>Enables the use of either integrated or semi-integrated devices to process credit transactions with Simphony First Edition.</p> <p><b>Prerequisite Products</b></p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Point-of-Sale</li> </ul> <p><b>Entitled Products and Restricted Use Licenses</b></p> <p>A license for Simphony First Edition Credit Card Interface contains a restricted-use license for Simphony First Edition Guest Facing Transaction Services. Use of Simphony First Edition Guest Facing Transaction Services is restricted to Pay at the Table services and may not be used or deployed for other purposes.</p>
	<p>Oracle Hospitality Simphony First Edition Fiscal Interface Part Number: L102926</p>	<p><b>Product Editions and Permitted Features</b></p> <p>Enables the use of fiscal integrations with Simphony First Edition. Fiscal integrations are required in many countries and typically involve communicating with a special printer or other fiscal device.</p> <p><b>Prerequisite Products</b></p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Point-of-Sale</li> </ul> <p><b>Entitled Products and Restricted Use Licenses</b></p> <p>N/A</p>
Oracle Hospitality Simphony First Edition Cloud Service	<p>Oracle Hospitality Simphony First Edition Cloud Service Part Number: B81482</p>	<p><b>Product Editions and Permitted Features</b></p> <p>Handles the entire operational and transaction process. Simphony First Edition Cloud Service requires a minimum of 2 POS clients for each customer's provisioned Enterprise. Devices that only operate shared services (for example, Check and Posting, Kitchen Display</p>

		<p>Controller, and Printing) are not counted toward the POS license total.</p> <p><b><u>Prerequisite Products</u></b></p> <p>N/A</p> <p><b><u>Entitled Products and Restricted Use Licenses</u></b></p> <p>A license for Simphony First Edition Cloud Service contains a restricted-use license for Oracle Hospitality Reporting and Analytics Advanced Cloud Service. Use of Oracle Hospitality Reporting and Analytics Advanced Cloud Service is limited to use with Simphony First Edition Cloud Service and may not be used or deployed for other purposes.</p>
	<p>Oracle Hospitality Simphony First Edition Credit Card Interface Cloud Service</p> <p>Part Number: B83731</p>	<p><b><u>Product Editions and Permitted Features</u></b></p> <p>Enables the use of either integrated or semi-integrated devices to process credit card transactions with the Simphony First Edition Cloud Service.</p> <p><b><u>Prerequisite Products</u></b></p> <p>A license to use the following product is a prerequisite to license and use Simphony First Edition Credit Card Interface Cloud Service:</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Cloud Service</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b></p> <p>A license for Simphony First Edition Credit Card Interface Cloud Service contains a restricted-use license for Oracle Hospitality Simphony First Edition Guest Facing Transaction Services. Use of Oracle Hospitality Simphony Guest Facing Transaction Services is restricted to Pay at the Table services.</p>
	<p>Oracle Hospitality Simphony First Edition Kitchen Display Services Cloud Service</p> <p>Part Number: B83732</p>	<p><b><u>Product Editions and Permitted Features</u></b></p> <p>Required for each Kitchen Display System (KDS) client connected to the Simphony First Edition system. This cloud service license is required even if the customer is using a non-Oracle KDS client solution.</p> <p><b><u>Prerequisite Products</u></b></p>

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	<p>Oracle Hospitality Simphony First Edition Fiscal Interface Cloud Service</p> <p>Part Number: B83736</p>	<p><b><u>Product Editions and Permitted Features</u></b></p> <p>Enables the use of fiscal integrations with Simphony First Edition. Fiscal integrations are required in many countries and typically involve communicating with a special printer or other fiscal device.</p> <p><b><u>Prerequisite Products</u></b></p> <p>A license to use the following product is a prerequisite to license and use Simphony First Edition Credit Card Interface Cloud Service:</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Cloud Service</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b></p> <p>N/A</p>
	<p>Oracle Hospitality Simphony First Edition Transaction Services Cloud Service</p> <p>Part Number: B83733</p>	<p><b><u>Product Editions and Permitted Features</u></b></p> <p>Allows third-party solutions to obtain and post transaction data to Simphony First Edition.</p> <p><b><u>Prerequisite Products</u></b></p> <p>A license to use the following product is a prerequisite to license and use Simphony First Edition Credit Card Interface Cloud Service:</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Cloud Service</li> </ul> <p><b><u>Entitled Products and Restricted Use Licenses</u></b></p> <p>N/A</p>
	<p>Oracle Hospitality Simphony First Edition Transaction Services Cloud Service – Revenue Center</p> <p>Part Number: B83734</p>	<p><b><u>Product Editions and Permitted Features</u></b></p> <p>Allows third-party solutions to obtain and post transaction data to Simphony First Edition.</p> <p><b><u>Prerequisite Products</u></b></p> <p>A license to use the following product is a prerequisite to license and use Simphony First Edition Credit Card Interface Cloud Service:</p>

