

## END-USER LICENSE AGREEMENT -- InstallAnywhere®

**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 (“you”) and Licensor (as designated below) for the InstallAnywhere software, including any associated media, printed materials and electronic documentation (the “Software”).

By clicking on the “I ACCEPT” button, by opening the package that contains the Software, or by copying, downloading, accessing or otherwise using the Software, you agree to be bound by the terms of this Agreement and you represent that you are authorized to enter into this Agreement on behalf of your corporate entity (if applicable). If you do not wish to be bound by the terms of this Agreement, click the “I DO NOT ACCEPT” button, and do not install, access or use the Software.

As used herein, *for users in Japan*, “Licensor” means Flexera Software GK, a Godo Kaisha organized under the laws of Japan; *for users in Europe, Middle East, or Africa*, “Licensor” means Flexera Software Ltd., a private company limited by shares and incorporated in England and Wales with company number 6524874; *for users outside of the countries listed above*, “Licensor” means Flexera Software LLC.

---

### **EVALUATION SOFTWARE**

***If you have received the Software for purposes of evaluation, regardless of how labeled, the use of the Software is limited to a specified period of time, as detailed in the email accompanying the download instructions (the “Evaluation Period”) and all use will be governed by the terms set forth below.***

1. Grant of License. Licensor grants you a limited, personal, internal use, non-exclusive, non-transferable license to use the Software solely to evaluate its suitability for your internal business requirements during the Evaluation Period. Without limiting the foregoing, you may not use the Software during the Evaluation Period to create publicly distributed computer software or for any other commercial purpose. This license may be terminated by Licensor at any time upon notice to you and will automatically terminate, without notice, upon the first to occur of the following: (a) the completion of your evaluation of the Software or (b) the expiration of the Evaluation Period.

2. Limited Use Software. Portions of the full-use version of the Software may be withheld or unusable and use of the Software may require accessing portions of the Software remotely through the Internet. Full use of the Software may be restricted by technological protections.

3. Disclaimer of Warranty. THE SOFTWARE IS PROVIDED ONLY FOR EVALUATION PURPOSES ON AN "AS IS" BASIS. LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES,

REPRESENTATIONS AND CONDITIONS INCLUDING THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

4. Limitation of Liability. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DATA SUPPLIED THEREWITH, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. In no case will Licensor’s liability for damages hereunder exceed fifty dollars (US \$50). ***For Users Outside of the United States, Canada or Mexico LICENSOR DOES NOT LIMIT OR EXCLUDE ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE***

---

### **SOFTWARE LICENSE**

1. Grant of License. Upon your payment of the fees shown on the invoice and acceptance of this Agreement, Licensor grants you a limited, personal, non-exclusive license to install and use the Software on the terms and conditions set forth herein.

If you have licensed under the node-locked model, your license grant is as follows. You may install and use one copy of the Software on either:

- a. a single computer only for your internal

business purposes. For the avoidance of doubt, the node-locked license is limited to use by a single individual on a single computer; sharing of node-locked licenses between individuals sharing a computer is not allowed. A license is required for each individual user of the Software., or

- b. a build server. For purpose of this agreement, a “build server” is a computer that is dedicated to running automated software build routines. The copy of the Software on the “build server” is used by automated processes, rather than by an individual user.

You may make one back up and/or archival copy of the Software.

If you have licensed under the concurrent licensing model, you may install the Software on any machine used only for your internal business purposes. For avoidance of doubt, concurrent user licenses may not be used on a build server. The number of machines that may use the Software concurrently at any time will be governed by the number of concurrent licenses specified on the original invoice. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. You may make one back up and/or archival copy of the Software.

2. Restrictions on Use of Software. You may not (a) make the Software available for use by others in any service bureau or similar arrangement; (b) distribute, sublicense, transfer, or lend the Software to any third party; or (c) disassemble or reverse engineer (except in European Union countries, to the extent allowed by law) the Software or (d) copy or adapt the Software for the purpose of error correction or making derivative works. You may copy the Software solely for backup/archival purposes, provided that you include all copyright and similar rights notices. Licensor (or its licensor) retains all right, title, and interest in the Software (and in all copies). Unauthorized copying and modification of the Software is not permitted.

If you have a license to the InstallAnywhere Collaboration or InstallAnywhere Enterprise, you may use the Software for the purposes of creating unit test installations for your own exclusive use. You may use the software as a plug-in to the Eclipse Open Source IDE. Licensor is not licensing to you any right, title, and interest with respect to the Eclipse Open Source IDE; your use of the Eclipse Open Source IDE is subject to your acceptance of the terms and conditions of the end-user license agreement from Eclipse Foundation for that product.

3. Shared Use on a Single Computer. Subject to the exceptions set forth herein, a copy of the Software installed on a single common machine may be shared for internal use by your employees, provided that a license has been purchased for each individual user.

