

FIRST AMENDMENT TO SERVICES AGREEMENT

This First Amendment to Services Agreement (“First Amendment”) is effective _____ (“Effective Date”) by and between the City of North Las Vegas, a political subdivision of the State of Nevada (“City”), and Flexential Colorado LLC, a Colorado limited-liability company (“Provider”).

RECITALS

WHEREAS, on September 02, 2014, City and Provider entered into Colocation and Power Services Agreement (“Original Agreement”), a copy of which is attached hereto as Exhibit A;

WHEREAS, on September 19, 2019, City and Provider entered into property data storage Services Agreement (“First Renewal Agreement”), a copy of which is attached hereto as Exhibit B;

WHEREAS, on December 01, 2020, City and Provider entered into a change order agreement to modify services, a copy of which is attached hereto as Exhibit C;

WHEREAS, on December 16, 2021, City and Provider entered into a change order agreement to modify services, a copy of which is attached hereto as Exhibit D;

WHEREAS, on January 23, 2024, City and Provider entered into a change order agreement to modify services for a one-time install, a copy of which is attached hereto as Exhibit E;

WHEREAS, on May 02, 2024, City and Provider entered into a change order agreement to modify services for Express Data Connections, a copy of which is attached hereto as Exhibit F

WHEREAS, on April 10, 2024, City and Provider entered into their second option to renew the above referenced Services Agreement (“Second Renewal Agreement”), a copy of which is attached as Exhibit G;

WHEREAS, the Parties wish to amend the not to exceed amount from One Hundred Eighty-Nine Thousand Eighty-Two Dollars and 56/100 (\$189,082.56) to Two Hundred Thirteen Thousand Eleven Dollars and 04/100 (\$213,011.04) per year; as provided in the updated Proposal Quotes # 155473 dated August 20, 2024, # 155477 dated August 19, 2024, and # 155469 dated August 19, 2024 (“Updated Quotes”); a copy of which is attached hereto as Exhibit H;

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WHEREAS, the Original Agreement shall be amended as described herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this First Amendment and for other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. The order form of the Original Agreement shall be deleted and replaced with Exhibit D attached hereto.

2. The Original Agreement and Order Form shall be updated with the following:

The term of this Agreement shall commence on the Effective Date and will continue for five (5) years. The City shall purchase the Colocation Services throughout the Term according to the prices and fees in the amount not to exceed Two Hundred Thirteen Thousand Eleven Dollars and 04/100 (\$213,011.04) annually. No additional compensation shall be paid, and no increase in the time of performance shall be awarded to the Vendor for changes referenced in this Agreement without the prior written authorization of the City to proceed with such changes. The total contract amount for this Agreement is One Million Sixty-Five Thousand Fifty-Five Dollars and 20/100 (\$1,065,055.20).

3. In all other aspects, the parties confirm and re-affirm the terms and provisions of the Original Agreement.

YEAR	AMOUNT PER YEAR
2 nd Renewal Year # 1	\$213,011.04
2 nd Renewal Year # 2	\$213,011.04
2 nd Renewal Year # 3	\$213,011.04
2 nd Renewal Year # 4	\$213,011.04
2 nd Renewal Year # 5	\$213,011.04
TOTAL	\$1,065,055.20

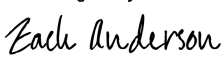
[The remainder of page is intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Provider and the City have caused this First Amendment to be executed as of the day and year indicated above.

City of North Las Vegas,
a Nevada municipal corporation

By: _____
Pamela Goynes-Brown, Mayor

Flexential Colorado LLC.
a Colorado limited-liability company

DocuSigned by:
By: 
Name: Zach Anderson
Title: Director of Customer Success

Attest:

By: _____
Jackie Rodgers, City Clerk

Approved as to Form:

By: _____
Andy Moore, Acting City Attorney

EXHIBIT A

Original Agreement

Please see attached page(s).



Master Service Agreement

1. **General; Definitions.** This master service agreement (this "Agreement") is between ViaWest, Inc. ("ViaWest") and the customer set forth below ("Customer"), and sets forth the terms and conditions pursuant to which ViaWest shall provide Services to Customer. "Services" means the services provided to Customer by ViaWest, as set forth on an "Order Form" executed by ViaWest and Customer. Any reference to an "Order Form" in this Agreement includes Services purchased by Customer pursuant to ViaWest's online ordering process. "Billing Start Date" means the date the Service is first made available to Customer, and shall be no later than 45 days after the Order Form Effective Date unless otherwise agreed to by ViaWest and Customer in writing. If Customer is not able to use the Service beginning on the Billing Start Date solely as a result of delays caused by ViaWest, then the Billing Start Date shall be extended for three days for each day of delay caused by ViaWest. "Service Term Start Date" means the first day of the calendar month following the Billing Start Date for the last Service installed on such Order Form. The "Service Term" begins on the Service Term Start Date and continues for the number of months set forth on the Order Form, and includes any renewal Service Terms. "Customer Equipment" means any Customer-owned or Customer-provided equipment placed by Customer in ViaWest's facility. "AUP" means ViaWest's Acceptable Use Policy, posted on ViaWest's web site at <http://www.viawest.com/acceptable-use.html>.

2. **Fees and Charges; Start Dates.** Customer agrees to pay the rates and charges for the Services set forth on an Order Form. All charges invoiced to Customer shall be deemed valid unless Customer disputes such charges in writing within 90 days after the invoice is sent by ViaWest to Customer. Undisputed payments for invoiced amounts are due within 30 days of invoice date. Recurring charges shall be invoiced monthly, beginning on the Billing Start Date; installation and other non-recurring charges shall be invoiced when incurred. If ViaWest experiences an increase in the rates and charges for obtaining electrical power services from the underlying provider, Customer's rates and charges for electrical power services shall increase or decrease in a proportional amount, provided that ViaWest agrees that the power pricing shall not increase more than 3% per year. Monthly recurring charges for all Services (other than electrical power services) shall increase 2.5% per year on each anniversary of the Service Term Start Date, which such increase shall be applied on the first day of any renewal term (e.g., if a Service Term is 60 months, upon renewal the monthly recurring charges would increase 12.5%). Customer agrees to pay interest on all amounts not paid by the applicable due date at the rate of the lesser of 1% per month or portion thereof or the highest rate permitted by applicable law. Customer agrees to pay all taxes and fees assessed in connection with the Service, such as interconnection or other mandated taxes, except for taxes based on ViaWest's net income. Any taxes required to be paid by Customer will be specifically set forth in an invoice. In the event of termination or suspension of a Service for any reason, Customer must pay charges accrued through the date of termination or suspension.

3. **Term.** After the expiration of the initial Service Term, Customer shall have three options to renew the Service Term, the first two for a 60-month term, and the third for the shorter of (a) 60 months and (b) the number of months remaining in the LM Lease (defined below). Customer must provide notice to ViaWest of its exercise of any renewal option at least 90 days prior to the expiration of the then-current Service Term. After the expiration of the third renewal Term, this Agreement shall terminate automatically unless each party agrees in writing to extend the Service Term.

Customer acknowledges that ViaWest's underlying lease for the Lone Mountain datacenter (the "LM Lease") expires on December 31, 2023, with ViaWest having the right to extend the LM Lease for two subsequent five-year terms (each, an "Extension Option"). In consideration of Customer's significant and unique investment in dark fiber for purposes of purchasing the Services, in the event that ViaWest decides, in its sole discretion, not to exercise an Extension Option, or in the event that ViaWest for any reason vacates the Lone Mountain datacenter, ViaWest shall provide Customer with at least 9 months prior written notice of such non-extension or move and Customer may terminate all Services on the effective date of the non-extension or move without penalty. In connection with such termination by Customer, or in the event of a Customer termination due to a ViaWest Event of Default (pursuant to which Customer may terminate all Services without penalty), ViaWest shall reimburse Customer for its reasonable costs and expenses incurred in relocating to another datacenter, with such reimbursement not to exceed the following: if such termination occurs during

Customer's initial Service Term, \$400,000; if such termination occurs during Customer's first Renewal Service Term, \$200,000; if such termination occurs during Customer's second Renewal Service Term, \$100,000; and if such termination occurs during Customer's third Renewal Service Term, \$50,000.

4. **Termination.**

A. **For Cause.** Either party may terminate this Agreement or ViaWest may suspend provision of the Service upon an Event of Default of the other party. A "Customer Event of Default" means (a) failure by Customer to pay any amount within 30 days of the applicable due date; or (b) failure by Customer to comply with ViaWest's AUP or Datacenter Rules, in each case which failure is not cured within 10 days following written notice by ViaWest. A "ViaWest Event of Default" means a material breach of this Agreement by ViaWest (other than Service-related issues, which are addressed in Section 14), which breach is not cured within 10 days following written notice by Customer.

B. **For Convenience.** Customer may terminate any Service for its convenience prior to the end of the applicable Service Term, provided that Customer gives ViaWest at least 60 days prior written notice of such termination and pays ViaWest the following early termination fee (as liquidated damages, not a penalty): (a) 50% of the remaining monthly recurring charges for each terminated Service for months one through 12 of the then-effective Service Term; plus (b) 25% of the remaining monthly recurring charges for each terminated Service for months 13 through 24 of the then-effective Service Term; plus (c) 10% of the remaining monthly recurring charges for each terminated Service for months 25 through the end of the then-effective Service Term; plus (d) any previously waived fees, including, without limitation, installation fees; plus (e) any termination fees or liability associated with any third-party telecommunication services used by ViaWest in the provision of the Service; plus (f) all reasonable costs and expenses, incurred by ViaWest as a result of collecting such early termination fee or any other amounts due under this Agreement. Customer shall not be liable for the early termination fee if Customer terminates this Agreement pursuant to Section 14.A. or due to a ViaWest Event of Default. Customer shall be liable for the early termination fee for any termination of Service due to a Customer Event of Default.

5. **Representations, Warranties, and Obligations of Customer.** Customer represents and warrants that it has full power and authority to enter into this Agreement. Customer agrees to comply, and cause its customers and other third-party users (including contractors, subcontractors or sublicensees) to comply, with ViaWest's AUP and Datacenter Rules. Customer shall not use, and shall not permit its agents to use, the Service or any Customer Equipment for any illegal purpose. Customer represents and warrants that no broker, finder or other intermediary is entitled to any broker's, finder's or other similar fee or commission in connection with the initial or any renewal term of the Services for which ViaWest would be responsible for payment or otherwise liable.

6. **Customer Equipment.** Customer shall have access to all Customer Equipment during the Service Term 24 hours per day, 7 days per week, provided that Customer adheres to ViaWest's Datacenter Rules. ViaWest, in its sole discretion, may require that Customer and any of Customer's agents be escorted when they are in the ViaWest datacenter, and may suspend Customer's access as directed or required in an emergency situation. If any Customer Equipment remains in a ViaWest datacenter following termination of Customer's space-related Service, Customer shall be (i) responsible for all monthly recurring fees, and (ii) subject to all obligations of Customer contained in this Agreement, in each case until removal of the Customer Equipment. If Customer does not remove the Customer Equipment after termination of Customer's space-related Service within 14 days following notice from ViaWest, Customer agrees that ViaWest may ship the Customer Equipment to Customer's last address of record at Customer's sole cost and expense. ViaWest shall not be liable for any damage resulting from such shipment except to the extent caused by ViaWest's gross negligence or willful misconduct. If Customer is purchasing Managed or Cloud Services, Customer shall have no right to access ViaWest's datacenter or any equipment provided by ViaWest in connection with such Services.

7. **Representations, Warranties, and Obligations of ViaWest.** ViaWest represents and warrants that it has full power and authority to enter into this Agreement. In the event of a network-based attack (such as a DDoS attack) against Customer's Equipment or a malfunction of Customer's Equipment that threatens ViaWest's ability to provide services to other ViaWest customers,

ViaWest may, at its sole option and in its sole discretion, black hole, disconnect, shut off or deactivate any portion or all of Customer's Equipment or Service. If possible given the urgency of the situation, ViaWest shall attempt to contact Customer to determine mutually acceptable remediation measures prior to taking any such action. At Customer's request, ViaWest shall use commercially reasonable efforts to secure domain names and to assign Internet Protocol ("IP") address space for Customer during a Service Term and to route those IP addresses on ViaWest's network. Customer shall have no right to route such IP addresses. ViaWest shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the Agreement.

8. **Disclaimer of Warranties.** ViaWest exercises no control over and accepts no responsibility for the information or content accessible on the Internet or for the products or services of third parties that may be included in the Services. The Internet is not a secure network; confidential or sensitive information should not be transmitted over the Internet or stored on computers directly connected to the Internet. ViaWest disclaims any liability for loss or theft of information transmitted over the Internet or stored on computers directly connected to the Internet. THE SERVICE AND ANY RELATED SOFTWARE AND/OR EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NEITHER VIAWEST NOR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS WARRANT THAT THE SERVICE SHALL BE ERROR-FREE, UNINTERRUPTED, SECURE, OR PRODUCE PARTICULAR RESULTS OR THAT THE INFORMATION OBTAINED ON THE INTERNET SHALL BE RELIABLE OR UNOBJECTIONABLE. NO ADVICE OR INFORMATION GIVEN BY VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS SHALL CREATE A WARRANTY.

9. **Indemnification**

A. **Indemnification by ViaWest.** ViaWest shall indemnify, defend, and hold harmless Customer and its employees and affiliates from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising from or related to (a) tangible personal property damage to Customer's equipment located in the ViaWest datacenter resulting from ViaWest's negligence or willful misconduct, up to the full replacement cost of the damaged equipment and (b) actual personal injury damage resulting from ViaWest's negligence or willful misconduct, in each case up to the limits covered by ViaWest's applicable insurance policies, provided, however that indemnification relating to personal injury shall not apply to any claims made by Customer's employees that are covered under applicable workers' compensation laws. In addition, if any portion of the Service becomes, or in ViaWest's opinion is likely to become, the subject of a claim of infringement of any third party intellectual property rights recognized in the United States of America, then ViaWest, at its option and expense, shall do one of the following: procure for Customer the right to continue using such portion of the Service, replace or modify such portion of the Service so that it becomes non-infringing, or terminate this Agreement and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of ViaWest set forth in the preceding sentence does not apply (a) with respect to portions or components of the Service that are not supplied directly by ViaWest, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by ViaWest to the extent the infringement relates to such combination; or (b) where Customer's use of the Service is not strictly in accordance with the terms of this Agreement and the applicable software license agreement provided by ViaWest to Customer or agreed to by Customer during installation, if any. Notwithstanding anything to the contrary set forth in this Agreement, Customer's sole and exclusive remedies against ViaWest for intellectual property infringement are as set forth in this Section 9.A.

B. **Indemnification by Customer.** Customer shall indemnify, defend, and hold harmless ViaWest and its employees, affiliates, contractors, and agents from and against any and all Losses arising from or related to (a) any breach of this Agreement, ViaWest's AUP or ViaWest's Data Center Rules; or (b) any use of the Service, or any negligent or willful act or omission by Customer or any of its invitees, employees, affiliates, contractors, or agents.

10. **Limitation of Liability.** IN NO EVENT SHALL VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS, REVENUE, DATA,

OR USE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, INCLUDING, WITHOUT LIMITATION, LEGAL THEORIES OF CONTRACT, TORT, OR STRICT LIABILITY, EVEN IF VIAWEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, IN NO EVENT SHALL VIAWEST'S LIABILITY FOR ANY DAMAGES EXCEED THE ACTUAL DOLLAR AMOUNT PAID BY CUSTOMER FOR THE SERVICE DURING THE SIXTY-MONTH PERIOD PRIOR TO THE DATE THE DAMAGES OCCURRED OR THE CAUSE OF ACTION AROSE. With the exception of any monetary obligations under this Agreement, neither party shall be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, interruption of or delay in transportation or telecommunication service, act of its vendors or suppliers or their products and services, or inability to obtain raw materials, supplies, or power used in or equipment needed for the provision of the Service.

11. **Insurance.** If Customer is purchasing colocation Services, Customer must procure and maintain the following insurance during the Service Term: (a) "all risk" property insurance covering all Customer Equipment in an amount not less than its full replacement cost; (b) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence for bodily injury and property damage; (c) employer's liability insurance in an amount not less than \$1,000,000 per occurrence; and (d) worker's compensation insurance in an amount not less than that required by applicable law. If Customer is purchasing Managed or Cloud Services, Customer must additionally obtain professional liability insurance and standard form property insurance, including business interruption and electronic data processing media insurance, in each case in the amount not less than \$1,000,000 per occurrence. The above policies must list ViaWest as additional insured, and must contain provisions providing that such insurance is primary insurance insofar as ViaWest and Customer are concerned, with any other insurance maintained by ViaWest being excess and noncontributing with the insurance required of Customer. Upon request, Customer shall provide a certificate of insurance to ViaWest evidencing such insurance requirements.

12. **Assignment; Governing Law; Venue.** Customer shall not assign this Agreement without the prior written consent of ViaWest, which consent shall not be unreasonably withheld. This Agreement shall be governed by the laws of the State of Nevada, without regard to its conflicts of laws principles. Each of the parties hereby irrevocably submits to the exclusive personal jurisdiction of any federal or state court of competent jurisdiction located in Clark County, Nevada, in any action or proceeding relating to this Agreement. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.

13. **Non-Disclosure.** During the Service Term, each party may have access to certain confidential and proprietary information disclosed by the other party, including, without limitation, information relating to either party's clients, customers, or business operations (including the terms of this Agreement and the rates charged for the Service), whether disclosed orally or in writing by any other media (collectively, "Confidential Information"). Each party (the "Receiving Party") acknowledges that the Confidential Information of the other party (the "Disclosing Party") may contain information valuable to the Disclosing Party and that any such Confidential Information shall remain the property of the Disclosing Party. Each party shall use the Confidential Information provided hereunder only for purposes directly related to the purpose for which it was provided and shall restrict disclosure of Confidential Information solely to its employees and subcontractors with a need to know, or to other third parties expressly permitted by the Disclosing Party, and not disclose such Confidential Information to any other parties, and otherwise to protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. The Receiving Party shall be responsible for any breach of this Section by its employees, subcontractors or any third parties to whom Receiving Party discloses the Confidential Information. "Confidential Information" shall not include information that: (a) was in the public domain free of any obligation of confidence at the time it was communicated to the Receiving Party; (b) is rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was communicated to the Receiving Party; or (c) was in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party. Notwithstanding the above, the Receiving Party shall not be in violation of this Section for a disclosure made in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with written notice of such disclosure where reasonably

possible in order to permit the Disclosing Party to seek confidential treatment of such information. The obligations of confidentiality of each party under this shall survive for two years from the termination of this Agreement. The parties recognize and agree that any breach of this Section would cause irreparable harm and, accordingly, that injunctive relief is an appropriate remedy to prevent any threatened or ongoing breach of such confidentiality obligations. Notwithstanding anything to the contrary set forth in this Section, any disclosure of confidential or proprietary information by means of a third-party attack, probe, theft, or other breach of network security shall not be deemed to be a breach of this Section. The terms of this Section shall supersede and replace any non-disclosure or confidentiality agreement entered into by the parties prior to the Effective Date of this Agreement. Pursuant to Chapter 239 of the Nevada Revised Statutes, documents provided to Customer may be a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. Customer shall not in any way be liable to ViaWest, its subcontractors, principals or agents, for the disclosure of any public record. In the event Customer is required to defend an action with regard to a public records request for documents submitted by ViaWest its subcontractors, principals or agents, ViaWest agrees to indemnify, hold harmless, and defend Customer from all damages, costs, and expenses, including court costs and reasonable attorney fees related to such public records request. This section shall survive the expiration or earlier termination of this Agreement.