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	<p>Oracle Hospitality Simphony First Edition Guest Facing Transaction Services Cloud Service</p> <p>Part Number: B83735</p>	<p><b>Product Editions and Permitted Features</b></p> <p>Allows third-party solutions to obtain configuration data, query check information, and post transaction data to Simphony First Edition from devices that guests use (for example, a tabletop ordering device or kiosk). Use of this part to integrate an employee facing solution is not permitted.</p> <p><b>Prerequisite Products</b></p> <p>A license to use the following product is a prerequisite to license and use Simphony First Edition Credit Card Interface Cloud Service:</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Cloud Service</li> </ul> <p><b>Entitled Products and Restricted Use Licenses</b> N/A</p>
Oracle Hospitality Technology Foundation for Food & Beverage	<p>Oracle Hospitality Technology Foundation for Food &amp; Beverage - POS Client Perpetual</p> <p>Part Number: L101237</p>	<p><b>Product Editions and Permitted Features</b></p> <p>Base product purchased once to use with one or more of the prerequisite products.</p> <p><b>Prerequisite Products</b></p> <p>A license to use the following product is a prerequisite to license and use Oracle Hospitality Technology Foundation for Food &amp; Beverage:</p> <ul style="list-style-type: none"> <li>• Oracle Hospitality Simphony First Edition Point-of-Sale</li> </ul> <p><b>Entitled Products and Restricted Use Licenses</b></p> <p>A license for Oracle Hospitality Technology Foundation for Food &amp; Beverage contains restricted-use licenses for its components:</p> <ul style="list-style-type: none"> <li>• Oracle Database Enterprise Edition</li> <li>• Oracle Database Enterprise Edition options: RAC, RAC One Node, Active Data Guard, Partitioning, Advanced Security, Label Security, Database Vault</li> </ul>

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Oracle Hospitality Simphony First Edition	HttpCore Version 4.1	Copyright © 2005-2010 The Apache Software Foundation A copy of the License appears below. <a href="#">Apache 2.0 License</a>
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Apache License

Version 2.0, January 2004

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Author: Chris Maunder (cmaunder@mail.com)

Date: 17 May 1999

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History: 25 May 1999 - First release

4 Jun 1999 - Fixed SetBitmap bug

4 May 2000 - 16 or 32 bit compression bug fix (Jim Miller <jam@3dfx.com>)

Bug fix in Save() (saving 4 bytes too many - Tadeusz Dracz)

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4.2 Either party may terminate this Agreement if the other party fails to cure any material breach of the terms of this Agreement within thirty (30) days' written notice thereof from the non-breaching party. In addition, either party may terminate this Agreement for cause immediately without notice if the other party (i) files or has filed against it a petition in bankruptcy, (ii) has a receiver appointed to handle its assets or affairs, or (iii) makes or attempts to make an assignment for the benefit of creditors. EPSON may terminate this Agreement immediately on notice, without cause, if it ceases to make the SDK generally available to developers.

4.3 Upon the termination of this Agreement COMPANY shall return or destroy all its copies of the SDK immediately. In case of termination by EPSON for breach, COMPANY shall cease distribution of Products if so directed by EPSON.

#### 5 Survival

Sections 4 through 18 of this Agreement shall survive any termination. Any termination of this Agreement shall not relieve either party from its obligations which had arisen prior to the termination.

#### 6 Assignment

Neither party shall assign, transfer or otherwise dispose of this Agreement in whole or in part to any third party without the prior written consent of the other party except that this Agreement may be assigned without prejudice to the previously accrued rights of the other party hereto in the event of merger, consolidation or reorganization.

#### 7 Force Majeure

Neither party shall be liable in any manner for failure or delay in fulfillment of all or part of this Agreement directly or indirectly owing to any causes or circumstances beyond its control, including, but not limited to, act of God, governmental orders or restrictions, war, war-like conditions, hostilities, sanctions, revolution, riot, looting, strike, lockout, plague or other epidemics, fire and flood.