4. Redistributable Files. The Software component parts may not be separated for use on more than one computer, except as set forth in this Agreement. You may copy the files specifically identified in the documentation as “redistributables” and redistribute such files to your end users of your products, provided that: (a) all such distribution is done solely with the redistributables as an integral part of your software installations; (b) all copies of the redistributables must be exact and unmodified; and (c) you grant your end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of your products and not to distribute them further. You will reproduce with the redistributables all applicable trademark and copyright notices that accompany the Software, but you may not use Licensor’s name, logos or trademarks to market your products.

5. Limited Warranty and Disclaimer of Warranty. Licensor warrants that:

- a. it has the right and authority to grant the rights described in this Agreement, and;
- b. the Software, as provided, will substantially perform the functions described in the documentation when operated in the intended environment for a period of ninety (90) days from the date of delivery (the “Warranty Period”).

THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS EXPRESS OR IMPLIED. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTIES AND/OR CONDITIONS OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. Licensor does not warrant that the Software will (a) achieve specific results, (b) operate without interruption, or (c) be error free.

6. Ownership. This Agreement does not convey to you any rights of ownership in the Software. All right, title, and interest in the Software and in any ideas, know-how, and programs which are developed by Licensor in the course of providing any technical services, including any enhancements or modifications made to the Software, shall at all times remain the property of Licensor or its licensor. You acknowledge and agree that the Software is licensed, not sold. You shall not permit the Software to be accessed or used by

anyone other than your employees whose duties require such access or use.

You will not remove, modify or alter any of Licensor's copyright, trademark or proprietary rights notices from any part of the Software, including but not limited to any such notices contained in the physical and/or electronic media or documentation, in the Setup Wizard dialogue or 'about' boxes, in any of the runtime resources and/or in any web-presence or web-enabled notices, code or other embodiments originally contained in or otherwise created by the Software, or in any archival or back-up copies, if applicable.

7. Transfer of Software. You may not, by operation of law or otherwise, transfer any license rights or other interests in Evaluation Software, or Software labeled "Not for Resale" or "NFR." You may not transfer any license rights or other interests in any other Software, unless (a) you permanently and wholly transfer all your rights under this Agreement; (b) you retain no copies (whole or partial); (c) you permanently and wholly transfer all of the Software (including component parts, media, printed materials, upgrades, prior versions, and authenticity certificates); and (d) the transferee agrees to abide by all the terms of this Agreement.

8. Limitation of Remedy and Liability. During the Warranty Period, in the event of any breach of the warranty outlined in Section 5b above, Licensor's ( and its suppliers), entire liability and your exclusive remedy will be, at Licensor's option, to either, repair or replace the defective Software.

NEITHER LICENSOR NOR ITS LICENSOR, IF ANY, SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGE TO SYSTEMS OR DATA, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID.

***For Users within Europe, the Middle East or Africa, 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.***

***LICENSOR DOES NOT LIMIT OR EXCLUDE ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.***

9. Maintenance Services. If ordered by you and upon payment of the applicable fee, you are entitled to receive technical support services, including corrections, fixes and enhancements to the Software as such are made generally available (the "maintenance services") from Licensor in accordance with Licensor's

then-current maintenance terms for the applicable maintenance level purchased by you.

Maintenance services will not include any releases of the Software which Licensor determines to be a separate product or for which Licensor charges its customers extra or separately.

10. Upgrades and Subscription. If you purchased a license for the Software which is identified as an "upgrade" or "subscription", you must have a valid license for the version of the Software which the "upgrade" or "subscription" supplements.

11. Unauthorized Use and Validation of Use.

IN ORDER TO PROTECT THE SOFTWARE FROM UNAUTHORIZED USE AND IN ORDER TO CONFIRM YOUR COMPLIANCE WITH THE LICENSE GRANTS AND RESTRICTIONS SET FORTH IN THIS AGREEMENT, THE SOFTWARE CONTAINS A VALIDATION PROCEDURE WHICH MAY TRANSMIT YOUR IP ADDRESS AND/OR APPLICABLE LICENSE KEY RELATING TO THE SOFTWARE TO LICENSOR. IF THE SOFTWARE DETECTS ANY VIOLATION OF THE TERMS OF THIS AGREEMENT, YOU MAY BE CONTACTED BY LICENSOR REGARDING YOUR USE OF THE SOFTWARE AND/OR YOU MAY BE UNABLE TO USE THE SOFTWARE AND/OR CREATE UNRESTRICTED INSTALLER PRODUCTS UNTIL THE PROBLEM IS CORRECTED. IF YOU ARE UNABLE TO USE THE SOFTWARE AND/OR CREATE UNRESTRICTED INSTALLER PRODUCTS, YOU SHOULD IMMEDIATELY CONTACT LICENSOR.