14. Service Level Commitments.

A. **Satisfaction Guarantee.** In the event that Customer is not 100% satisfied with the Service's power, network, HVAC or redundant hardware availability, then Customer may provide written notice to ViaWest of its dissatisfaction (the "Mad Notice"). The Mad Notice must identify the affected Service, refer to this satisfaction guarantee, and document Customer's eligibility for credits due to noncompliance of the Service with the commitments set forth in Section 14.C., D., I., or J. as applicable. If ViaWest does not cure the issue causing the noncompliance or provide documentation to Customer demonstrating that the Service is in compliance with the applicable commitment within 10 days from receiving the Mad Notice, then Customer may terminate the affected Service without penalty upon written notice to ViaWest within 15 days following the end of ViaWest's 10-day cure period. In addition, if Customer provides a Mad Notice to ViaWest two or more times over any consecutive 6-month period for noncompliance of the same commitment (which notice is not countered by documentation demonstrating that the Service is in compliance with the applicable commitment), then Customer may terminate the affected Service without penalty upon written notice to ViaWest. Any termination pursuant to this Section 14.A. shall be effective 10 business days after receipt of written notice by ViaWest. In the event of any incident of which ViaWest becomes aware affecting Customer's Service, ViaWest shall use commercially reasonable efforts to notify Customer, via any immediately available method, of any such incident.

B. **Installation Commitment.** ViaWest's commitment is to install all standard Services set forth on a fully executed Order Form by the Billing Start Date set forth on the Order Form or issued in writing or via e-mail by ViaWest following execution of the Order Form. If ViaWest fails to meet this installation commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 50% of the installation fees charged to Customer.

C. **Power Availability Commitment.** ViaWest's commitment is to maintain availability of the power provided to Customer's environment in the ViaWest datacenter 100% of the time. Power unavailability is measured by the number of seconds from the time power unavailability to Customer's environment is determined by ViaWest to the time power is restored. "Power Unavailability" shall mean and refer to the unavailability of the power to Customer Space whereby both the primary and secondary/supplemental power circuits have failed. Power shall not be considered to be unavailable if provided through any secondary or supplemental power circuit without disconnection of service (the availability of power through only one power circuit where such power is supplied through a primary and redundant circuit is not considered "Power Unavailability"). If ViaWest fails to meet this power availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service. Customer shall not be eligible for credits for power unavailability unless Customer properly installs and configures redundant power circuits and

utilizes such circuits in a redundant manner and in accordance with the provisions of Section 15 hereof.

D. **Network Availability Commitment.** ViaWest's commitment is to maintain availability of the ViaWest Network 100% of the time. Unavailability of the ViaWest Network is measured over a calendar month and is based on total outage time incurred by Customer. Network unavailability shall exist when (i) a particular Customer Port is unable to transmit IP data packets from such Customer Port to the Public Internet via the ViaWest Network and (ii) such failure is recorded in ViaWest's trouble ticket system. Network unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this ViaWest Network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

E. **Network Connections Availability Commitment.** ViaWest's commitment is to maintain availability of Customer's network connections (i.e., cross connects provided by ViaWest) 100% of the time. Unavailability of Customer's network connections is measured over a calendar month and is based on total outage time incurred by Customer. Customer's network connections begin at the initial piece of ViaWest owned and operated equipment to which the applicable circuit connects and end at the demarcation point installed in Customer's cabinet and/or cage. Network connection unavailability exists when (a) due to a failure of Customer's network connection(s) (i.e., cross connects provided by ViaWest), a particular Customer Port is unable to transmit data from the ViaWest network connection(s) and (b) such failure is recorded in ViaWest's trouble ticket system. Network connection unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

F. **ViaWest Network Packet Loss Commitment.** ViaWest's commitment is to maintain average packet loss of no more than 1% across the ViaWest Network. Average packet loss across the ViaWest Network is measured on an ongoing basis over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network packet loss commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

G. **ViaWest Network Roundtrip Delay Commitment.** ViaWest's commitment is to maintain average roundtrip delay of no more than 40 milliseconds across the ViaWest Network. Average roundtrip delay across the ViaWest Network is measured over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network roundtrip delay commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

H. **ViaWest Support Response Commitment.** ViaWest's service support for colocation Service is available 24 x 7. ViaWest's commitment is to respond to any failure of Customer's colocation Service within the following time frames following ViaWest's confirmation of such failure:

Severity	Response Time
Level 1 - Critical	15 minutes

For the purposes of this Section 14.H., (a) "Critical" issues shall mean all issues in which Customer's Operating System, Server Infrastructure, ViaWest Network Infrastructure, and/or the power to Customer's space are unavailable for normal use; and (b) "response" shall mean that a ViaWest representative is working to resolve the issue. If ViaWest fails to meet this support response commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

I. ViaWest Redundant Hardware Availability Commitment. ViaWest's commitment is to maintain availability of ViaWest-owned and operated hardware, consisting of Communications, controller, routers, switches, firewalls, other network infrastructure, KINECTed storage, and CPU and/or processing platform for which Customer has ordered a redundant unit (the "Redundant Hardware") 100% of the time. Unavailability of the Redundant Hardware is measured over a calendar month and is based on total outage time incurred by Customer, measured from the time a trouble ticket is opened to the time ViaWest confirms that at least one of the affected units is again operational. Redundant Hardware unavailability shall exist when (1) both the primary and the redundant units that are in production for provision of the Service are unable to operate in accordance with industry standards and cause unavailability of the Service and (2) such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet this Redundant Hardware availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

J. ViaWest KINECTed Cloud Availability Commitment. ViaWest's commitment for KINECTed Cloud Service availability in any given monthly billing period is: KINECTed Enterprise Cloud Service and KINECTed Health Cloud Service – 99.9%; and KINECTed Synergy Class Cloud Service – 0%. Unavailability of the KINECTed Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure impacting multiple customers simultaneously below the applicable commitment level, and such failure is recorded in ViaWest's trouble ticket system ("Cloud Unavailability"). For each instance of Cloud Unavailability in a given month, upon Customer's written request (provided within 30 days of the date on which such failure occurred), ViaWest shall provide a service credit to Customer's account equal to 10% of the monthly service charges for Committed Reserves charged by ViaWest to Customer for each cumulative hour of Cloud Unavailability during the applicable month, up to a maximum of the total monthly service charges for Committed Reserves charged by ViaWest to Customer during the applicable month. "Committed Reserves" means the amount of CPU, RAM and Disk reserved by Customer as set forth on an Order Form to support the Customer running one or more Virtual Machines. "Virtual Machine" means a portion of a physical machine that includes all of the attributes of a physical machine such as an operating system, a server and a central processing unit (CPU). "Cloud infrastructure" means the ViaWest-controlled portion of the infrastructure supporting the KINECTed Cloud Service.

K. KINECTed Cloud Desktop Availability. ViaWest's commitment is to maintain availability of the KINECTed Cloud Desktop Service 100% of the time. Unavailability of the KINECTed Cloud Desktop Services is measured over a calendar month and is based on the total outage time incurred by Customer. KINECTed Cloud Desktop unavailability shall exist when there is a KINECTed Cloud Desktop infrastructure failure impacting multiple customers simultaneously and such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet the KINECTed Cloud Desktop commitment set forth herein and Customer provides ViaWest with a written request within five business days of the last day of the month in which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

L. HVAC Availability Commitment. ViaWest's commitment is to provide delivered air to the Customer's space within the data center at a temperature

not to exceed 80.6 degrees Fahrenheit and at a humidity level between 20% and 80% (as per the ASHRAE allowable standards), measured 12 inches above the unobstructed perforated tiles in Customer's space. If ViaWest fails to meet this HVAC availability commitment for two or more consecutive hours and Customer provides ViaWest with a written request within 30 days following the date of such occurrence, ViaWest shall provide a service credit to Customer's account equal to ten percent (10%) of Customer's Monthly Service Charges for the affected Service for each failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

M. Definitions; Service Credit Eligibility. For purposes of this Section 14, "Monthly Service Charges" means the service charges (excluding any taxes, pass-through charges, set-up or installation charges, or other one-time charges) billed for the affected Service during the month. A "trouble ticket" may be opened in ViaWest's trouble ticketing system by ViaWest, Customer, or ViaWest's monitoring systems. ViaWest reserves the right to verify the validity of any tickets opened by Customer or ViaWest's monitoring systems. "ViaWest Network" means that portion of the system facilitating Customer's use of and connection to the Internet beginning where Customer's colocation uplink (the "Customer Port") connects to the network and ending where ViaWest delivers IP data packets to the Public Internet on the Customer's behalf. "Public Internet" means the gateway router interface between the ViaWest Network and ViaWest's upstream providers' networks. In the event that Customer is eligible to receive multiple credits under this Section 14 from the same event pursuant to different commitments, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event under the service level commitment corresponding to the root service failure. THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR EQUIPMENT AND/OR SOFTWARE FAILURES, SERVICE INTERRUPTIONS, SERVICE RESPONSE ISSUES, AND/OR SERVICE DEFICIENCIES OF ANY KIND WHATSOEVER.

N. Service Credit Exceptions. For each commitment set forth in this Section 14, service credits shall not be available to Customer in cases where the Service is unavailable as a result of (a) the acts or omissions of Customer or its employees, contractors, agents or end-users; (b) the failure, malfunction, or limitation of throughput of equipment, network, software, applications or systems not owned or directly controlled by ViaWest (including third-party products and services that may be included in the Services); (c) circumstances or causes beyond the control of ViaWest, such as events of force majeure and third-party attacks on the ViaWest Network; (d) scheduled maintenance with prior notice posted at mysupport.viawest.net, which URL is subject to change upon prior notice; or (e) urgent maintenance with notice provided as soon as is commercially practicable under the circumstances. ViaWest reserves the right to re-route IP data packets to any and all Internet carriers connected to the ViaWest Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in this Section 14.

O. Managed and Cloud Services Roles and Responsibilities. Unless otherwise set forth on a roles and responsibilities matrix agreed to in writing and signed by each of ViaWest and Customer, the following sets forth the roles and responsibilities for each party with respect to Managed and Cloud Services purchased by Customer.

ViaWest Responsibilities. (a) *Operating System Management:* ViaWest shall manage, maintain, and support the applicable Red Hat Linux and/or Windows Server operating system (the "Operating System"). ViaWest shall perform the initial setup and installation of the Operating System and ongoing maintenance, including reasonable upgrades or fixes. ViaWest shall use commercially reasonable efforts to notify Customer of any upgrades to the Operating System in advance of such upgrade. (b) *Server Infrastructure Management:* ViaWest shall manage, maintain, and support the following server infrastructure elements: CPU, memory, hard disk, power supply, and motherboard (collectively, "Server Infrastructure"). If Customer purchases any server upgrades, ViaWest also shall provide installation as necessary. (c) *Network Infrastructure Management:* ViaWest shall manage, maintain, and support the following network infrastructure elements: routers, switches, Internet connectivity on the ViaWest Network, and, to the extent ordered by Customer and provided by ViaWest as part of the Service, firewalls and load balancers (collectively, "ViaWest Network Infrastructure"). (d) *Monitoring:* ViaWest shall provide 24x7 monitoring of the Operating System, Server Infrastructure, and ViaWest Network Infrastructure for health and failure of these systems and infrastructures. (e) *Usage.* In order to ensure system-wide availability, ViaWest has the right to limit Cloud usage at any time by Customer to Customer's committed reserves.

Customer Responsibilities. (a) **Application, Code, and Content Management:** Customer shall manage, maintain, and support any application code or content that is not provided and installed by ViaWest. Customer also shall be responsible for application, code, and content compatibility with the Operating System, including upgrades and loading software to the server remotely. (b) **Server Access:** Customer shall be responsible for providing its own access to the server through an administration tool such as SSH, VNC, or Remote Desktop and for any Internet access needed to access the server. (c) **Security:** Customer shall be responsible for the security of its Operating System, application, code, and content. If ViaWest is providing database administration, patching or other Services that require access to the Operating System, Customer shall provide ViaWest with passwords or other applicable access to the Operating System required for ViaWest to perform its obligations. Customer shall report to ViaWest any misuse or unauthorized disclosure of sensitive information on equipment managed by ViaWest immediately upon becoming aware of such misuse or disclosure. (d) **Backup Service:** Customer shall be responsible for backup and recovery of its content unless backup services are purchased through ViaWest. Customer acknowledges and agrees that ViaWest is not responsible for the integrity or security of any data or information stored by Customer on the ViaWest managed hosting or cloud environment except as otherwise expressly provided in an amendment to this Agreement. (e) **Content Management:** All data or information stored by Customer on the ViaWest managed hosting or cloud environment is owned by Customer. Customer is responsible for the use of the Services by any employee of Customer, any person to whom Customer has given access, or any person who gains access to Customer's data. (f) **Third Party O/S T&Cs.** Customer agrees to comply with the Terms & Conditions regarding use of the applicable third-party operating system (such as Microsoft or RedHat/Linux) as required by the O/S provider (the "Third-Party O/S T&Cs").

Additional Cloud Billing Terms. Committed Reserves and availability are calculated using a Service Hours based on a 730-hour month. Usage for any portion of any 15 minute period within an hour will result in the full 15 minute period being charged. Operating system license fees for Cloud Service users are billed on a monthly basis. Any usage of Cloud Services during a portion of a month will result in the monthly fee being charged.

15. Power and Circuit Breaker Utilization (Colocation Services Only).

A. Power Utilization. Customer acknowledges that ViaWest's engineering team specifically designs Customer's space to accommodate Customer's power utilization requirements in accordance with ViaWest's datacenter design. Customer agrees to cooperate with ViaWest's sales engineering team in this design process and to abide by power utilization design provided by ViaWest.

B. Circuit Breaker Utilization. In the event that any of Customer's allocated circuit breaker(s) carry greater than eighty percent (80%) of its continuous current load based on National Fire Protection Association 70 Article 210.20(A), then one of the following must occur as determined by ViaWest: (a) Customer shall purchase additional power circuits at the then-current rates in order to reduce circuit breaker utilization to less than eighty percent (80%) of its rated current or (b) Customer shall decrease its circuit breaker utilization to eighty percent (80%) of its rated current.

C. Primary and Redundant Power. In the event that Customer orders a primary power circuit or a redundant power circuit, such Service must be utilized as set forth on the applicable Order Form. If Customer is found to be using a redundant power circuit as a primary power circuit, then one of the following must occur as determined by ViaWest: (a) ViaWest shall increase Customer's power pricing set forth on the applicable Order Form, at its reasonable discretion, to the then-current rates for primary power circuit or (b) Customer shall begin utilizing the redundant power circuit in a redundant manner as reasonably determined by ViaWest. For purposes of this Section 15.C., any redundant power circuit with utilization greater than 40% of the rated breaker capacity shall be deemed to being utilized as a primary power circuit.

16. Miscellaneous. This Agreement, including any Order Forms, ViaWest's AUP, ViaWest's Datacenter Rules, and any applicable Third-Party O/S T&Cs, constitutes the entire agreement between the parties with respect to the Service and supersedes all prior representations, understandings, and agreements between the parties with respect to the Service. This Agreement may only be amended in a writing signed by both parties. ViaWest's AUP and Datacenter Rules may be amended from time to time in ViaWest's sole discretion. Customer agrees that ViaWest may refer to Customer by trade name and trademark, and may briefly describe customer's business in ViaWest's marketing materials. ViaWest, in its discretion, may alter its provision of any Service upon notice to Customer, provided that such alteration does not result in a material adverse change in the Service, as

determined in accordance with industry standards, provided, however, that ViaWest's ability to alter provision of any Service shall not in any way alter or affect ViaWest's obligations pursuant to Section 14 of this Agreement. Customer shall cooperate with ViaWest in any investigation of the use or possible use of the Customer's Equipment, ViaWest's facilities or the Services for any illegal purpose or other than in strict compliance with ViaWest's AUP. In connection therewith, Customer acknowledges that ViaWest may cooperate with law enforcement agencies in investigations of such use or possible use in accordance with ViaWest's privacy statement available at <http://www.viawest.com/privacy-statement.html>. No failure by either party to insist upon strict performance of any provision of this Agreement shall be construed as a waiver of any of its rights hereunder. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties and the remainder shall remain in full force and effect. All terms and provisions of this Agreement that should by their nature survive the termination of this Agreement shall so survive, including, without limitation, Sections 3, 4, 6, 8, 9, 10, 12, 13, and 16. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures to this Agreement may be transmitted facsimile signature or in portable document format via electronic mail.

Agreed to and accepted by:

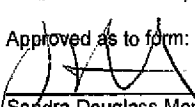
CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation


Dr. Xiong X. Liu, P.E., P.T.O.E., Interim City Manager Date 9/2/14

ATTEST:


Barbara A. Andolina, City Clerk

Approved as to form:


Sandra Douglass Morgan, City Attorney

City of North Las Vegas
2250 Las Vegas Blvd. North, Suite 700
North Las Vegas, Nevada 89030

VIAWEST, INC.