#### 8 Waiver

8.1 Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor will it affect any subsequent breach or the effectiveness of this Agreement or any part of this Agreement, or prejudice either party with respect to any subsequent action.

8.2 A waiver of any right accruing to either party pursuant to this Agreement shall not be effective unless given in writing.

## 9 Notice

Any notice required or permitted under this Agreement, or any statute or law requiring the giving of notice, may be delivered (i) in person, (ii) by registered airmail or registered courier service, or (iii) by facsimile with confirmation of sending. Any such notice shall be deemed to have been given upon receipt or upon the fifth day after having been dispatched in the manner provided in this section, whichever is earlier.

## 10 Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

## 11 Intellectual Property Rights

11.1 COMPANY agrees that any intellectual property right, including any patent and copyright, in and/or relating to the SDK shall be the sole property of EPSON or its licensors.

11.2 COMPANY shall not remove or change any notice of copyright or intellectual property right in the SDK.

## 12 No Liability

IN NO EVENT SHALL EPSON OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT, INDIRECT, SPECULATIVE, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, ARISING OUT OF USE OF THE SDK OR DISTRIBUTION OF COMPANY PRODUCTS, INCLUDING, BUT NOT LIMITED TO,

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, LOSS OF USE, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, IRRESPECTIVE OF WHETHER EPSON HAS ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. IN NO EVENT SHALL EPSON'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF \$500.00.

## 13 No Warranty

EPSON provides the SDK on an "AS IS" basis. EPSON MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Neither COMPANY nor its employees or agents shall make any other representation, warranty or promise with respect to the SDK.

## 14 Indemnification

EPSON has no obligation to COMPANY to indemnify, defend or hold harmless COMPANY from and against any claim arising from or related to the SDK or Products. COMPANY, however, agrees to notify EPSON promptly of any such claim. COMPANY shall indemnify, defend and hold harmless EPSON and its affiliates from any and all claims, damages, losses, liabilities, costs and expense (including reasonable attorney's fees) arising out of or in connection with COMPANY's use of the SDK and/or distribution of Products.

### 15 Confidentiality

The SDK is confidential, proprietary information of EPSON ("Confidential Information") COMPANY shall exercise at least the same standard of care to prevent the disclosure of Confidential Information as it exercises to prevent the disclosure of its own proprietary information, and shall limit the dissemination of Confidential Information to its employees who have a need to know. All rights to Confidential Information are reserved by EPSON. All Confidential Information shall be returned to EPSON or destroyed promptly upon EPSON's request.

### 16 Entire Agreement

16.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

16.2 No modification or amendment of any of the provisions of this Agreement shall be effective unless made in writing specifically referring to this Agreement and duly signed by each party.

### 17 Partial Invalidity

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement, all of which shall remain enforceable in accordance with their terms. Should any provision or partial provision of this Agreement be found illegal and unenforceable for being too broad with respect to the duration, scope or subject matter thereof, such provision or partial provision shall be deemed and construed to be reduced to the maximum duration, scope or subject matter permitted by law.

### 18 Export Restriction

COMPANY agrees that the SDK shall not be shipped, transferred or exported into any country or used in any manner prohibited by any export laws, restrictions or regulations

## Flexera InstallShield License

### FLEXERA SOFTWARE END-USER LICENSE AGREEMENT

**IMPORTANT-READ CAREFULLY:** This End-User License Agreement ("Agreement") is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the "Licensee"), and Flexera Software for the Software.

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## I. DEFINITIONS

"Affiliate" means any entity under the control of Licensee where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

"Cloud Site" means the website hosted by Flexera Software through which Licensee may access Cloud Software. "Cloud Software" means Software provided in a cloud-based software as a service delivery model.

"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) could reasonably be construed to be confidential.

"Contractor" means any third party contracted by Licensee to perform services on behalf of and for the benefit of Licensee.

"Documentation" means the technical specification documentation generally made available by Flexera Software to its licensees with regard to the Software.

"License Level" means the allowed level of usage of the Software licensed to Licensee in an Order Confirmation.

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"On-Premise Software" means the object code form of the Software licensed to Licensee for installation at a Licensee site.

"Order Confirmation" means a confirmation document provided by Flexera Software specifying the Software and Support and Maintenance (if any) purchased by Licensee that are subject to the terms of this Agreement.