12. Reports. Within thirty (30) days following Licensor's written request, and no more frequently than twice in any twelve (12) month period, you shall provide Licensor with a written statement certifying that you are not using copies of the Software in violation of this Agreement.

13. Audit. During the term of this Agreement and for a period of twelve (12) months thereafter, you shall permit, no more than once in any twelve (12) month period, a third party auditor, upon thirty (30) days prior written notice from Licensor and during normal business hours, to examine and audit your records to determine your compliance with this Agreement and report such findings to Licensor. Licensor shall bear the expense of the audit unless the audit uncovers that you have used the Software in violation of the terms of this Agreement or have unpaid the license fees rightfully owed to Licensor, in which event you shall bear the expenses for such audit. In the event such audit is the result of your failure to provide reports as set forth in Section 12, then you shall bear the expense of such audit.

14. Dual-Media Software. You may receive the Software in more than one medium (electronic and on a CD, for example). Receipt of the Software in more than a single manner (electronic or on a CD, for example) does not expand the license rights granted to you hereunder. Your use of the Software is limited to the number of licenses that you have acquired overall, regardless of number or type of media on which it has been provided.

15. U.S. Government Restricted Rights. The Software and Documentation are provided as "Commercial Computer Software" or "restricted computer software". Use, duplication, or disclosure by the U.S. Government or a U.S. Government subcontractor is subject to the restrictions set forth in 48.C.F.R. Section 12.212 or 48 C.F.R 227.2702, as applicable or successor provisions. The manufacturer is Flexera Software LLC, 1000 East Woodfield Road, Suite 400, Schaumburg, IL 60173 USA.

16. U. S. Export Restrictions. You will fully comply with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations and Executive Orders ("Export Controls"). You warrant that you are not a person, company or destination restricted or prohibited by Export Controls ("Restricted Person"). You will not, directly or indirectly, export, re-export, divert, or transfer the Software, any portion thereof or any materials, items or technology relating to Licensor's business or related technical data or any direct product thereof to any Restricted Person.

17. Termination. Your license may be terminated by Licensor if (a) you fail to make payment and/or (b) you fail to comply with the terms of this Agreement within ten (10) days after receipt of written notice of such failure. In the event of termination, you must cease using the Software, destroy all copies of the Software (including copies in storage media) and certify such destruction to Licensor. This requirement applies to all copies in any form, partial or complete. Upon the effective date of any termination, you relinquish all rights granted under this Agreement.

18. Relationship of Parties. You and Licensor are independent parties. Nothing in this Agreement shall be construed as making you an employee, agent or legal representative of Licensor.

19. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

20. Controlling Law. *For users in Japan*, this Agreement will be governed by the laws of Japan; *for users in Europe, Middle East, or Africa*, this Agreement will be governed by the laws of England and Wales and you submit to the jurisdiction of the courts of England and Wales; *for users outside the countries listed above*,

this Agreement will be governed by the laws of California, USA, excluding conflicts of law. This Agreement is not subject to the United Nations Convention on Contracts for the Sale of Goods.

21. Company Name. Licensor may include your company name in a list of Licensor customers.

22. Payment Terms/Shipments. *For users in Japan*, all fees are in non-refundable Japanese Yen. *For users in Europe, Middle East or Africa*, all fees are in the currency outlined in the quote/invoice and are non-refundable. *For users in any region not outlined*, all fees are in non-refundable US Dollars. Fees are due within 30-days of the date of the invoice.

If you have ordered Maintenance services you may renew the applicable services for the Software for the next annual period for the amount specified on the original invoice for the Software. All shipments of any media will be FOB Origin.

23. Taxes. All fees do not include taxes. If Licensor is required to pay any sales, use, GST, VAT, or other taxes in connection with your order, other than taxes based on Licensor's income, such taxes will be billed to and paid by you.

You will make all payments of fees to Licensor free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Licensor will be your sole responsibility and consequently the amount of such fees will be increased such that the net fee received by Licensor will be the same as if such withholding taxes were not imposed, and you will provide Licensor with official receipts issued by the appropriate taxing authority, or such other evidence as the Licensor may reasonably request, to establish that such taxes have been paid.

24. Entire Agreement. This Agreement constitutes the complete and entire understanding and agreement of all terms, conditions and representations between you and Licensor with respect to the Software and may be modified only in writing by both parties. No term or condition contained in your purchase order will apply unless expressly accepted by Licensor in writing. Failure to prosecute a party's rights will not constitute a waiver of any other breach.

If any provision of this Agreement is found to be invalid, it will be enforced to the extent permissible and the remainder of this Agreement will remain in full effect.

This Agreement has been written in the English language and you waive any rights you may have under the law of your country or province to have this Agreement written in any other language.