Signature of Authorized Representative Date

 **VP SALES OPERATIONS**
Name and Title of Authorized Representative

6400 S. Fiddler's Green Circle
Suite 2000
Greenwood Village, CO 80111

VIAWEST ORDER INFORMATION

Sales Rep:	Corey Huish	Type of Service:	Colocation Services
Contract Term:	63 Months	Order Number:	57252
Installation Location:	Las Vegas - Lone Mountain		

CUSTOMER INFORMATION

Company Name:	City of North Las Vegas		
Billing Address:	2250 Las Vegas Boulevard North		
City:	North Las Vegas	State:	NV
		Zip:	89030

	Name	Phone/Cell Phone	E-mail
Contract Contact:	Christopher Craft	(702) 633-2442	CraftC@cityofnorthlasvegas.com
Technical Contact:	Adam Cohen	(702) 633-1854	cohenA@cityofnorthlasvegas.com
Billing Contact:	Accounts Payable	(702) 633-1460	accountspayable@cityofnorthlasvegas.com

PRODUCTS/SERVICES ORDER DETAILS

	Colocation and Power Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	500 Sq Ft Colocation Cage Includes: cage construction and space, cage door with physical key and combo lock box, and cabinet grounding. Customer may provide: cabinets, ladder racking, power strips, cable management as required.	1	\$18,540.00	\$10.00	\$18,540.00	\$5,000.00
New	PCI Compliant Cabinet Bundle - Camera & Bio Card Reader Includes: Controlled hardened facility, 24x7 physical security monitoring, 90 day video surveillance and retention, Colocation cabinet perimeter security (2 surveillance cameras and 2 card readers), electronic cabinet access device and user reports (standard weekly access reports sent to all designated administrators in Customer's MySupport account), independent audit reports, and security incident notification. Available in Cornell, Delong, Synergy Park, Arapahoe, Carson I and II, Lone Mountain, and Hillsboro data centers.	1	\$4,210.00	\$400.00	\$4,210.00	\$400.00
New	Colocation Cage - Secure Cage Ceiling Secure wire mesh cage ceiling.	1	\$2,330.00	\$0.00	\$2,330.00	\$0.00
New	Colocation Cage - Secure Raised Floor Tiles Secured floor tiles within customer cage environment.	1	\$2,580.00	\$0.00	\$2,580.00	\$0.00
New	34840 kWh Minimum Monthly Kilowatt Hour Charge Additional Per kWh Charge: \$0.32	1	\$0.00	\$0.20	\$0.00	\$6,968.00
New	208 Volt 30 Amp AC Primary Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	208 Volt 30 Amp AC Redundant Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	Custom Full Colocation Cabinet 28x48 colocation cabinet - CCVG2006337 **SKU CCV005708, 47RU, 87.63H x 28W x 42D, 19inch square mounting holes, Fully perforated front and back doors with integrated 3 point combination lock	12	\$1,075.00	\$0.00	\$12,900.00	\$0.00
	Subtotal:				\$45,504.00	\$12,368.00

	Network and Security Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	OC-X / Gigabit Ethernet Cross Connect (Fiber, CPA)	6	\$500.00	\$0.00	\$3,000.00	\$0.00
	Subtotal:				\$3,000.00	\$0.00

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Customer Initials: _____

	Total Installation Charges	Total Monthly Charges
Total:	\$48,504.00	\$12,368.00

Notes:

Notwithstanding anything to the contrary in the Agreement or this Order Form, the Billing Start Date for all Services set forth on this Order Form shall be November 1, 2014.

Additional Notes:

Monthly recurring charges for all new Service set forth on this Order Form shall begin billing (the "Billing Start Date") on the earlier to occur of (a) the date the Service is first made available to Customer and (b) 45 days from the Effective Date of this Order Form.

All terms and conditions of the Master Service Agreement between ViaWest and Customer, including this Order Form (collectively, the "Agreement"), shall prevail over any terms and conditions set forth in payments or other forms, all of which are hereby rejected. ViaWest's provision of the services set forth above and Customer's use of such services are subject to the terms of the Agreement. The signatory below has full power and authority to act on behalf of the Customer and hereby confirms the Customer's agreement with the terms of this Order Form.

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation

Dr. Qiong X. Liu, P.E., P.T.O.E., Interim City Manager

ViaWest, Inc.

By:

Name:

Its:

ATTEST:

Barbara A. Andolina, City Clerk

Approved as to form:

Sandra Douglass Morgan, City Attorney

Customer Initials: _____

EXHIBIT B

First Renewal

Please see attached page(s).

Mayor
John J. Lee

Council Members
Isaac E. Barron
Pamela A. Goynes-Brown
Scott Black
Richard Cherchio



City Manager
Ryann Juden

Finance Department

2250 Las Vegas Boulevard, North · Suite 708 · North Las Vegas, Nevada 89030
Telephone: (702) 633-1463 · Fax: (702) 649-5077 · TDD: (800) 326-6868
www.cityofnorthlasvegas.com

September 19, 2019

Flexential Colorado Corp.
Attn: Jeff Goodrich
3330 E. Lone Mountain Rd
North Las Vegas, NV 89081

Re: Renewal of Master Service Agreement


Sir,

On September 2, 2014, The City of North Las Vegas (the "City") and Viawest ("Viawest") entered into a Master Services Agreement (the "Agreement") for off property data storage services. Flexential joined forces with Viawest in August of 2017 and rebranded as Flexential in January of 2018.

The initial term of the Agreement was for five years with options to renew for 14 years (first option is for five years; second option is for five years; and third option is for four years). As such, please accept this correspondence as notice that the City hereby exercises its option to renew the Agreement for the first five-year option ("Notice") so that the Agreement will now expire on September 1, 2024.

Please contact our Assistant Director, Administrative Services, Tony C. Danford, at 702-633-1463, or by email at danforda@cityofnorthlasvegas.com if you have any questions or concerns

ATTEST:


Catherine A. Raynor, MMC
City Clerk

Sincerely,


Ryann Juden
City Manager



Document Date: August 07, 2019

City of North Las Vegas

Account Executive: Jeff Goodrich

Exhibit A

Attention: City of North Las Vegas
2250 Las Vegas Blvd N
North Las Vegas, Nevada 89030

Billing ID: NEKIY001

Quote #: Q-48450

Colocation: Las Vegas - North	Change	Qty	Units		Setup Total	Monthly Total
Flexential Provided Cabinet within a Cage	Add	12.0	EA			
Steel frame cabinet with front and rear locking doors, adjustable mounting rails, and at least 40U of space within a cage. Power subscriptions are sold separately. Total power consumption not to exceed 12kW per cabinet without Flexential approval. Higher power density configurations may be available.						
Secure Cage Space optional roof installation	Add	500.0	EA			
Service provides for the installation of an optional cage roof priced per square foot. The square footage must equal the square footage of the cage space for which the roof will be installed.						
kW commit - all in power pricing	Add	50.0	kW			
kW power threshold available for customer usage. Overages above the kW commit subject to overage fees. All in kW power pricing with no additional metered power pass through.						
20A 120V AC Power - Single Phase	Add	1.0	Each			
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.						
30A 208V AC Power - Single Phase	Add	14.0	Each			
Primary and redundant power whip including L6-30 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.						
Cage Security - Badge+Bio+Camera	Add	1.0	EA			
This service provides use of a proximity badge reader with biometric scanner, standard access reporting, video surveillance camera facing the door, and associated management as an add-on to a Flexential data center cage space subscription.						
Secure Raised Floor Tiles	Add	1.0	SQ FT			
Secured floor tiles within customer cage space.						
Secure Cage Space - kW based pricing models	Add	500.0	SQFT			
Secure cage space within a Flexential data center. Power is not included with this service and requires a separate subscription. Cabinets / data racks are not included either and must be provided or subscribed to as a service.						
Colocation: Las Vegas - North Total:					\$0.00	\$11,755.00

Cross Connect Service: Las Vegas - North	Change	Qty	Units		Setup Total	Monthly Total
Carrier Cross Connect - Fiber	Add	6.0	EA			
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.						
Cross Connect Service: Las Vegas - North Total:					\$0.00	\$1,350.00

Setup	Monthly
-------	---------

The MSA includes automatic renewal and annual price escalation provisions unless otherwise agreed.

Services are provided subject to the MSA, and the Service Definitions on the Customer Portal.

Prices valid until September 06, 2019.
Prices do not include applicable sales tax.
This document is private and confidential.



Document
Date: August 07, 2019

Account
Executive: Jeff Goodrich

Attention: City of North Las Vegas
2250 Las Vegas Blvd N
North Las Vegas, Nevada 89030

City of North Las Vegas

Exhibit A

Billing ID: NEKIY001

Quote #: Q-48450

Totals:

\$ 0.00

\$ 13,105.00



Master Service Agreement

1. General Definitions. This master service agreement (this "Agreement") is between ViaWest, Inc. ("ViaWest") and the customer set forth below ("Customer"), and sets forth the terms and conditions pursuant to which ViaWest shall provide Services to Customer. "Services" means the services provided to Customer by ViaWest, as set forth on an "Order Form" executed by ViaWest and Customer. Any reference to an "Order Form" in this Agreement includes Services purchased by Customer pursuant to ViaWest's online ordering process. "Billing Start Date" means the date the Service is first made available to Customer, and shall be no later than 45 days after the Order Form Effective Date unless otherwise agreed to by ViaWest and Customer in writing. If Customer is not able to use the Service beginning on the Billing Start Date solely as a result of delays caused by ViaWest, then the Billing Start Date shall be extended for three days for each day of delay caused by ViaWest. "Service Term Start Date" means the first day of the calendar month following the Billing Start Date for the last Service installed on such Order Form. The "Service Term" begins on the Service Term Start Date and continues for the number of months set forth on the Order Form, and includes any renewal Service Terms. "Customer Equipment" means any Customer-owned or Customer-provided equipment placed by Customer in ViaWest's facility. "AUP" means ViaWest's Acceptable Use Policy, posted on ViaWest's web site at <http://www.viawest.com/acceptable-use.html>.

2. Fees and Charges; Start Dates. Customer agrees to pay the rates and charges for the Services set forth on an Order Form. All charges invoiced to Customer shall be deemed valid unless Customer disputes such charges in writing within 90 days after the invoice is sent by ViaWest to Customer. Undisputed payments for Invoiced amounts are due within 30 days of invoice date. Recurring charges shall be invoiced monthly, beginning on the Billing Start Date; installation and other non-recurring charges shall be invoiced when incurred. If ViaWest experiences an increase in the rates and charges for obtaining electrical power services from the underlying provider, Customer's rates and charges for electrical power services shall increase or decrease in a proportional amount, provided that ViaWest agrees that the power pricing shall not increase more than 3% per year. Monthly recurring charges for all Services (other than electrical power services) shall increase 2.5% per year on each anniversary of the Service Term Start Date, which such increase shall be applied on the first day of any renewal term (e.g., if a Service Term is 60 months, upon renewal the monthly recurring charges would increase 12.5%). Customer agrees to pay interest on all amounts not paid by the applicable due date at the rate of the lesser of 1% per month or portion thereof or the highest rate permitted by applicable law. Customer agrees to pay all taxes and fees assessed in connection with the Service, such as interconnection or other mandated taxes, except for taxes based on ViaWest's net income. Any taxes required to be paid by Customer will be specifically set forth in an invoice. In the event of termination or suspension of a Service for any reason, Customer must pay charges accrued through the date of termination or suspension.

3. Term. After the expiration of the Initial Service Term, Customer shall have three options to renew the Service Term, the first two for a 60-month term, and the third for the shorter of (a) 60 months and (b) the number of months remaining in the LM Lease (defined below). Customer must provide notice to ViaWest of its exercise of any renewal option at least 90 days prior to the expiration of the then-current Service Term. After the expiration of the third renewal Term, this Agreement shall terminate automatically unless each party agrees in writing to extend the Service Term.

Customer acknowledges that ViaWest's underlying lease for the Lone Mountain datacenter (the "LM Lease") expires on December 31, 2023, with ViaWest having the right to extend the LM Lease for two subsequent five-year terms (each, an "Extension Option"). In consideration of Customer's significant and unique investment in dark fiber for purposes of purchasing the Services, in the event that ViaWest decides, in its sole discretion, not to exercise an Extension Option, or in the event that ViaWest for any reason vacates the Lone Mountain datacenter, ViaWest shall provide Customer with at least 9 months prior written notice of such non-extension or move and Customer may terminate all Services on the effective date of the non-extension or move without penalty. In connection with such termination by Customer, or in the event of a Customer termination due to a ViaWest Event of Default (pursuant to which Customer may terminate all Services without penalty), ViaWest shall reimburse Customer for its reasonable costs and expenses incurred in relocating to another datacenter, with such reimbursement not to exceed the following: If such termination occurs during

Customer's Initial Service Term, \$400,000; If such termination occurs during Customer's first Renewal Service Term, \$200,000; If such termination occurs during Customer's second Renewal Service Term, \$100,000; and if such termination occurs during Customer's third Renewal Service Term, \$50,000.

4. Termination.

A. For Cause. Either party may terminate this Agreement or ViaWest may suspend provision of the Service upon an Event of Default of the other party. A "Customer Event of Default" means (a) failure by Customer to pay any amount within 30 days of the applicable due date; or (b) failure by Customer to comply with ViaWest's AUP or Datacenter Rules, in each case which failure is not cured within 10 days following written notice by ViaWest. A "ViaWest Event of Default" means a material breach of this Agreement by ViaWest (other than Service-related issues, which are addressed in Section 14), which breach is not cured within 10 days following written notice by Customer.

B. For Convenience. Customer may terminate any Service for its convenience prior to the end of the applicable Service Term, provided that Customer gives ViaWest at least 60 days prior written notice of such termination and pays ViaWest the following early termination fee (as liquidated damages, not a penalty): (a) 50% of the remaining monthly recurring charges for each terminated Service for months one through 12 of the then-effective Service Term; plus (b) 25% of the remaining monthly recurring charges for each terminated Service for months 13 through 24 of the then-effective Service Term; plus (c) 10% of the remaining monthly recurring charges for each terminated Service for months 25 through the end of the then-effective Service Term; plus (d) any previously waived fees, including, without limitation, installation fees; plus (e) any termination fees or liability associated with any third-party telecommunication services used by ViaWest in the provision of the Service; plus (f) all reasonable costs and expenses, incurred by ViaWest as a result of collecting such early termination fee or any other amounts due under this Agreement. Customer shall not be liable for the early termination fee if Customer terminates this Agreement pursuant to Section 14.A. or due to a ViaWest Event of Default. Customer shall be liable for the early termination fee for any termination of Service due to a Customer Event of Default.

5. Representations, Warranties, and Obligations of Customer. Customer represents and warrants that it has full power and authority to enter into this Agreement. Customer agrees to comply, and cause its customers and other third-party users (including contractors, subcontractors or sublicensees) to comply, with ViaWest's AUP and Datacenter Rules. Customer shall not use, and shall not permit its agents to use, the Service or any Customer Equipment for any illegal purpose. Customer represents and warrants that no broker, finder or other intermediary is entitled to any broker's, finder's or other similar fee or commission in connection with the initial or any renewal term of the Services for which ViaWest would be responsible for payment or otherwise liable.

6. Customer Equipment. Customer shall have access to all Customer Equipment during the Service Term 24 hours per day, 7 days per week, provided that Customer adheres to ViaWest's Datacenter Rules. ViaWest, in its sole discretion, may require that Customer and any of Customer's agents be escorted when they are in the ViaWest datacenter, and may suspend Customer's access as directed or required in an emergency situation. If any Customer Equipment remains in a ViaWest datacenter following termination of Customer's space-related Service, Customer shall be (i) responsible for all monthly recurring fees, and (ii) subject to all obligations of Customer contained in this Agreement. In each case until removal of the Customer Equipment. If Customer does not remove the Customer Equipment after termination of Customer's space-related Service within 14 days following notice from ViaWest, Customer agrees that ViaWest may ship the Customer Equipment to Customer's last address of record at Customer's sole cost and expense. ViaWest shall not be liable for any damage resulting from such shipment except to the extent caused by ViaWest's gross negligence or willful misconduct. If Customer is purchasing Managed or Cloud Services, Customer shall have no right to access ViaWest's datacenter or any equipment provided by ViaWest in connection with such Services.

7. Representations, Warranties, and Obligations of ViaWest. ViaWest represents and warrants that it has full power and authority to enter into this Agreement. In the event of a network-based attack (such as a DDoS attack) against Customer's Equipment or a malfunction of Customer's Equipment that threatens ViaWest's ability to provide services to other ViaWest customers,

ViaWest may, at its sole option and in its sole discretion, black hole, disconnect, shut off or deactivate any portion or all of Customer's Equipment or Service. If possible given the urgency of the situation, ViaWest shall attempt to contact Customer to determine mutually acceptable remediation measures prior to taking any such action. At Customer's request, ViaWest shall use commercially reasonable efforts to secure domain names and to assign Internet Protocol ("IP") address space for Customer during a Service Term and to route those IP addresses on ViaWest's network. Customer shall have no right to route such IP addresses. ViaWest shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the Agreement.

8. **Disclaimer of Warranties.** ViaWest exercises no control over and accepts no responsibility for the information or content accessible on the Internet or for the products or services of third parties that may be included in the Services. The Internet is not a secure network; confidential or sensitive information should not be transmitted over the Internet or stored on computers directly connected to the Internet. ViaWest disclaims any liability for loss or theft of information transmitted over the Internet or stored on computers directly connected to the Internet. THE SERVICE AND ANY RELATED SOFTWARE AND/OR EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NEITHER VIAWEST NOR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS WARRANT THAT THE SERVICE SHALL BE ERROR-FREE, UNINTERRUPTED, SECURE, OR PRODUCE PARTICULAR RESULTS OR THAT THE INFORMATION OBTAINED ON THE INTERNET SHALL BE RELIABLE OR UNOBJECTIONABLE. NO ADVICE OR INFORMATION GIVEN BY VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS SHALL CREATE A WARRANTY.

9. **Indemnification**

A. **Indemnification by ViaWest.** ViaWest shall indemnify, defend, and hold harmless Customer and its employees and affiliates from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising from or related to (a) tangible personal property damage to Customer's equipment located in the ViaWest datacenter resulting from ViaWest's negligence or willful misconduct, up to the full replacement cost of the damaged equipment and (b) actual personal injury damage resulting from ViaWest's negligence or willful misconduct, in each case up to the limits covered by ViaWest's applicable insurance policies, provided, however that indemnification relating to personal injury shall not apply to any claims made by Customer's employees that are covered under applicable workers' compensation laws. In addition, if any portion of the Service becomes, or in ViaWest's opinion is likely to become, the subject of a claim of infringement of any third party Intellectual property rights recognized in the United States of America, then ViaWest, at its option and expense, shall do one of the following: procure for Customer the right to continue using such portion of the Service, replace or modify such portion of the Service so that it becomes non-infringing, or terminate this Agreement and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of ViaWest set forth in the preceding sentence does not apply (a) with respect to portions or components of the Service that are not supplied directly by ViaWest, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by ViaWest to the extent the infringement relates to such combination; or (b) where Customer's use of the Service is not strictly in accordance with the terms of this Agreement and the applicable software license agreement provided by ViaWest to Customer or agreed to by Customer during installation, if any. Notwithstanding anything to the contrary set forth in this Agreement, Customer's sole and exclusive remedies against ViaWest for intellectual property infringement are as set forth in this Section 9.A.