“Schedule” means the schedule attached to this End User License Agreement titled “Schedule” that outlines the terms and conditions applicable to the Software product(s) identified in such Schedule.

“Services” means professional consulting services. Services shall not include Support and Maintenance which is otherwise defined herein.

“Software” means the software products specified in an applicable Order Confirmation with which this Agreement was provided or referenced, including any Updates to the Software provided by Flexera Software to Licensee. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, Software does not include source code. The Software may include features that will limit use of the Software in excess of the License Level.

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6. Taxes. Fees do not include taxes. If Flexera Software is required to pay any sales, use, GST, VAT, or other taxes in connection with Licensee's order, other than taxes based on Flexera Software's income, such taxes will be billed to and paid by Licensee. Licensee will make all payments of fees to Flexera Software free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Flexera Software will be Licensee's sole responsibility and consequently the amount of such fees will be increased such that the net fee received by Flexera Software will be the same as if such withholding taxes were not imposed, and Licensee will provide Flexera Software with official receipts issued by the appropriate taxing authority, or such other evidence as the Flexera Software may reasonably request, to establish that such taxes have been paid.

7. Termination. Licensee's license may be terminated by Flexera Software if (a) Licensee fails to make payment and/or (b) Licensee fails to comply with the terms of this Agreement within ten (10) days after receipt of written notice of such failure. Upon expiration of a subscription license or termination of any license, Licensee shall cease any and all use of the expired or terminated Software and destroy all copies of such Software and associated Documentation (including copies in storage media), and so certify to Flexera Software in writing. This requirement applies to all copies in any form, partial or complete.

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a. Limited Software Performance Warranty. Flexera Software warrants to Licensee that during the Warranty Period the Software shall operate in substantial conformity with the Documentation. Flexera Software does not warrant that Licensee's use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Flexera Software's sole liability (and Licensee's exclusive remedy) for any breach of this warranty shall be, in Flexera Software's sole discretion, to use commercially reasonable efforts to provide Licensee with an error-correction or work-around which corrects the reported non-conformity, to replace the non-conforming Software with conforming Software, or if Flexera Software determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund the license fee paid for the Software. Flexera Software shall have no obligation with respect to a warranty claim unless notified of such claim in writing within the Warranty Period.

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11. Controlling Law. For Licensees in North America and Latin America, this Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Europe, Middle East, or Africa, this Agreement shall be governed by the substantive laws of England and Wales, excluding that body of law known as conflicts of law and the United Nations Convention on Contracts for the Sale of Goods. For Licensees in Australia, this Agreement shall be governed by the laws of the

State of Victoria, Australia without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Japan, this Agreement shall be governed by the laws of Japan without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in the Asia Pacific region other than Australia and Japan, this Agreement shall be governed by the laws of Special Administrative Region of Hong Kong without regard to conflicts of laws provisions thereof, and without regard to the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods.

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.

13. Compliance.

a. Verification/Audits. Upon Flexera Software's reasonable request, Licensee will furnish Flexera Software with a signed statement confirming whether the Software is being used by Licensee in accordance with this Agreement. Further, during the term of this Agreement and for a period of one (1) year thereafter, with prior reasonable notice of at least five (5) days, Flexera Software may audit Licensee for the purpose of verifying the information provided by Licensee under this Agreement, and for the purpose of verifying that Licensee is conforming to the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. If an audit reveals an underpayment or that the Licensee's usage is greater than the License Level, then the Licensee shall immediately pay the difference in License fees and, if applicable, Support and Maintenance fees to bring the License Level into compliance. If an audit reveals that (i) Licensee has intentionally misrepresented its usage of the Software, (ii) Licensee materially breached this Agreement, or (iii) Licensee's usage is more than 5% over the License Level, then Licensee shall pay Flexera Software's reasonable costs of conducting the audit in addition to any fees due to Licensee's misrepresentation or material breach. Audits shall be conducted no more than once annually.

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.

14. Confidentiality.

a. Confidential Information. Any software, documentation or technical information provided by Flexera Software (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed "Trade Secrets" of Flexera Software without any marking or further designation.

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.

19. Independent Contractors. 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. Licensee acknowledges and agrees that the Software and Services may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera Software 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 Software or Work Product; all actions taken or not taken by Licensee based on the output of the Software or Work Product shall be the responsibility of Licensee. 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.

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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