B. **Indemnification by Customer.** Customer shall indemnify, defend, and hold harmless ViaWest and its employees, affiliates, contractors, and agents from and against any and all Losses arising from or related to (a) any breach of this Agreement, ViaWest's AUP or ViaWest's Data Center Rules; or (b) any use of the Service, or any negligent or willful act or omission by Customer or any of its invitees, employees, affiliates, contractors, or agents.

10. **Limitation of Liability.** IN NO EVENT SHALL VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS, REVENUE, DATA,

OR USE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, INCLUDING, WITHOUT LIMITATION, LEGAL THEORIES OF CONTRACT, TORT, OR STRICT LIABILITY, EVEN IF VIAWEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, IN NO EVENT SHALL VIAWEST'S LIABILITY FOR ANY DAMAGES EXCEED THE ACTUAL DOLLAR AMOUNT PAID BY CUSTOMER FOR THE SERVICE DURING THE SIXTY-MONTH PERIOD PRIOR TO THE DATE THE DAMAGES OCCURRED OR THE CAUSE OF ACTION AROSE. With the exception of any monetary obligations under this Agreement, neither party shall be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, interruption of or delay in transportation or telecommunication service, act of its vendors or suppliers or their products and services, or inability to obtain raw materials, supplies, or power used in or equipment needed for the provision of the Service.

11. **Insurance.** If Customer is purchasing colocation Services, Customer must procure and maintain the following insurance during the Service Term: (a) "all risk" property insurance covering all Customer Equipment in an amount not less than its full replacement cost; (b) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence for bodily injury and property damage; (c) employer's liability insurance in an amount not less than \$1,000,000 per occurrence; and (d) worker's compensation insurance in an amount not less than that required by applicable law. If Customer is purchasing Managed or Cloud Services, Customer must additionally obtain professional liability insurance and standard form property insurance, including business interruption and electronic data processing media insurance, in each case in the amount not less than \$1,000,000 per occurrence. The above policies must list ViaWest as additional insured, and must contain provisions providing that such insurance is primary insurance insofar as ViaWest and Customer are concerned, with any other insurance maintained by ViaWest being excess and noncontributing with the insurance required of Customer. Upon request, Customer shall provide a certificate of insurance to ViaWest evidencing such insurance requirements.

12. **Assignment; Governing Law; Venue.** Customer shall not assign this Agreement without the prior written consent of ViaWest, which consent shall not be unreasonably withheld. This Agreement shall be governed by the laws of the State of Nevada, without regard to its conflicts of laws principles. Each of the parties hereby irrevocably submits to the exclusive personal jurisdiction of any federal or state court of competent jurisdiction located in Clark County, Nevada, in any action or proceeding relating to this Agreement. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.

13. **Non-Disclosure.** During the Service Term, each party may have access to certain confidential and proprietary information disclosed by the other party, including, without limitation, information relating to either party's clients, customers, or business operations (including the terms of this Agreement and the rates charged for the Service), whether disclosed orally or in writing by any other media (collectively, "Confidential Information"). Each party (the "Receiving Party") acknowledges that the Confidential Information of the other party (the "Disclosing Party") may contain information valuable to the Disclosing Party and that any such Confidential Information shall remain the property of the Disclosing Party. Each party shall use the Confidential Information provided hereunder only for purposes directly related to the purpose for which it was provided and shall restrict disclosure of Confidential Information solely to its employees and subcontractors with a need to know, or to other third parties expressly permitted by the Disclosing Party, and not disclose such Confidential Information to any other parties, and otherwise to protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. The Receiving Party shall be responsible for any breach of this Section by its employees, subcontractors or any third parties to whom Receiving Party discloses the Confidential Information. "Confidential Information" shall not include information that: (a) was in the public domain free of any obligation of confidence at the time it was communicated to the Receiving Party; (b) is rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was communicated to the Receiving Party; or (c) was in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party. Notwithstanding the above, the Receiving Party shall not be in violation of this Section for a disclosure made in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with written notice of such disclosure where reasonably

possible in order to permit the Disclosing Party to seek confidential treatment of such information. The obligations of confidentiality of each party under this shall survive for two years from the termination of this Agreement. The parties recognize and agree that any breach of this Section would cause irreparable harm and, accordingly, that injunctive relief is an appropriate remedy to prevent any threatened or ongoing breach of such confidentiality obligations. Notwithstanding anything to the contrary set forth in this Section, any disclosure of confidential or proprietary information by means of a third-party attack, probe, theft, or other breach of network security shall not be deemed to be a breach of this Section. The terms of this Section shall supersede and replace any non-disclosure or confidentiality agreement entered into by the parties prior to the Effective Date of this Agreement. Pursuant to Chapter 239 of the Nevada Revised Statutes, documents provided to Customer may be a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. Customer shall not in any way be liable to ViaWest, its subcontractors, principals or agents, for the disclosure of any public record. In the event Customer is required to defend an action with regard to a public records request for documents submitted by ViaWest its subcontractors, principals or agents, ViaWest agrees to indemnify, hold harmless, and defend Customer from all damages, costs, and expenses, including court costs and reasonable attorney fees related to such public records request. This section shall survive the expiration or earlier termination of this Agreement.

14. Service Level Commitments.

A. **Satisfaction Guarantee.** In the event that Customer is not 100% satisfied with the Service's power, network, HVAC or redundant hardware availability, then Customer may provide written notice to ViaWest of its dissatisfaction (the "Mad Notice"). The Mad Notice must identify the affected Service, refer to this satisfaction guarantee, and document Customer's eligibility for credits due to noncompliance of the Service with the commitments set forth in Section 14.C., D., I., or J as applicable. If ViaWest does not cure the issue causing the noncompliance or provide documentation to Customer demonstrating that the Service is in compliance with the applicable commitment within 10 days from receiving the Mad Notice, then Customer may terminate the affected Service without penalty upon written notice to ViaWest within 15 days following the end of ViaWest's 10-day cure period. In addition, if Customer provides a Mad Notice to ViaWest two or more times over any consecutive 6-month period for noncompliance of the same commitment (which notice is not countered by documentation demonstrating that the Service is in compliance with the applicable commitment), then Customer may terminate the affected Service without penalty upon written notice to ViaWest. Any termination pursuant to this Section 14.A. shall be effective 10 business days after receipt of written notice by ViaWest. In the event of any incident of which ViaWest becomes aware affecting Customer's Service, ViaWest shall use commercially reasonable efforts to notify Customer, via any immediately available method, of any such incident.

B. **Installation Commitment.** ViaWest's commitment is to install all standard Services set forth on a fully executed Order Form by the Billing Start Date set forth on the Order Form or issued in writing or via e-mail by ViaWest following execution of the Order Form. If ViaWest fails to meet this installation commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 50% of the installation fees charged to Customer.

C. **Power Availability Commitment.** ViaWest's commitment is to maintain availability of the power provided to Customer's environment in the ViaWest datacenter 100% of the time. Power unavailability is measured by the number of seconds from the time power unavailability to Customer's environment is determined by ViaWest to the time power is restored. "Power Unavailability" shall mean and refer to the unavailability of the power to Customer Space whereby both the primary and secondary/supplemental power circuits have failed. Power shall not be considered to be unavailable if provided through any secondary or supplemental power circuit without disconnection of service (the availability of power through only one power circuit where such power is supplied through a primary and redundant circuit is not considered "Power Unavailability"). If ViaWest fails to meet this power availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service. Customer shall not be eligible for credits for power unavailability unless Customer properly installs and configures redundant power circuits and

utilizes such circuits in a redundant manner and in accordance with the provisions of Section 15 hereof.

D. **Network Availability Commitment.** ViaWest's commitment is to maintain availability of the ViaWest Network 100% of the time. Unavailability of the ViaWest Network is measured over a calendar month and is based on total outage time incurred by Customer. Network unavailability shall exist when (i) a particular Customer Port is unable to transmit IP data packets from such Customer Port to the Public Internet via the ViaWest Network and (ii) such failure is recorded in ViaWest's trouble ticket system. Network unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this ViaWest Network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

E. **Network Connections Availability Commitment.** ViaWest's commitment is to maintain availability of Customer's network connections (i.e., cross connects provided by ViaWest) 100% of the time. Unavailability of Customer's network connections is measured over a calendar month and is based on total outage time incurred by Customer. Customer's network connections begin at the initial piece of ViaWest owned and operated equipment to which the applicable circuit connects and end at the demarcation point installed in Customer's cabinet and/or cage. Network connection unavailability exists when (a) due to a failure of Customer's network connection(s) (i.e., cross connects provided by ViaWest), a particular Customer Port is unable to transmit data from the ViaWest network connection(s) and (b) such failure is recorded in ViaWest's trouble ticket system. Network connection unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

F. **ViaWest Network Packet Loss Commitment.** ViaWest's commitment is to maintain average packet loss of no more than 1% across the ViaWest Network. Average packet loss across the ViaWest Network is measured on an ongoing basis over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network packet loss commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

G. **ViaWest Network Roundtrip Delay Commitment.** ViaWest's commitment is to maintain average roundtrip delay of no more than 40 milliseconds across the ViaWest Network. Average roundtrip delay across the ViaWest Network is measured over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network roundtrip delay commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

H. **ViaWest Support Response Commitment.** ViaWest's service support for colocation Service is available 24 x 7. ViaWest's commitment is to respond to any failure of Customer's colocation Service within the following time frames following ViaWest's confirmation of such failure:

Severity	Response Time
Level 1 - Critical	15 minutes

For the purposes of this Section 14.H., (a) "Critical" Issues shall mean all issues in which Customer's Operating System, Server Infrastructure, ViaWest Network Infrastructure, and/or the power to Customer's space are unavailable for normal use; and (b) "response" shall mean that a ViaWest representative is working to resolve the issue. If ViaWest fails to meet this support response commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

I. ViaWest Redundant Hardware Availability Commitment. ViaWest's commitment is to maintain availability of ViaWest-owned and operated hardware, consisting of Communications, controller, routers, switches, firewalls, other network infrastructure, KINECTed storage, and CPU and/or processing platform for which Customer has ordered a redundant unit (the "Redundant Hardware") 100% of the time. Unavailability of the Redundant Hardware is measured over a calendar month and is based on total outage time incurred by Customer, measured from the time a trouble ticket is opened to the time ViaWest confirms that at least one of the affected units is again operational. Redundant Hardware unavailability shall exist when (1) both the primary and the redundant units that are in production for provision of the Service are unable to operate in accordance with industry standards and cause unavailability of the Service and (2) such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet this Redundant Hardware availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

J. ViaWest KINECTed Cloud Availability Commitment. ViaWest's commitment for KINECTed Cloud Service availability in any given monthly billing period is: KINECTed Enterprise Cloud Service and KINECTed Health Cloud Service – 99.9%; and KINECTed Synergy Class Cloud Service – 0%. Unavailability of the KINECTed Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure impacting multiple customers simultaneously below the applicable commitment level, and such failure is recorded in ViaWest's trouble ticket system ("Cloud Unavailability"). For each instance of Cloud Unavailability in a given month, upon Customer's written request (provided within 30 days of the date on which such failure occurred), ViaWest shall provide a service credit to Customer's account equal to 10% of the monthly service charges for Committed Reserves charged by ViaWest to Customer for each cumulative hour of Cloud Unavailability during the applicable month, up to a maximum of the total monthly service charges for Committed Reserves charged by ViaWest to Customer during the applicable month. "Committed Reserves" means the amount of CPU, RAM and Disk reserved by Customer as set forth on an Order Form to support the Customer running one or more Virtual Machines. "Virtual Machine" means a portion of a physical machine that includes all of the attributes of a physical machine such as an operating system, a server and a central processing unit (CPU). "Cloud infrastructure" means the ViaWest-controlled portion of the infrastructure supporting the KINECTed Cloud Service.

K. KINECTed Cloud Desktop Availability. ViaWest's commitment is to maintain availability of the KINECTed Cloud Desktop Service 100% of the time. Unavailability of the KINECTed Cloud Desktop Services is measured over a calendar month and is based on the total outage time incurred by Customer. KINECTed Cloud Desktop unavailability shall exist when there is a KINECTed Cloud Desktop Infrastructure failure impacting multiple customers simultaneously and such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet the KINECTed Cloud Desktop commitment set forth herein and Customer provides ViaWest with a written request within five business days of the last day of the month in which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

L. HVAC Availability Commitment. ViaWest's commitment is to provide delivered air to the Customer's space within the data center at a temperature

not to exceed 80.6 degrees Fahrenheit and at a humidity level between 20% and 80% (as per the ASHRAE allowable standards), measured 12 inches above the unobstructed perforated tiles in Customer's space. If ViaWest fails to meet this HVAC availability commitment for two or more consecutive hours and Customer provides ViaWest with a written request within 30 days following the date of such occurrence, ViaWest shall provide a service credit to Customer's account equal to ten percent (10%) of Customer's Monthly Service Charges for the affected Service for each failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

M. Definitions; Service Credit Eligibility. For purposes of this Section 14, "Monthly Service Charges" means the service charges (excluding any taxes, pass-through charges, set-up or installation charges, or other one-time charges) billed for the affected Service during the month. A "trouble ticket" may be opened in ViaWest's trouble ticketing system by ViaWest, Customer, or ViaWest's monitoring systems. ViaWest reserves the right to verify the validity of any tickets opened by Customer or ViaWest's monitoring systems. "ViaWest Network" means that portion of the system facilitating Customer's use of and connection to the Internet beginning where Customer's colocation uplink (the "Customer Port") connects to the network and ending where ViaWest delivers IP data packets to the Public Internet on the Customer's behalf. "Public Internet" means the gateway router interface between the ViaWest Network and ViaWest's upstream providers' networks. In the event that Customer is eligible to receive multiple credits under this Section 14 from the same event pursuant to different commitments, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event under the service level commitment corresponding to the root service failure. THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR EQUIPMENT AND/OR SOFTWARE FAILURES, SERVICE INTERRUPTIONS, SERVICE RESPONSE ISSUES, AND/OR SERVICE DEFICIENCIES OF ANY KIND WHATSOEVER.

N. Service Credit Exceptions. For each commitment set forth in this Section 14, service credits shall not be available to Customer in cases where the Service is unavailable as a result of (a) the acts or omissions of Customer or its employees, contractors, agents or end-users; (b) the failure, malfunction, or limitation of throughput of equipment, network, software, applications or systems not owned or directly controlled by ViaWest (including third-party products and services that may be included in the Services); (c) circumstances or causes beyond the control of ViaWest, such as events of force majeure and third-party attacks on the ViaWest Network; (d) scheduled maintenance with prior notice posted at mysupport.viawest.net, which URL is subject to change upon prior notice; or (e) urgent maintenance with notice provided as soon as is commercially practicable under the circumstances. ViaWest reserves the right to re-route IP data packets to any and all Internet carriers connected to the ViaWest Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in this Section 14.

O. Managed and Cloud Services Roles and Responsibilities. Unless otherwise set forth on a roles and responsibilities matrix agreed to in writing and signed by each of ViaWest and Customer, the following sets forth the roles and responsibilities for each party with respect to Managed and Cloud Services purchased by Customer.

ViaWest Responsibilities. (a) *Operating System Management:* ViaWest shall manage, maintain, and support the applicable Red Hat Linux and/or Windows Server operating system (the "Operating System"). ViaWest shall perform the initial setup and installation of the Operating System and ongoing maintenance, including reasonable upgrades or fixes. ViaWest shall use commercially reasonable efforts to notify Customer of any upgrades to the Operating System in advance of such upgrade. (b) *Server Infrastructure Management:* ViaWest shall manage, maintain, and support the following server infrastructure elements: CPU, memory, hard disk, power supply, and motherboard (collectively, "Server Infrastructure"). If Customer purchases any server upgrades, ViaWest also shall provide installation as necessary. (c) *Network Infrastructure Management:* ViaWest shall manage, maintain, and support the following network infrastructure elements: routers, switches, Internet connectivity on the ViaWest Network, and, to the extent ordered by Customer and provided by ViaWest as part of the Service, firewalls and load balancers (collectively, "ViaWest Network Infrastructure"). (d) *Monitoring:* ViaWest shall provide 24x7 monitoring of the Operating System, Server Infrastructure, and ViaWest Network Infrastructure for health and failure of these systems and infrastructures. (e) *Usage.* In order to ensure system-wide availability, ViaWest has the right to limit Cloud usage at any time by Customer to Customer's committed reserves.

Customer Responsibilities. (a) **Application, Code, and Content Management:** Customer shall manage, maintain, and support any application code or content that is not provided and installed by ViaWest. Customer also shall be responsible for application, code, and content compatibility with the Operating System, including upgrades and loading software to the server remotely. (b) **Server Access:** Customer shall be responsible for providing its own access to the server through an administration tool such as SSH, VNC, or Remote Desktop and for any Internet access needed to access the server. (c) **Security:** Customer shall be responsible for the security of its Operating System, application, code, and content. If ViaWest is providing database administration, patching or other Services that require access to the Operating System, Customer shall provide ViaWest with passwords or other applicable access to the Operating System required for ViaWest to perform its obligations. Customer shall report to ViaWest any misuse or unauthorized disclosure of sensitive information on equipment managed by ViaWest immediately upon becoming aware of such misuse or disclosure. (d) **Backup Service:** Customer shall be responsible for backup and recovery of its content unless backup services are purchased through ViaWest. Customer acknowledges and agrees that ViaWest is not responsible for the integrity or security of any data or information stored by Customer on the ViaWest managed hosting or cloud environment except as otherwise expressly provided in an amendment to this Agreement. (e) **Content Management:** All data or information stored by Customer on the ViaWest managed hosting or cloud environment is owned by Customer. Customer is responsible for the use of the Services by any employee of Customer, any person to whom Customer has given access, or any person who gains access to Customer's data. (f) **Third Party O/S T&Cs.** Customer agrees to comply with the Terms & Conditions regarding use of the applicable third-party operating system (such as Microsoft or RedHat/Linux) as required by the O/S provider (the "Third-Party O/S T&Cs").

Additional Cloud Billing Terms. Committed Reserves and availability are calculated using a Service Hours based on a 730-hour month. Usage for any portion of any 15 minute period within an hour will result in the full 15 minute period being charged. Operating system license fees for Cloud Service users are billed on a monthly basis. Any usage of Cloud Services during a portion of a month will result in the monthly fee being charged.

15. Power and Circuit Breaker Utilization (Colocation Services Only).

A. Power Utilization. Customer acknowledges that ViaWest's engineering team specifically designs Customer's space to accommodate Customer's power utilization requirements in accordance with ViaWest's datacenter design. Customer agrees to cooperate with ViaWest's sales engineering team in this design process and to abide by power utilization design provided by ViaWest.

B. Circuit Breaker Utilization. In the event that any of Customer's allocated circuit breaker(s) carry greater than eighty percent (80%) of its continuous current load based on National Fire Protection Association 70 Article 210.20(A), then one of the following must occur as determined by ViaWest: (a) Customer shall purchase additional power circuits at the then-current rates in order to reduce circuit breaker utilization to less than eighty percent (80%) of its rated current or (b) Customer shall decrease its circuit breaker utilization to eighty percent (80%) of its rated current.

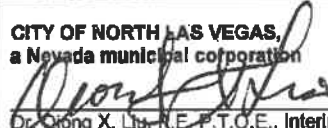
C. Primary and Redundant Power. In the event that Customer orders a primary power circuit or a redundant power circuit, such Service must be utilized as set forth on the applicable Order Form. If Customer is found to be using a redundant power circuit as a primary power circuit, then one of the following must occur as determined by ViaWest: (a) ViaWest shall increase Customer's power pricing set forth on the applicable Order Form, at its reasonable discretion, to the then-current rates for primary power circuit or (b) Customer shall begin utilizing the redundant power circuit in a redundant manner as reasonably determined by ViaWest. For purposes of this Section 15.C., any redundant power circuit with utilization greater than 40% of the rated breaker capacity shall be deemed to be utilized as a primary power circuit.

16. Miscellaneous. This Agreement, including any Order Forms, ViaWest's AUP, ViaWest's Datacenter Rules, and any applicable Third-Party O/S T&Cs, constitutes the entire agreement between the parties with respect to the Service and supersedes all prior representations, understandings, and agreements between the parties with respect to the Service. This Agreement may only be amended in a writing signed by both parties. ViaWest's AUP and Datacenter Rules may be amended from time to time in ViaWest's sole discretion. Customer agrees that ViaWest may refer to Customer by trade name and trademark, and may briefly describe customer's business in ViaWest's marketing materials. ViaWest, in its discretion, may alter its provision of any Service upon notice to Customer, provided that such alteration does not result in a material adverse change in the Service, as

determined in accordance with industry standards, provided, however, that ViaWest's ability to alter provision of any Service shall not in any way alter or affect ViaWest's obligations pursuant to Section 14 of this Agreement. Customer shall cooperate with ViaWest in any investigation of the use or possible use of the Customer's Equipment, ViaWest's facilities or the Services for any illegal purpose or other than in strict compliance with ViaWest's AUP. In connection therewith, Customer acknowledges that ViaWest may cooperate with law enforcement agencies in investigations of such use or possible use in accordance with ViaWest's privacy statement available at <http://www.viawest.com/privacy-statement.html>. No failure by either party to insist upon strict performance of any provision of this Agreement shall be construed as a waiver of any of its rights hereunder. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties and the remainder shall remain in full force and effect. All terms and provisions of this Agreement that should by their nature survive the termination of this Agreement shall so survive, including, without limitation, Sections 3, 4, 6, 8, 9, 10, 12, 13, and 16. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures to this Agreement may be transmitted facsimile signature or in portable document format via electronic mail.

Agreed to and accepted by:

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation


Qing X. Liu, P.E., P.T.O.E., Interim City Manager

9/24/14
Date

ATTEST:


Barbara A. Andolina, City Clerk

Approved as to form:


Sandra Douglass Morgan, City Attorney

City of North Las Vegas
2250 Las Vegas Blvd. North, Suite 700
North Las Vegas, Nevada 89030

VIAWEST, INC.


Signature of Authorized Representative

Date

 VP SALES OPERATIONS
Name and Title of Authorized Representative

6400 S. Fiddler's Green Circle
Suite 2000
Greenwood Village, CO 80111



VIAWEST ORDER INFORMATION

Sales Rep: Corey Huish
Contract Term: 63 Months
Installation Location: Las Vegas - Lone Mountain

Type of Service: Colocation Services
Order Number: 57252

CUSTOMER INFORMATION

Company Name: City of North Las Vegas
Billing Address: 2250 Las Vegas Boulevard North
City: North Las Vegas State: NV Zip: 89030

	Name	Phone/Cell Phone	E-mail
Contract Contact:	Christopher Craft	(702) 633-2442	CraftC@cityofnorthlasvegas.com
Technical Contact:	Adam Cohen	(702) 633-1854	cohenA@cityofnorthlasvegas.com
Billing Contact:	Accounts Payable	(702) 633-1460	accountspayable@cityofnorthlasvegas.com

PRODUCTS/SERVICES ORDER DETAILS

	Colocation and Power Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	500 Sq Ft Colocation Cage Includes: cage construction and space, cage door with physical key and combo lock box, and cabinet grounding. Customer may provide: cabinets, ladder racking, power strips, cable management as required.	1	\$18,540.00	\$10.00	\$18,540.00	\$5,000.00
New	PCI Compliant Cabinet Bundle - Camera & Bio Card Reader Includes: Controlled hardened facility, 24x7 physical security monitoring, 90 day video surveillance and retention, Colocation cabinet perimeter security (2 surveillance cameras and 2 card readers), electronic cabinet access device and user reports (standard weekly access reports sent to all designated administrators in Customer's MySupport account), independent audit reports, and security incident notification. Available in Cornell, Delong, Synergy Park, Arapahoe, Carson I and II, Lone Mountain, and Hillsboro data centers.	1	\$4,210.00	\$400.00	\$4,210.00	\$400.00
New	Colocation Cage - Secure Cage Ceiling Secure wire mesh cage ceiling.	1	\$2,330.00	\$0.00	\$2,330.00	\$0.00
New	Colocation Cage - Secure Raised Floor Tiles Secured floor tiles within customer cage environment.	1	\$2,580.00	\$0.00	\$2,580.00	\$0.00
New	34840 kWh Minimum Monthly Kilowatt Hour Charge Additional Per kWh Charge: \$0.32	1	\$0.00	\$0.20	\$0.00	\$6,968.00
New	208 Volt 30 Amp AC Primary Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	208 Volt 30 Amp AC Redundant Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	Custom Full Colocation Cabinet 28x48 colocation cabinet - CCVG2006337 **SKU CCV005708, 47RU, 87.63H x 28W x 42D, 19inch square mounting holes, Fully perforated front and back doors with integrated 3 point combination lock	12	\$1,075.00	\$0.00	\$12,900.00	\$0.00
	Subtotal:				\$45,504.00	\$12,368.00

	Network and Security Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	OC-X / Gigabit Ethernet Cross Connect (Fiber, CPA)	6	\$500.00	\$0.00	\$3,000.00	\$0.00
	Subtotal:				\$3,000.00	\$0.00

--	--	--

Customer Initials: _____

	Total Installation Charges	Total Monthly Charges
Total:	\$48,504.00	\$12,368.00

Notes:

Notwithstanding anything to the contrary in the Agreement or this Order Form, the Billing Start Date for all Services set forth on this Order Form shall be November 1, 2014.

Additional Notes:

Monthly recurring charges for all new Service set forth on this Order Form shall begin billing (the "Billing Start Date") on the earlier to occur of (a) the date the Service is first made available to Customer and (b) 45 days from the Effective Date of this Order Form.

All terms and conditions of the Master Service Agreement between ViaWest and Customer, including this Order Form (collectively, the "Agreement"), shall prevail over any terms and conditions set forth in payments or other forms, all of which are hereby rejected. ViaWest's provision of the services set forth above and Customer's use of such services are subject to the terms of the Agreement. The signatory below has full power and authority to act on behalf of the Customer and hereby confirms the Customer's agreement with the terms of this Order Form.

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation

Dr. Qiong X. Liu, P.E., P.T.O.E., Interim City Manager

ViaWest, Inc.

By:

Name:

Its:

ATTEST:

Barbara A. Andolina, City Clerk

Approved as to form:

Sandra Douglass Morgan, City Attorney

Customer Initials: _____

EXHIBIT C

2020 Change Order

Please see attached page(s).



Change Order Proposal Quote Q-77962

Presented To:

Jeremy Jami

7026331683

jamij@cityofnorthlasvegas.com

Prepared By:

Jeff Goodrich

(714) 366-7856

jeff.goodrich@flexential.com

Flexential

8809 Lenox Pointe Dr, Suite G
Charlotte, NC 28273

www.flexential.com



Cover Sheet

FLEXENTIAL

Address	8809 Lenox Pointe Drive, Suite G, Charlotte, NC 28273
Name	Jeff Goodrich
Phone	(714) 366-7856
Email	jeff.goodrich@flexential.com
Legal Notices	8809 Lenox Pointe Drive, Suite G, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

**Legal notices will be sent to the Primary Contact at the address/email address above.*

AGREEMENT INFORMATION

MSA Date	September 02, 2014
Service Term	12.0 months

This **Change Order** is made by and between Flexential Corp., formerly known as Peak 10, Inc., for itself and on behalf of its affiliated entities included within the definition of “**Flexential**” or “**Peak 10**” in the MSA, and City of North Las Vegas (“**Customer**”) and modifies the Services to be provided pursuant to that certain Master Services Agreement dated as of the MSA Date set forth above (as amended, the “**MSA**”). Upon signature by Customer and Flexential, this Change Order shall become legally binding. This Change Order constitutes a “Quote” and an “Order Form” as such terms may be used in the MSA. The “Service Term” identified above on this Cover Sheet represents the agreed number of months in the Service Term for the Services on this Change Order. In the event any term or condition of this Change Order shall conflict with or be inconsistent with any term of the MSA or any other amendment or exhibit to the MSA, the terms of this Change Order will control with respect to the Services on this Change Order. All other terms and conditions of the MSA and any other amendment or exhibit to the MSA shall remain in full force and effect. Capitalized terms used herein, not otherwise defined, shall have the meaning set forth in the MSA. Except as otherwise permitted in the MSA, this Change Order is non-cancelable. This Change Order is comprised of the documents set forth below as well as the terms and conditions found at <http://www.flexential.com/legal-information/> (to the extent Customer licenses software from Flexential or receives the services described thereon).

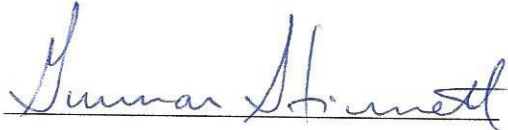
This **Change Order** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential Corp.

Signature:



Name:

GUNNAR STINETT

Title:

REGIONAL VP

Date:

11/30/2020

City of North Las Vegas

Signature:



Name:

Ryann Juden

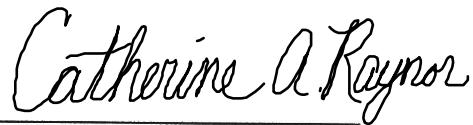
Title:

City Manager

Date:

12/01/2020 17:25:25 PST

Attest:


By: Catherine A. Raynor, City Clerk

Approved as to Form:


By: Micaela Rustia Moore, City Attorney



Document
Date: November 24, 2020

City of North Las Vegas

Account
Executive: Jeff Goodrich

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID:
Quote #: Q-77962

IP Bandwidth: Las Vegas - North	Change	Qty	Units		Setup Total	Monthly Total
Burstable IP Bandwidth with 95th Percentile Billing	Add	1000.0	Mbps			
Burstable multi-carrier IP Bandwidth including auto-DDoS mitigation. No burst limits when delivered on a port speed of 1Gb or less. On a 10Gb port, bursting is capped at 2 times the commit rate. Overage is billed at the 95th percentile on the higher of in or out traffic.						
IPv4 Allocation and VLAN: /24 or 256 IP Addresses	Add	1.0	EA			
Public IPv4 address allocation of 256 IP addresses, known as a /24 or a Class C, delivered via a dedicated VLAN. Flexential reserves 5 addresses of a primary allocation for core network interfaces. Customer will receive 251 usable addresses. If this is a secondary, routed block Customer will receive 254 usable addresses.						
Transport Service 1 Gbps Network Port and Cross Connect	Add	2.0	EA			
Cross connect and network access switch port used to deliver Flexential Internet access, Virtual Private Line (VPL), or Ethernet Private Line (EPL) services. The service includes one (1) 10/100/1000 Mbps switch port per subscription. Bandwidth, IP addresses require separate subscriptions. Multiple connections are needed if redundancy is required.						
IP Bandwidth: Las Vegas - North Total:					\$550.00	\$1,999.00

	Setup	Monthly
Totals:	\$ 550.00	\$ 1,999.00

Prices do not include applicable sales tax and are valid until 12/24/2020. The MSA includes automatic renewal and annual price escalation provisions unless otherwise agreed. Services are provided subject to the MSA, and the Service Definitions on the Customer Portal.

Per Unit prices are displayed as rounded to the nearest penny but may include up to four decimals. Total prices are calculated using actual Per Unit pricing and will govern in the event of any discrepancy with displayed Per Unit prices. This document is private and confidential.

EXHIBIT D

2021 Change order

Please see attached page(s).



Renewal Proposal Quote Q-94911

Presented To:

Jeremy Jami

7026331683

jamij@cityofnorthlasvegas.com

Prepared By:

Jeff Goodrich

(714) 366-7856

jeff.goodrich@flexential.com

Flexential

600 Forest Point Circle, Suite 100

Charlotte, NC 28273

www.flexential.com



Cover Sheet

FLEXENTIAL

Address	600 Forest Point Circle, Suite 100, Charlotte, NC 28273
Name	Jeff Goodrich
Phone	(714) 366-7856
Email	jeff.goodrich@flexential.com
Legal Notices	600 Forest Point Circle, Suite 100, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

MSA Date	September 02, 2014
Renewal Effective Date	January 01, 2022
Renewal Term	32.0 months

This **Master Services Agreement Extension** (this “**Extension**”) is entered into as of the Renewal Effective Date set forth above. Flexential Corp., formerly known as Peak 10, Inc., or one of its affiliated entities including, without limitation, Flexential Colorado Corp, formerly known as Viawest, Inc., and Customer entered into that certain Master Services Agreement dated as of the MSA Date above (as amended, the “MSA”). The parties desire to extend the Term of the MSA and make additional modifications to the MSA as set forth herein. The attached Exhibit A(s), if any, replaces any previous Exhibit A(s). This Extension is comprised of the documents set forth below as well as the terms and conditions found at <http://www.flexential.com/legal-information/> (to the extent Customer licenses software from Flexential).

This **Master Services Agreement Extension** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing
- iii. The attached Master Services Agreement Extension Terms and Conditions
- iv. The attached Exhibit C – Service Level Agreement

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential Corp.

City of North Las Vegas

Signature: 
265DB408C2DE406...
Name: Gunnar Stinnett

Signature: 
Name: John J. Lee

Title: Regional VP

Date: 11/11/2021

Title: Mayor

Date: 12/16/2021 08:21:20 PST

Attest:

By: 
Jackie Rodgers, City Clerk

Approved as to form:

By: 
Micaela Rustia Moore, City Attorney



Document Date: October 27, 2021

City of North Las Vegas

Account Executive: Jeff Goodrich

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001

Quote #: Q-94911

IP Bandwidth: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Burstable IP Bandwidth with 95th Percentile Billing	Add	1000.0	Mbps	\$0.00	\$1.0980	\$0.00	\$1,098.00
Burstable multi-carrier IP Bandwidth including auto-DDoS mitigation. No burst limits when delivered on a port speed of 1Gb or less. On a 10Gb port, bursting is capped at 2 times the commit rate. Overage is billed at the 95th percentile on the higher of in or out traffic.							
Transport Service 1 Gbps Network Port and Cross Connect	Add	2.0	EA	\$0.00	\$150.0000	\$0.00	\$300.00
Cross connect and network access switch port used to deliver Flexential Internet access, Virtual Private Line (VPL), or Ethernet Private Line (EPL) services. The service includes one (1) 10/100/1000 Mbps switch port per subscription. Bandwidth, IP addresses require separate subscriptions. Multiple connections are needed if redundancy is required.							
IPv4 Allocation and VLAN: /24 or 256 IP Addresses	Add	1.0	EA	\$0.00	\$650.0000	\$0.00	\$650.00
Public IPv4 address allocation of 256 IP addresses, known as a /24 or a Class C, delivered via a dedicated VLAN. Flexential reserves 5 addresses of a primary allocation for core network interfaces. Customer will receive 251 usable addresses. If this is a secondary, routed block Customer will receive 254 usable addresses.							
IP Bandwidth: Las Vegas - North Total:						\$0.00	\$2,048.00

Totals:	Setup	Monthly
	\$ 0.00	\$ 2,048.00



Master Services Agreement Extension Terms and Conditions

1. **Definitions.** Capitalized terms shall have the meaning set forth below.

- a. **“Colocation Services”** means Services related to the storage of Customer Equipment in the Equipment Space, including space and power as set forth on the applicable Quote.
- b. **“Cover Sheet”** means the cover sheet to which these Extension Terms and Conditions are attached, that identifies the parties and their notice addresses and includes signature blocks for Flexential and Customer to execute the Extension and the renewal Quote for Services.
- c. **“Cloud Services”** means Services related to an information technology system, operated, maintained, and housed by Flexential, which is comprised of software and hardware including data storage, physical computing equipment (hosts), and networking components used to provide Services to Customer.
- d. **“Customer Equipment”** means any equipment provided by Customer in connection with the MSA, whether or not owned by Customer.
- e. **“Customer Portal”** means the online portal designated by Flexential with respect to a particular Service through which Flexential customers may, among other things, create service tickets and review reports and other information related to the Service.
- f. **“Equipment Space”** means the designated area within the Facility that Customer may access and use.
- g. **“Facility”** means the Flexential data center(s) where the Customer Equipment is located, for Colocation Services, and where the Flexential Equipment containing Customer Data is located, for Cloud Services.
- h. **“Flexential”** means Flexential Corp. a Delaware corporation. Services may be provided by employees or independent contractors of Flexential, its affiliated entity Flexential Colorado Corp. or any of their respective subsidiaries, and Flexential Corp. shall be responsible to Customer for the performance of all Services in accordance with the MSA.
- i. **“Flexential Equipment”** means any equipment provided and operated by Flexential to provide the Services. Such equipment may be located inside or outside the Equipment Space.
- j. **“Flexential Network”** means that portion of the network Services beginning at the ingress port of Flexential Equipment used to provide network Services, and ending at the egress port of Flexential Equipment used to provide network Services.
- k. **“Managed Services”** means those additional information technology and network/data transport Services set forth in a Quote.
- l. **“MSA”** means the agreement identified as the “MSA” on the Cover Sheet to which these Extension Terms and Conditions are attached.
- m. **“Quote”** means an order, quote, change order, proposal, exhibit, statement of work or other document, executed by both parties, that identifies Services to be provided by Flexential to Customer pursuant to the MSA. All Quotes executed by Customer and Flexential pursuant to the MSA are incorporated by reference into, and shall collectively constitute, Exhibit A to the MSA.

2. **Extension Term and Renewal.** Notwithstanding anything to the contrary in the MSA, the Term of the MSA and the Service Term for all Services is hereby extended for a Renewal Service Term equal to the period of time identified on the Cover Sheet as the “Extension Term”, effective as of the “Extension Effective Date” identified on the Cover Sheet. Upon the scheduled expiration of any Renewal Service Term for any Service, the Service Term shall automatically renew for successive one (1) year periods on the same terms and conditions (each, a **“Renewal Service Term”**) unless either party informs the other party in writing of its intent not to renew the Service at least ninety (90) days prior to the scheduled expiration of the then-current Term; provided that, with respect to Services provided in Facilities that are leased and not owned by Flexential, no Service Term shall extend beyond the term of the

underlying lease in the applicable Facility (unless the parties agree to relocate the Service to another Flexential-operated Facility); provided, further, that notice of non-renewal from Customer to Flexential pursuant to this Section 2 must be provided via email to: cancel@flexential.com. Renewal Service Terms may also be established at any time pursuant to a Quote executed by Flexential and Customer, in which case the duration and other terms and conditions of such Renewal Service Term shall be as set forth in such Quote and the MSA.

3. **Termination for Convenience.** Customer may terminate any Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives Flexential at least ninety (90) days prior written notice of such termination via email to: cancel@flexential.com, and pays Flexential an early termination fee in an amount equal to: (i) 100% of the remaining monthly recurring charges for each terminated Service or portion thereof for months one through 12 of the then-effective Service Term; plus (ii) 90% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 13 through 24 of the then-effective Service Term, if any; plus (iii) 80% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 25 through the end of the then-effective Service Term, if any; plus (iv) any installation or other fees identified on the Quote for the terminated Service or portion thereof as having been previously waived; plus (v) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer; plus (vi) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum. The parties agree that in the event Customer terminates the MSA or a particular Service or portion thereof for its convenience, actual damages would be difficult to determine and that these liquidated damages are a reasonable and fair estimate of the damages which may be caused by such early termination and are not a penalty. Customer shall not be liable for the early termination fee if Customer terminates the MSA pursuant to its terms for cause or pursuant to any provision of the MSA that permits termination by Customer "without liability". Customer shall be liable for the early termination fee if Flexential terminates the MSA pursuant to its terms for cause.
4. **Annual Escalator For Colocation Services.** The monthly recurring charges for all Colocation Services and Colocation-related Managed Services will increase 5% on each successive anniversary of the applicable Service Term Start Date, if any, that occurs during the applicable Service Term, and on the Service Term Start Date for any Renewal Service Term established pursuant to the auto-renewal provision in Section 2 of this Extension.
5. **Online Ordering.** Flexential may permit Customer to add or modify Services (including adjusting volume commitments) via the Customer Portal or other website. In such event, clicking on "I accept" or other indicia of consent will be considered a valid Quote for Services and the addition of such Services will be governed by the terms of the MSA. Additional terms and conditions related to the use of online ordering or to the price, quantity, description and Service Term of the ordered Service may be provided on the applicable website and/or in the Customer Portal.
6. **Service Level Agreements.**
 - a. **Credits.** In the event Flexential fails to meet the service level criteria outlined in Exhibit C – Service Level Agreement (the "SLA"), Customer will be entitled to receive the "Service Credits" (as defined below) set forth on Exhibit C. For purposes of the SLA, each "**Service Credit**" will equal 1/30th of the monthly recurring charges associated with the related Service to which the SLA applies. The total amount of credits for SLA failures affecting a Service during any month may not exceed the amount of one month's recurring charges for the affected Service. Credits must be requested by Customer in a support ticket/case within ten (10) business days of a service interruption and will be reflected as a credit on the next month's invoice, provided that Flexential reserves the right to apply any credits to undisputed past due invoices in its discretion. No credits will be issued, nor shall the Satisfaction Guarantee provided for in Section 6(b) of this Extension apply, to Customer if (i) Customer has an undisputed balance more than sixty (60) days past due or (ii) Customer is in breach or default under this MSA at the time of the event giving rise to credits. In the event that Customer is eligible to receive multiple credits under this Section 6 from the same event pursuant to different commitments, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event under the service level commitment corresponding to the root service failure.
 - b. **Satisfaction Guarantee.** In the event of noncompliance with an SLA that disrupts Customer's operations, if Flexential does not cure the issue causing noncompliance or provide documentation to Customer demonstrating that the Service was in compliance with the applicable SLA within 10 days after receiving written notice from Customer in a support ticket/case identifying the SLA noncompliance and stating that its operations are disrupted by the noncompliance (an "**SLA Disruption Notice**"), then Customer may terminate the affected Service without penalty upon written termination notice to Flexential delivered via email to: cancel@flexential.com within 15 days following the end of Flexential's 10-day cure period. In addition, if Customer provides an SLA Disruption Notice to Flexential four or more times over any consecutive 12-month period for the same root cause resulting in noncompliance of the same SLA (which notice is not countered by documentation demonstrating

that the Service was in compliance with the applicable SLA), then Customer may terminate the affected Service without penalty upon written notice to Flexential delivered via email to: cancel@flexential.com within 15 days following delivery of the fourth such SLA Disruption Notice. Any Service termination by Customer pursuant to this Section 6(b) will be effective upon the earlier of: (i) the effective date stated in Customer's termination notice delivered to Flexential, or (ii) the last day of the third calendar month after the calendar month in which the termination notice is delivered to Flexential by Customer.

- c. **Sole and Exclusive Remedy.** The remedies provided under Sections 6(a) and 6(b) of this Extension are Customer's sole and exclusive remedy for any equipment and/or software failures, service interruptions, service response issues, and/or service deficiencies of any kind and, each of Customer and Flexential hereby acknowledge and agree that, Customer shall not have any other claims, rights or remedies and Flexential shall have no other liabilities or obligations to Customer in connection therewith.

- 7. **Conflict.** In the event any term or condition of this Extension shall conflict with or be inconsistent with any term of the MSA or any other amendment or exhibit to the MSA, the terms of this Extension will control. All other terms and conditions of the MSA and any other amendment or exhibit to the MSA shall remain in full force and effect. Capitalized terms used herein, not otherwise defined, shall have the meaning as set forth in the MSA.

Exhibit C

Service Level Agreement

The Service Level Agreement ("SLA") does not cover Service unavailability caused either directly or indirectly by:

- 1) Acts or omissions of Customer or its employees, contractors, agents or end-users, including software or hardware configuration changes not made or approved by Flexential;
- 2) Regular scheduled or emergency system maintenance;
- 3) Failure, malfunction or limitation of throughput of any equipment, network, software, applications, systems, components or services not managed by Flexential, including but not limited to third party vendor support; or
- 4) Circumstances or causes beyond the control of Flexential, including third-party attacks (such as ping or denial of service attacks) on the Flexential Network.

Co-location Services

Service Level	Non-compliance	Applicable Service Credits
Power will be available to Customer computer infrastructure in the Flexential data center 100% of the time provided Customer subscribes to redundant power circuits. Customer is responsible for proper connectivity and cabling of circuits to support redundancy within the Customer Equipment Space. This SLA does not cover outages caused, either directly or indirectly, by overloaded power strips or circuits. The availability of power through only one power circuit where such power is supplied through a primary and redundant circuit does not entitle Customer to a credit under this SLA.	Any failure of both primary and redundant circuits	One Service Credit for each day in which there is non-compliance during any month

Data Center Network Services

Service Level	Non-compliance	Applicable Service Credits
Network availability. Network unavailability shall exist when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. For Customers subscribing to redundant network connections, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network connection < 100% for Customers subscribing to redundant network connections	One Service Credit for each day in which there is non-compliance during any month
Network cross-connect availability. Customer's network cross-connects begin at the initial piece of Flexential Equipment or third party carrier equipment, as applicable, to which the applicable circuit connects, and end at the demarcation point installed in Customer's cabinet and/or cage. Network cross-connect unavailability exists when due to a failure of Customer's network cross-connect(s), a particular Customer Port is unable to transmit data from the Flexential Network or third party carrier connection(s), as applicable. For Customers subscribing to redundant network cross-connects, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network cross-connect < 100% for Customers subscribing to redundant network cross-connects	One Service Credit for each day in which there is non-compliance during any month

Packet loss between any two points on the Flexential Network	>1%	One Service Credit for each day in which there is non-compliance during any month
Round-trip Latency between any two points in the U.S. on the Flexential Network	>90 ms	One Service Credit for each day in which there is non-compliance during any month

Cloud Services

Service Level	Non-compliance	Applicable Service Credits
Cloud Service availability. Availability for Cloud Service is access to compute, network and storage resources, provided Customer subscribes to and configures redundant resources. Unavailability of the Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure below the applicable commitment level, or, with respect to the network component of Cloud Services, when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. Failure of Customer to maintain compliance with Flexential sizing recommendations may render this SLA void. Downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.999% (26 seconds per month)	One Service Credit for each day in which there is non-compliance during any month
Flexential DRaaS/Recovery Cloud – Recovery time. Recovery time is defined as the duration of time from customer service request to instantiation (power-on ready) of the disaster recovery virtual machine instance, not including instance boot time and boot priority controlled by Customer. The instance must be in a valid virtual protection group and in a Protected state as reported by Flexential Portal. This SLA is not valid with respect to any particular disaster recovery event unless a successful failover test was completed within the preceding 12 months or, if a material change in the Customer's protected environment occurred at any point during the preceding 12 months, after the most recent such material change.	Standard DRaaS/Essentials* > 8 hours RTO 4-hour Package/Prime* > 4 hours RTO 2-hour Package/Premium* > 2 hours	One Service Credit for each day in which there is non-compliance during any month

* RTO 4-hour and RTO 2-hour Packages are additional Services that can be purchased as separate line items on a Quote, and "Essentials", "Prime" and "Premium" refer to Service names. If no RTO 4-hour or 2-hour Package has been purchased for Flexential DRaaS, the time commitment for "Standard DRaaS" shall apply.

Data Protection Services

Service Level	Non-compliance	Applicable Service Credits
Backup jobs will start within 4 hours of scheduled start time slot*	>3 failures in a month	One Service Credit for the fourth and each successive failure during any month
Restores initiated within 30 minutes of receiving the request	Any failure	One Service Credit for each day in which there is non-compliance during any month
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure	One Service Credit for each day in which there is non-compliance during any month

*Reporting on job start performance will be by Customer request. Flexential is not responsible for jobs failing to start due to previous job still running where Customer server/configuration is the cause of the job completion delay.

Incident Response Time

Service Level	Non-compliance	Applicable Service Credits
Flexential shall Respond to any request for incident resolution from an authorized Customer representative with respect to any Service within 1 hour of creation of the applicable ticket for a “high priority” incident, and within 2 hours of creation of the applicable ticket for any non-high priority incident. A “high priority” incident means that the Service is unavailable or has been materially impacted. “Respond” means that a ticket has been created/submitted and the incident has been assigned to the Flexential representatives responsible for resolving the incident.	Any failure to Respond within the required timeframe	One Service Credit for each failure

EXHIBIT E

2023 Change order

Please see attached page(s).



Change Order Proposal

Quote Q-141366

Presented To:

Jeremy Jami

7026331683

jami@cityofnorthlasvegas.com

Prepared By:

James Bruck

(801) 309-8329

james.bruck@flexential.com

Flexential
600 Forest Point Circle, Suite 100
Charlotte, NC 28273
www.flexential.com



Cover Sheet

FLEXENTIAL

Address	600 Forest Point Circle, Suite 100, Charlotte, NC 28273
Name	James Bruck
Phone	(801) 309-8329
Email	james.bruck@flexential.com
Legal Notices	600 Forest Point Circle, Suite 100, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

MSA Effective Date	September 02, 2014
Service Term	Coterminous

This **Change Order** is made by and between Flexential LLC, a Delaware limited liability company ("Flexential"), for itself and on behalf of its affiliated entities, and City of North Las Vegas ("**Customer**") and modifies the Services to be provided pursuant to that certain Master Services Agreement dated as of the MSA Date set forth above (as amended, the "**MSA**"). Upon signature by Customer and Flexential, this Change Order shall become legally binding. In the event any term or condition of this Change Order shall conflict with or be inconsistent with any term of the MSA or any other amendment or exhibit to the MSA, the terms of this Change Order will control. All other terms and conditions of the MSA and any other amendment or exhibit to the MSA shall remain in full force and effect. Flexential Corp. will be directly obligated to Customer to perform the Services on Exhibit A at Facilities, if any, that are identified on Exhibit A as "Flexential Corp." Capitalized terms used herein, not otherwise defined, shall have the meaning set forth in the MSA. Except as otherwise permitted in the MSA, this Change Order is non-cancelable. This Change Order is comprised of the documents set forth below as well as the terms and conditions found at <http://www.flexential.com/legal-information/> (to the extent Customer licenses software from Flexential or receives the services described thereon).

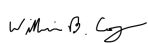
This **Change Order** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential LLC

Signature:

DocuSigned by:

17B5D4A491EA4C4...

Name:

Bill Cory

Title:

RVP Sales

Date:

1/4/2024

City of North Las Vegas:

By:



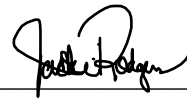
Print Name: Ryann Juden

Title: City Manager

Date: 01/23/2024 10:07:22 PST

Attest:

By:



Jackie Rodgers, City Clerk

Approved as to Form:

By:



Micaela Rustia Moore, City Attorney



Document
Date: November 09, 2023

City of North Las Vegas

Account
Executive: James Bruck

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001

Quote #: Q-141366

Colocation: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
30A 208V AC Power - Single Phase	Add	1.0	Each	\$1,733.58	\$0.0000	\$1,733.58	\$0.00
Primary and redundant power whip - maximum power utilization not to exceed 80% of the rated capacity of the circuit pair. Includes two rack mount PDUs and L6-30 twist lock receptacle. This product is used in conjunction with a usage-based power subscription.							
Colocation: Las Vegas - North Total:						\$1,733.58	\$0.00

Totals:	Setup	Monthly
	\$ 1,733.58	\$ 0.00

EXHIBIT F

2024 Change order

Please see attached page(s).

Change Order Proposal

Quote Q-148807

Presented To:

Jeremy Jami

7026331683

jamij@cityofnorthlasvegas.com

Prepared By:

John Loughin

1112223333

john.loughin@flexential.com

Flexential
600 Forest Point Circle, Suite 100
Charlotte, NC 28273
www.flexential.com



Cover Sheet

FLEXENTIAL

Address	600 Forest Point Circle, Suite 100, Charlotte, NC 28273
Name	John Loughin
Phone	1112223333
Email	john.loughin@flexential.com
Legal Notices	600 Forest Point Circle, Suite 100, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

MSA Effective Date	September 02, 2014
Service Term	24.0 months

This **Change Order** is made by and between Flexential LLC, a Delaware limited liability company ("Flexential"), for itself and on behalf of its affiliated entities, and City of North Las Vegas ("**Customer**") and modifies the Services to be provided pursuant to that certain Master Services Agreement dated as of the MSA Date set forth above (as amended, the "**MSA**"). Upon signature by Customer and Flexential, this Change Order shall become legally binding. This Change Order constitutes a "Quote" and an "Order Form" as such terms may be used in the MSA. The "Service Term" identified above on this Cover Sheet represents the agreed number of months in the Service Term for the Services on this Change Order. In the event any term or condition of this Change Order shall conflict with or be inconsistent with any term of the MSA or any other amendment or exhibit to the MSA, the terms of this Change Order will control with respect to the Services on this Change Order. All other terms and conditions of the MSA and any other amendment or exhibit to the MSA shall remain in full force and effect. Flexential Corp. will be directly obligated to Customer to perform the Services on Exhibit A at Facilities, if any, that are identified on Exhibit A as "Flexential Corp." Capitalized terms used herein, not otherwise defined, shall have the meaning set forth in the MSA. Except as otherwise permitted in the MSA, this Change Order is non-cancelable. This Change Order is comprised of the documents set forth below as well as the terms and conditions found at <http://www.flexential.com/legal-information/> (to the extent Customer licenses software from Flexential or receives the services described thereon).

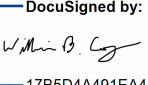
This **Change Order** is comprised of the following documents:


- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:


Flexential LLC

City of North Las Vegas

Signature: 
DocuSigned by:
17B5D4A491EA4C4...
Name: Bill Cory
Title: RVP Sales
Date: 5/2/2024

Signature: 
Name: Micaela Rustia Moore,
Title: City Manager
Date: 05/02/2024 12:14:18 PDT

Attest:
By: 
Jackie Rodgers, City Clerk

Approved as to form:
By: 
Andy Moore, Acting City Attorney



Document Date: March 28, 2024

City of North Las Vegas

Account Executive: James Bruck

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001
Quote #: Q-148807

Cloud Fabric: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Port 1G	Add	1.0	EA	\$480.00	\$240.0000	\$480.00	\$240.00
1G SMF Cloud Fabric Port including cross connect used to gain access to the Cloud Fabric platform. The service includes one (1) 1G single mode fiber switch port per subscription. Multiple connections are needed if redundancy is required.							
Cloud Fabric: Las Vegas - North Total:						\$480.00	\$240.00

Cloud Fabric: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Port 1G	Add	1.0	EA	\$480.00	\$240.0000	\$480.00	\$240.00
1G SMF Cloud Fabric Port including cross connect used to gain access to the Cloud Fabric platform. The service includes one (1) 1G single mode fiber switch port per subscription. Multiple connections are needed if redundancy is required.							
Cloud Fabric: Las Vegas - North Total:						\$480.00	\$240.00

Professional Services: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Design & Deploy - Single site to single site	Add	1.0	Each	\$3,900.00	\$0.0000	\$3,900.00	\$0.00
Consultation for cloud fabric between 1 Flexential and 1 public cloud environment. Includes a cloud fabric design and technical configuration of customer's Flexential edge network equipment and public cloud infrastructure.							
Professional Services: Las Vegas - North Total:						\$3,900.00	\$0.00

	Setup	Monthly
Totals:	\$ 4,860.00	\$ 480.00

Professional Services Agreement

The customer ("**Customer**") agreeing to this Professional Services Agreement (the "**PSA**") is purchasing "Professional Services" (as defined below) to be performed by Applied Trust Engineering, Inc., a Colorado corporation doing business as Flexential Professional Services ("**FPS**"). FPS is a subsidiary of Flexential Colorado LLC., a Colorado limited liability company (together with Flexential Corp., a Delaware corporation and each of their respective subsidiaries, including FPS, "**Flexential**"). "**Quote**" means a statement of work, order, quote, change order, proposal, exhibit or other document, executed by Customer and Flexential, that identifies services to be provided by Flexential to Customer. For the sake of clarity, the "Quote" may include multiple documents, including one or more documents titled "Quote" listing Professional Services line items (and which may also list non-Professional Services line items) as well as separate Statement of Work document(s) defining the Professional Services.

1. Payment Terms for Professional Services

- a. **Billing Start Date.** Unless otherwise set forth on the Quote with respect to Professional Services on the Quote: (i) the "**Billing Start Date**" for any Professional Service invoiced as a monthly recurring charge ("**Recurring Professional Service**") will be the date such Services are Installed; and (ii) the "**Billing Start Date**" for any Professional Services that are not invoiced as monthly recurring charges ("**Project-Based Professional Services**") will be the execution date of the Quote. "**Installed**" means the date a Service is first made available to Customer; provided, that if Customer is not able to use the Recurring Professional Service beginning on the date the Service is first made available to Customer solely as a result of delays caused by Flexential, then the Billing Start Date shall be extended for each day of delay caused by Flexential.
- b. **Invoicing.** All recurring charges for Professional Services, including committed monthly amounts of hourly Professional Services, will be invoiced by Flexential in advance on a monthly basis beginning on the applicable Billing Start Date. Invoicing for partial months will be prorated based on a calendar month (and may be billed in arrears). Charges for Professional Services that are dependent upon the level of actual usage or billable hours during a month, including overages above a committed monthly amount of hourly Professional Services, will be billed a month in arrears at the standard rate(s) set forth in the applicable Quote. Unless otherwise set forth on the applicable Quote, non-recurring fixed or one-time project charges, which may be identified as "setup" charges on the Quote, will be invoiced 50% upon execution of the Quote, and 50% upon project completion or delivery of the written or "as built" work product.
- c. **Payment Terms.** All undisputed invoices are due within thirty (30) days of the date the invoice is sent to Customer by email, and any overdue balances are subject to a 1.5% per month finance charge.
- d. **Expense Reimbursement.** Customer will reimburse FPS for reasonable, actual costs of out-of-state transportation (economy airfare only for domestic travel) and lodging incurred as a direct result of providing the Professional Services. Customer will also reimburse FPS for actual costs for non-travel related expenses that are incurred by FPS in order to perform the Professional Services and that are identified and approved in writing by Customer in advance. Upon request, FPS will provide additional supporting documentation to substantiate invoiced expenses.

2. Term and Termination

- a. **Term of PSA:** The term of the PSA will commence on the first date the PSA has been executed by both Customer and Flexential (the "**Effective Date**"), and will continue until the later of the 12-month anniversary of the Effective Date or the termination of all Service Terms, unless earlier terminated by a party pursuant to the terms hereof.
- b. **Service Term for Recurring Professional Services.** The "**Service Term Start Date**" for a Recurring Professional Service means the first day of the calendar month following the applicable "Billing Start Date", unless the Billing Start Date is the first day of a calendar month, in which case the Service Term Start Date is the same as the Billing Start Date. The "**Service Term**" for a Recurring Professional Service begins on the Billing Start Date for that Service and continues thereafter until the number of months set forth on the Quote for the initial Service Term has elapsed since the Service Term Start Date (the "**Initial Service Term**"), and includes any Renewal Service Terms, as defined below. Upon the scheduled expiration of the Initial Service Term or any Renewal Service Term for any Recurring Professional Service, the Service Term shall automatically renew for successive one (1) year periods on the same terms and conditions (each, a "**Renewal Service Term**") unless either party informs the other party in writing of its intent not to renew such Service at least sixty (60) days prior to the scheduled expiration of the then-current Service Term; provided that notice of non-renewal from Customer to Flexential is made via email to: cancel@flexential.com.
- i. **Termination for Breach.** Either party may terminate the Professional Services and the PSA without liability if the other party materially breaches any representation, warranty or obligation in the PSA and the breaching party fails to cure the breach within thirty (30) days of receipt of written notice from the non-breaching party describing the breach and citing the specific provision(s) that have been breached. There is no cure period for any material breach which is not reasonably capable of cure and the non-breaching party may immediately terminate the Professional Services and the PSA upon written notice in

accordance with this paragraph in the event of such a breach by the other party. Either party shall have the right to immediately terminate the PSA without liability if the other party is the subject of an involuntary bankruptcy filing that is not withdrawn or dismissed within sixty (60) days of filing or any voluntary bankruptcy filing, becomes insolvent, or is liquidated. For clarification purposes, "insolvent" means a party's admission in writing of its inability to pay its debts as they become due.

- ii. Termination of Recurring Professional Service for Convenience. Customer may terminate any Recurring Professional Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives FPS at least ninety (90) days prior written notice of such termination via email to: cancel@flexential.com, and pays FPS an early termination fee in an amount equal to: (A) 50% of the remaining monthly recurring charges for each terminated Recurring Professional Service or portion thereof through the end of the then-effective Service Term, plus (B) any monthly recurring charges for each terminated Recurring Professional Service identified on the Quote as having been previously waived or credited to Customer, plus (C) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer, plus (D) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum, together with any unpaid expenses due pursuant to Section 1(d) above. The parties agree that in the event Customer terminates a particular Recurring Professional Service or portion thereof for its convenience, actual damages would be difficult to determine and that these liquidated damages are a reasonable and fair estimate of the damages which may be caused by such early termination and are not a penalty. Customer shall not be liable for the early termination fee if Customer terminates this PSA pursuant to any provision that permits termination by Customer "without penalty" or "without liability".
- e. Termination of Project-Based Professional Services. Customer may terminate Project-Based Professional Services at any time without penalty by providing written termination notice to FPS, in which case: (i) FPS will perform no further work for Customer with respect to such Project-Based Professional Services, (ii) all previously paid amounts with respect to such Project-Based Professional Services will not be refundable, (iii) all previously invoiced amounts with respect to such Project-Based Professional Services will remain due and payable in accordance with this PSA, (iv) all outstanding balances for work already completed with respect to such Project-Based Professional Services will be invoiced by Flexential together with any unpaid expenses due pursuant to Section 1(d) above, and will be due and payable in accordance with this PSA, (v) any agreement by Flexential to waive any portion of, or credit to Customer any amount of the Project-Based Professional Services, shall be null and void when calculating amounts due upon termination pursuant to this Section 2(c), and (vi) Customer shall pay Flexential an amount equal to the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer. Customer may also request rescheduling of Project-Based Professional Services, and FPS will use reasonable commercial efforts to accommodate such rescheduling request, provided that Customer will reimburse Flexential for any change fees or associated costs incurred in rescheduling any travel and lodging expenses to be reimbursed by Customer hereunder. If FPS becomes concerned that Customer has abandoned any Project-Based Professional Services, Flexential will send notice to Customer by email that the Project-Based Professional Services will be deemed terminated by Customer pursuant to this paragraph unless Customer responds to such email within ten business days of the third such notice sent by Flexential to Customer, and the Customer will be deemed to have terminated the Project-Based Professional Services in the event that Customer fails to respond to Flexential within ten business days of the third such notice sent by Flexential.

3. **Flexential Personnel; Non-Solicitation**

- a. Flexential Employees. Certain Professional Services may involve the assignment of a specific point of contact or technical resources. FPS may terminate, reassign or replace any FPS employees in its sole discretion without prior notification to Customer, and such reassignment may be permanent or temporary.
 - b. Nonsolicitation. The parties agree that while FPS is providing Professional Services to Customer and for a period of six (6) months thereafter, Customer shall not solicit, negotiate with or offer employment to (whether as an employee, consultant, contractor, or otherwise), directly or indirectly, FPS employees involved in providing the Professional Services to Customer; provided, however, that this provision will not apply to general advertising solicitations or similar efforts not targeted toward current or former FPS employees. In the event Customer violates the immediately preceding sentence, the parties agree damages would be difficult to ascertain and Customer will pay to FPS an amount equal to the employee's annual salary. This paragraph will survive termination of this PSA.
4. **Venue.** The PSA will be governed and construed in accordance with the laws of the state of Colorado without regard to any conflict of law provisions; (b) should a dispute arise under or in relation to the PSA, jurisdiction over and venue of any such suit shall be exclusively in the state and federal courts of Denver, Colorado, and the parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts; and (c) EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS PSA, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.
5. **Limited Warranty.** FPS will perform the Professional Services in a good, workmanlike and professional manner in accordance with accepted industry standards and practices and all material requirements set forth in the applicable Quote(s). Customer shall notify FPS in writing of any breach within thirty (30) days after performance of the non-conforming Professional Services. Upon

receipt of such notice, FPS, at its option, shall either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or shall terminate the affected Professional Services and refund to Customer any amounts paid for the nonconforming Professional Services. THIS SECTION SETS FORTH CUSTOMER'S EXCLUSIVE RIGHTS AND REMEDIES (AND FLEXENTIAL'S SOLE LIABILITY) IN CONNECTION WITH THIS WARRANTY, AND ALL OTHER WARRANTIES OTHER THAN THE LIMITED WARRANTY SET FORTH HEREIN ARE DISCLAIMED TO THE EXTENT PROVIDED IN THE PSA. FPS DOES NOT GUARANTEE, AND HEREBY DISCLAIMS, ANY PARTICULAR RESULTS FROM THE PROFESSIONAL SERVICES. CUSTOMER SHALL BE RESPONSIBLE FOR MAKING ANY FINAL DECISIONS REGARDING THE SUITABILITY OR THE IMPLEMENTATION OF ANY RECOMMENDATIONS OR POTENTIAL SOLUTIONS PROVIDED BY FPS AS PART OF THE PROFESSIONAL SERVICES, INCLUDING WHETHER OR NOT TO ACT ON THE RECOMMENDATIONS OR ANY PART THEREOF, AND SHALL TAKE RESPONSIBILITY FOR THE RESULTING OUTCOMES

6. Indemnity

- a. **Flexential Indemnification Obligations.** Flexential shall indemnify and defend Customer, Customer's affiliated entities and its employees, officers, contractors and agents (collectively, "*Customer Indemnified Parties*") from and against any claim, brought against Customer Indemnified Parties by a third party, and all liability, judgment, or cost, including reasonable attorney fees arising out of such claim, to the extent such claims arises from or relates to the following: (i) tangible personal property damage to Customer's Equipment resulting from Flexential's negligence or willful misconduct, up to the full replacement cost of the damaged equipment, (ii) actual personal injury damage resulting from Flexential's negligence or willful misconduct, provided, however that indemnification relating to personal injury shall not apply to any claims made by employees of Customer or any Customer Indemnified Party that are covered under applicable workers' compensation law, or (iii) infringement by the Services of a third party intellectual property rights recognized in the United States of America.
- b. **Customer Indemnification Obligations.** Customer shall indemnify and defend Flexential, Flexential's affiliated entities and its employees, officers, contractors and agents (collectively, "*Flexential Indemnified Parties*") from and against any claims brought against Flexential Indemnified Parties by a third party and all liability, judgment, or cost, including reasonable attorney's fees arising from such claim, where the claim arises from or relates to the following (i) any breach of this PSA; (ii) any use of the Service, or (iii) any negligence or willful misconduct, by Customer, any Customer Indemnified Party or any of its or their invitees, assignees or customers.

7. Insurance

- a. **Customer Obligations.** Customer shall procure and maintain, at Customer's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; and (ii) "All Risk" Property insurance covering all of Customer's Equipment colocated in any Facility in an amount not less than its full replacement cost, as well as business interruption coverage.
- b. **Flexential Obligations.** Flexential shall procure and maintain, at Flexential's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) "All Risk" Property Insurance in an amount equal to the full replacement cost of any Flexential Equipment used to provide the Services and (v) Professional Liability (Errors and Omissions) Insurance Policy, including Cyber Breach Liability, in an amount not less than \$1,000,000. All Flexential insurance policies, with the exception of Workers Compensation and Employer's Liability, shall be secondary and in excess of Customer's insurance required to be maintained hereunder and non-contributory with Customer's policies.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS PSA, THE PARTIES AGREE THAT FLEXENTIAL'S ENTIRE CUMULATIVE LIABILITY ARISING OUT OF THE PROFESSIONAL SERVICES (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFICATION OBLIGATION) WILL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES IN THE 12 MONTH PERIOD PRECEDING THE EVENT WHICH CAUSED THE DAMAGES, LOST PROFITS, OR INJURY. IN NO EVENT SHALL FLEXENTIAL BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THE PROFESSIONAL SERVICES OR THIS PSA OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF FLEXENTIAL HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. ANY CLAIM ARISING OUT OF OR RELATED TO THE PROFESSIONAL SERVICES MUST BE BROUGHT NO LATER THAN ONE YEAR AFTER THE SAME HAS ACCRUED.

9. Confidentiality In connection with the PSA, either party (the "Recipient") may obtain confidential and proprietary information ("Confidential Information") from the other (the "Discloser"). Confidential Information includes information designated in writing as

confidential, and any information a reasonable person would understand to be confidential or proprietary, including pricing information, data center designs and Flexential audit and security reports. Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information disclosed to Recipient by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any Services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The obligations of confidentiality of each party under this Section shall survive for two years from the termination of the PSA or, if longer with respect to any particular item of Confidential Information, for so long as such item of Confidential Information meets the definition of a "trade secret" under applicable law. Flexential may share the PSA as well as information relating to the Services received by Customer and the fees paid by Customer (but not any Customer Data) to Flexential alliance partner(s) who are associated with Customer's account for the purposes of allowing the partner(s) to verify commissions payable by Flexential, so long as such partner(s) are bound to a confidentiality provision substantially similar to this Section. Unless set forth herein, the term of this PSA and all Quotes are Confidential Information. Except as otherwise provided in this Section 9, at all times during the term of this PSA and for two years thereafter, Recipient shall not disclose Discloser's Confidential Information to a third party without the Discloser's prior written consent or use the Confidential Information for purposes other than the performance of this PSA. Where disclosure is required by law, such disclosure shall not constitute a breach of this PSA provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information. Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) was provided to Recipient by a third party not subject to an obligation of confidentiality to Disclosing Party with respect to the Disclosing Party's Confidential Information. Recipient may disclose the Disclosing Party's Confidential Information as required by a legal, judicial or governmental entity, or as otherwise required by law or regulation (including disclosures required in filings with the Securities and Exchange Commission or other governmental body and via subpoena, search warrant or other similar demand for production of information or materials).

10. **Assignment or Transfer.** Both parties may assign their respective rights and obligations under the PSA (a) to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, or (b) by operation of law. Flexential may assign the PSA to an affiliate or division so long as Flexential exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate, Flexential may continue to collect and receive all or any portion of the amounts payable hereunder by the Customer as agent for and on behalf of such affiliate-transferee/assignee and notify the Customer thereof in writing this PSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Customer may permit its affiliated entities to use the Services, provided Customer shall be directly responsible and liable to Flexential for any breach of this PSA by affiliated entities. Customer shall not resell any of the Services provided by Flexential to an unaffiliated third party without first obtaining the written consent of Flexential. Unless otherwise set forth herein, neither party may assign the PSA in whole or in part without the prior written consent of the other party, which consent will not be unreasonably withheld.
11. **Customer Data Ownership.** As between Flexential and Customer, Customer Data is and will remain the exclusive property of Customer.
12. **Data Privacy Compliance.** Customer Responsibility. Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of Customer Data or information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information, including Regulated Customer Data. If any international, state or federal law requires any specific agreement about such information, it is Customer's responsibility to notify Flexential and, in such event, the parties will work together in good faith to modify the PSA as may be required by entering into an ancillary document, which may include a Business Associate Agreement or a Data Protection Addendum.
 - a. PCI DSS. Flexential acknowledges it will maintain all applicable published PCI DSS requirements to the extent Flexential handles, has access to, or otherwise stores, processes, or transmits cardholder data or sensitive authentication data, or manages Customer's cardholder data environment on behalf of Customer.
 - b. Risk Assessment. Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer's purposes and Customer's compliance with applicable law; and (iii) Flexential is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.

- c. CCPA. If and to the extent the California Consumer Privacy Act of 2018, (as amended "**CCPA**"), applies to the provision and use of the Services, Flexential hereby agrees as follows: (i) Flexential is a Service Provider, and Flexential shall not: (x) Sell Personal Information or (y) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Services including retaining, using, or disclosing Personal Information for a Commercial Purpose; and (ii) Flexential shall promptly take such actions and provide such information as Customer may reasonably request to help Customer fulfill requests of individuals to exercise their rights under the CCPA, including, without limitation, requests to access, delete, opt out of the sale of, or receive information about Personal Information. Flexential shall inform Customer of Flexential's receipt of any requests under clause (ii) of the preceding sentence, and Flexential may direct individuals making such to Customer. Customer and Flexential acknowledge and agree that Flexential's access to Personal Information is not part of the consideration exchanged by the parties in respect of the PSA. For the purposes of this Section 28(d), the terms "Commercial Purpose," "Sell," and "Service Provider," shall have the meanings given in the CCPA, and the term "Personal Information" means any information that Flexential has at any time, whether before or after the date hereof, collected, accessed, received, used, disclosed, or otherwise processed on behalf of Customer in relation to Flexential's provision of Services to Customer under the PSA and that constitutes "personal information" under the CCPA.

13. Entire Agreement

This PSA, if any, and any non-disclosure or confidentiality agreement in force between the parties, constitutes the entire agreement between Flexential and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous understandings, letters, agreements or representations, whether oral or written. No modification or waiver of any provision of this PSA shall be binding unless executed in writing by both Flexential and Customer.

EXHIBIT G

2024 – 2nd Renewal

Please see attached page(s).

Mayor
Pamela A. Goynes-Brown

Council Members
Issac E. Barron
Ruth Garcia Anderson
Scott Black
Richard J. Cherchio

City Manager
Micaela Rustia Moore



Your Community of Choice

City Manager's Office

2250 Las Vegas Boulevard, North · Suite #900 · North Las Vegas, Nevada 89030
Telephone: (702) 633-1005 · Fax: (702) 633-1339 · TDD: (800) 326-6868
www.cityofnorthlasvegas.com

April 10, 2024

Flexential Colorado LLC.
Attn: Jeff Goodrich
3330 E. Lone Mountain Rd
North Las Vegas, NV 89081

Re: Renewal of Master Service Agreement

Dear Mr. Goodrich,

This letter serves to memorialize the mutual consent of Flexential Colorado LLC. ("Flexential Colorado LLC") and the City of North Las Vegas ("City") to exercise their second option to renew the above referenced agreement.


On September 2, 2014, The City of North Las Vegas (the "City") and Viawest ("Viawest") entered into a Master Services Agreement (the "Agreement"), attached hereto as **Exhibit A**. Flexential joined forces with Viawest in August of 2017 and rebranded as Flexential in January of 2018.

The initial term of the Agreement was for five years with options to renew for 14 years (first option is for five years; second option is for five years; and third option is for four years). On September 2, 2019, the City and Provider exercised its first five-year option to renew the Agreement ("First Renewal), attached hereto as **Exhibit B**.

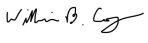
Pursuant to the terms of the Agreement, the City has the authority to renew the Agreement for two (2), five-year terms and one (1) four-year term. Please accept this correspondence as notice that the City hereby exercises its second five-year option to renew the Agreement. This renewal option will authorize the performance of the contract from September 2, 2024 through September 1, 2029.

Please contact Maria Consengco, Buyer by phone at 702-633-1463, or by email at consengcom@cityofnorthlasvegas.com if you have any questions or concerns.


City of North Las Vegas,
a Nevada municipal corporation

By: 
Micaela Rustia Moore, City Manager

Flexential Colorado LLC,
a Colorado limited liability company

DocuSigned by:

By: 17B5B4A81EAC4...
Title: RVP Sales

Attest:

By: 
Jackie Rodgers, City Clerk

Approved as to Form:


By: 
Andy Moore, Acting City Attorney

EXHIBIT A

ORIGINAL AGREEMENT

Please see attached pages.

VIAWEST ORDER INFORMATION

Sales Rep:	Corey Huish	Type of Service:	Colocation Services
Contract Term:	63 Months	Order Number:	57252
Installation Location:	Las Vegas - Lone Mountain		

CUSTOMER INFORMATION

Company Name:	City of North Las Vegas		
Billing Address:	2250 Las Vegas Boulevard North		
City:	North Las Vegas	State:	NV
		Zip:	89030

	Name	Phone/Cell Phone	E-mail
Contract Contact:	Christopher Craft	(702) 633-2442	CraftC@cityofnorthlasvegas.com
Technical Contact:	Adam Cohen	(702) 633-1854	cohenA@cityofnorthlasvegas.com
Billing Contact:	Accounts Payable	(702) 633-1460	accountspayable@cityofnorthlasvegas.com

PRODUCTS/SERVICES ORDER DETAILS

	Colocation and Power Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	500 Sq Ft Colocation Cage Includes: cage construction and space, cage door with physical key and combo lock box, and cabinet grounding. Customer may provide: cabinets, ladder racking, power strips, cable management as required.	1	\$18,540.00	\$10.00	\$18,540.00	\$5,000.00
New	PCI Compliant Cabinet Bundle - Camera & Bio Card Reader Includes: Controlled hardened facility, 24x7 physical security monitoring, 90 day video surveillance and retention, Colocation cabinet perimeter security (2 surveillance cameras and 2 card readers), electronic cabinet access device and user reports (standard weekly access reports sent to all designated administrators in Customer's MySupport account), independent audit reports, and security incident notification. Available in Cornell, Delong, Synergy Park, Arapahoe, Carson I and II, Lone Mountain, and Hillsboro data centers.	1	\$4,210.00	\$400.00	\$4,210.00	\$400.00
New	Colocation Cage - Secure Cage Ceiling Secure wire mesh cage ceiling.	1	\$2,330.00	\$0.00	\$2,330.00	\$0.00
New	Colocation Cage - Secure Raised Floor Tiles Secured floor tiles within customer cage environment.	1	\$2,580.00	\$0.00	\$2,580.00	\$0.00
New	34840 kWh Minimum Monthly Kilowatt Hour Charge Additional Per kWh Charge: \$0.32	1	\$0.00	\$0.20	\$0.00	\$6,968.00
New	208 Volt 30 Amp AC Primary Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	208 Volt 30 Amp AC Redundant Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	Custom Full Colocation Cabinet 28x48 colocation cabinet - CCVG2006337 **SKU CCV005708, 47RU, 87.63H x 28W x 42D, 19inch square mounting holes, Fully perforated front and back doors with integrated 3 point combination lock	12	\$1,075.00	\$0.00	\$12,900.00	\$0.00
	Subtotal:				\$45,504.00	\$12,368.00

	Network and Security Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	OC-X / Gigabit Ethernet Cross Connect (Fiber, CPA)	6	\$500.00	\$0.00	\$3,000.00	\$0.00
	Subtotal:				\$3,000.00	\$0.00

--	--	--

Customer Initials: _____

	Total Installation Charges	Total Monthly Charges
Total:	\$48,504.00	\$12,368.00

Notes:

Notwithstanding anything to the contrary in the Agreement or this Order Form, the Billing Start Date for all Services set forth on this Order Form shall be November 1, 2014.

Additional Notes:

Monthly recurring charges for all new Service set forth on this Order Form shall begin billing (the "Billing Start Date") on the earlier to occur of (a) the date the Service is first made available to Customer and (b) 45 days from the Effective Date of this Order Form.

All terms and conditions of the Master Service Agreement between ViaWest and Customer, including this Order Form (collectively, the "Agreement"), shall prevail over any terms and conditions set forth in payments or other forms, all of which are hereby rejected. ViaWest's provision of the services set forth above and Customer's use of such services are subject to the terms of the Agreement. The signatory below has full power and authority to act on behalf of the Customer and hereby confirms the Customer's agreement with the terms of this Order Form.

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation

Dr. Qiong X. Liu, P.E., P.T.O.E., Interim City Manager

ViaWest, Inc.

By:

Name:

Its:

ATTEST:

Barbara A. Andolina, City Clerk

Approved as to form:

Sandra Douglass Morgan, City Attorney

Customer Initials: _____

EXHIBIT B

FIRST RENEWAL

Please see attached pages.

Mayor
John J. Lee

Council Members
Isaac E. Barron
Pamela A. Goynes-Brown
Scott Black
Richard Cherchio



City Manager
Ryann Juden

Finance Department

2250 Las Vegas Boulevard, North · Suite 708 · North Las Vegas, Nevada 89030
Telephone: (702) 633-1463 · Fax: (702) 649-5077 · TDD: (800) 326-6868
www.cityofnorthlasvegas.com

September 19, 2019

Flexential Colorado Corp.
Attn: Jeff Goodrich
3330 E. Lone Mountain Rd
North Las Vegas, NV 89081

Re: Renewal of Master Service Agreement


Sir,

On September 2, 2014, The City of North Las Vegas (the "City") and Viawest ("Viawest") entered into a Master Services Agreement (the "Agreement") for off property data storage services. Flexential joined forces with Viawest in August of 2017 and rebranded as Flexential in January of 2018.

The initial term of the Agreement was for five years with options to renew for 14 years (first option is for five years; second option is for five years; and third option is for four years). As such, please accept this correspondence as notice that the City hereby exercises its option to renew the Agreement for the first five-year option ("Notice") so that the Agreement will now expire on September 1, 2024.

Please contact our Assistant Director, Administrative Services, Tony C. Danford, at 702-633-1463, or by email at danforda@cityofnorthlasvegas.com if you have any questions or concerns

ATTEST:


Catherine A. Raynor, MMC
City Clerk

Sincerely,


Ryann Juden
City Manager



Document Date: August 07, 2019

City of North Las Vegas

Account Executive: Jeff Goodrich

Exhibit A

Attention: City of North Las Vegas
2250 Las Vegas Blvd N
North Las Vegas, Nevada 89030

Billing ID: NEKIY001

Quote #: Q-48450

Colocation: Las Vegas - North	Change	Qty	Units		Setup Total	Monthly Total
Flexential Provided Cabinet within a Cage	Add	12.0	EA			
Steel frame cabinet with front and rear locking doors, adjustable mounting rails, and at least 40U of space within a cage. Power subscriptions are sold separately. Total power consumption not to exceed 12kW per cabinet without Flexential approval. Higher power density configurations may be available.						
Secure Cage Space optional roof installation	Add	500.0	EA			
Service provides for the installation of an optional cage roof priced per square foot. The square footage must equal the square footage of the cage space for which the roof will be installed.						
kW commit - all in power pricing	Add	50.0	kW			
kW power threshold available for customer usage. Overages above the kW commit subject to overage fees. All in kW power pricing with no additional metered power pass through.						
20A 120V AC Power - Single Phase	Add	1.0	Each			
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.						
30A 208V AC Power - Single Phase	Add	14.0	Each			
Primary and redundant power whip including L6-30 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.						
Cage Security - Badge+Bio+Camera	Add	1.0	EA			
This service provides use of a proximity badge reader with biometric scanner, standard access reporting, video surveillance camera facing the door, and associated management as an add-on to a Flexential data center cage space subscription.						
Secure Raised Floor Tiles	Add	1.0	SQ FT			
Secured floor tiles within customer cage space.						
Secure Cage Space - kW based pricing models	Add	500.0	SQFT			
Secure cage space within a Flexential data center. Power is not included with this service and requires a separate subscription. Cabinets / data racks are not included either and must be provided or subscribed to as a service.						
Colocation: Las Vegas - North Total:					\$0.00	\$11,755.00

Cross Connect Service: Las Vegas - North	Change	Qty	Units		Setup Total	Monthly Total
Carrier Cross Connect - Fiber	Add	6.0	EA			
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.						
Cross Connect Service: Las Vegas - North Total:					\$0.00	\$1,350.00

Setup	Monthly
--------------	----------------

The MSA includes automatic renewal and annual price escalation provisions unless otherwise agreed.

Services are provided subject to the MSA, and the Service Definitions on the Customer Portal.

Prices valid until September 06, 2019.
Prices do not include applicable sales tax.
This document is private and confidential.



Document
Date: August 07, 2019

Account
Executive: Jeff Goodrich

Attention: City of North Las Vegas
2250 Las Vegas Blvd N
North Las Vegas, Nevada 89030

City of North Las Vegas

Exhibit A

Billing ID: NEKIY001

Quote #: Q-48450

Totals:

\$ 0.00

\$ 13,105.00



Master Service Agreement

1. **General Definitions.** This master service agreement (this "Agreement") is between ViaWest, Inc. ("ViaWest") and the customer set forth below ("Customer"), and sets forth the terms and conditions pursuant to which ViaWest shall provide Services to Customer. "Services" means the services provided to Customer by ViaWest, as set forth on an "Order Form" executed by ViaWest and Customer. Any reference to an "Order Form" in this Agreement includes Services purchased by Customer pursuant to ViaWest's online ordering process. "Billing Start Date" means the date the Service is first made available to Customer, and shall be no later than 45 days after the Order Form Effective Date unless otherwise agreed to by ViaWest and Customer in writing. If Customer is not able to use the Service beginning on the Billing Start Date solely as a result of delays caused by ViaWest, then the Billing Start Date shall be extended for three days for each day of delay caused by ViaWest. "Service Term Start Date" means the first day of the calendar month following the Billing Start Date for the last Service installed on such Order Form. The "Service Term" begins on the Service Term Start Date and continues for the number of months set forth on the Order Form, and includes any renewal Service Terms. "Customer Equipment" means any Customer-owned or Customer-provided equipment placed by Customer in ViaWest's facility. "AUP" means ViaWest's Acceptable Use Policy, posted on ViaWest's web site at <http://www.viawest.com/acceptable-use.html>.

2. **Fees and Charges; Start Dates.** Customer agrees to pay the rates and charges for the Services set forth on an Order Form. All charges invoiced to Customer shall be deemed valid unless Customer disputes such charges in writing within 90 days after the invoice is sent by ViaWest to Customer. Undisputed payments for Invoiced amounts are due within 30 days of invoice date. Recurring charges shall be invoiced monthly, beginning on the Billing Start Date; installation and other non-recurring charges shall be invoiced when incurred. If ViaWest experiences an increase in the rates and charges for obtaining electrical power services from the underlying provider, Customer's rates and charges for electrical power services shall increase or decrease in a proportional amount, provided that ViaWest agrees that the power pricing shall not increase more than 3% per year. Monthly recurring charges for all Services (other than electrical power services) shall increase 2.5% per year on each anniversary of the Service Term Start Date, which such increase shall be applied on the first day of any renewal term (e.g., if a Service Term is 60 months, upon renewal the monthly recurring charges would increase 12.5%). Customer agrees to pay interest on all amounts not paid by the applicable due date at the rate of the lesser of 1% per month or portion thereof or the highest rate permitted by applicable law. Customer agrees to pay all taxes and fees assessed in connection with the Service, such as interconnection or other mandated taxes, except for taxes based on ViaWest's net income. Any taxes required to be paid by Customer will be specifically set forth in an invoice. In the event of termination or suspension of a Service for any reason, Customer must pay charges accrued through the date of termination or suspension.

3. **Term.** After the expiration of the Initial Service Term, Customer shall have three options to renew the Service Term, the first two for a 60-month term, and the third for the shorter of (a) 60 months and (b) the number of months remaining in the LM Lease (defined below). Customer must provide notice to ViaWest of its exercise of any renewal option at least 90 days prior to the expiration of the then-current Service Term. After the expiration of the third renewal Term, this Agreement shall terminate automatically unless each party agrees in writing to extend the Service Term.

Customer acknowledges that ViaWest's underlying lease for the Lone Mountain datacenter (the "LM Lease") expires on December 31, 2023, with ViaWest having the right to extend the LM Lease for two subsequent five-year terms (each, an "Extension Option"). In consideration of Customer's significant and unique investment in dark fiber for purposes of purchasing the Services, in the event that ViaWest decides, in its sole discretion, not to exercise an Extension Option, or in the event that ViaWest for any reason vacates the Lone Mountain datacenter, ViaWest shall provide Customer with at least 9 months prior written notice of such non-extension or move and Customer may terminate all Services on the effective date of the non-extension or move without penalty. In connection with such termination by Customer, or in the event of a Customer termination due to a ViaWest Event of Default (pursuant to which Customer may terminate all Services without penalty), ViaWest shall reimburse Customer for its reasonable costs and expenses incurred in relocating to another datacenter, with such reimbursement not to exceed the following: If such termination occurs during

Customer's Initial Service Term, \$400,000; If such termination occurs during Customer's first Renewal Service Term, \$200,000; If such termination occurs during Customer's second Renewal Service Term, \$100,000; and if such termination occurs during Customer's third Renewal Service Term, \$50,000.

4. **Termination.**

A. **For Cause.** Either party may terminate this Agreement or ViaWest may suspend provision of the Service upon an Event of Default of the other party. A "Customer Event of Default" means (a) failure by Customer to pay any amount within 30 days of the applicable due date; or (b) failure by Customer to comply with ViaWest's AUP or Datacenter Rules, in each case which failure is not cured within 10 days following written notice by ViaWest. A "ViaWest Event of Default" means a material breach of this Agreement by ViaWest (other than Service-related issues, which are addressed in Section 14), which breach is not cured within 10 days following written notice by Customer.

B. **For Convenience.** Customer may terminate any Service for its convenience prior to the end of the applicable Service Term, provided that Customer gives ViaWest at least 60 days prior written notice of such termination and pays ViaWest the following early termination fee (as liquidated damages, not a penalty): (a) 50% of the remaining monthly recurring charges for each terminated Service for months one through 12 of the then-effective Service Term; plus (b) 25% of the remaining monthly recurring charges for each terminated Service for months 13 through 24 of the then-effective Service Term; plus (c) 10% of the remaining monthly recurring charges for each terminated Service for months 25 through the end of the then-effective Service Term; plus (d) any previously waived fees, including, without limitation, installation fees; plus (e) any termination fees or liability associated with any third-party telecommunication services used by ViaWest in the provision of the Service; plus (f) all reasonable costs and expenses, incurred by ViaWest as a result of collecting such early termination fee or any other amounts due under this Agreement. Customer shall not be liable for the early termination fee if Customer terminates this Agreement pursuant to Section 14.A. or due to a ViaWest Event of Default. Customer shall be liable for the early termination fee for any termination of Service due to a Customer Event of Default.

5. **Representations, Warranties, and Obligations of Customer.** Customer represents and warrants that it has full power and authority to enter into this Agreement. Customer agrees to comply, and cause its customers and other third-party users (including contractors, subcontractors or sublicensees) to comply, with ViaWest's AUP and Datacenter Rules. Customer shall not use, and shall not permit its agents to use, the Service or any Customer Equipment for any illegal purpose. Customer represents and warrants that no broker, finder or other intermediary is entitled to any broker's, finder's or other similar fee or commission in connection with the initial or any renewal term of the Services for which ViaWest would be responsible for payment or otherwise liable.

6. **Customer Equipment.** Customer shall have access to all Customer Equipment during the Service Term 24 hours per day, 7 days per week, provided that Customer adheres to ViaWest's Datacenter Rules. ViaWest, in its sole discretion, may require that Customer and any of Customer's agents be escorted when they are in the ViaWest datacenter, and may suspend Customer's access as directed or required in an emergency situation. If any Customer Equipment remains in a ViaWest datacenter following termination of Customer's space-related Service, Customer shall be (i) responsible for all monthly recurring fees, and (ii) subject to all obligations of Customer contained in this Agreement. In each case until removal of the Customer Equipment. If Customer does not remove the Customer Equipment after termination of Customer's space-related Service within 14 days following notice from ViaWest, Customer agrees that ViaWest may ship the Customer Equipment to Customer's last address of record at Customer's sole cost and expense. ViaWest shall not be liable for any damage resulting from such shipment except to the extent caused by ViaWest's gross negligence or willful misconduct. If Customer is purchasing Managed or Cloud Services, Customer shall have no right to access ViaWest's datacenter or any equipment provided by ViaWest in connection with such Services.

7. **Representations, Warranties, and Obligations of ViaWest.** ViaWest represents and warrants that it has full power and authority to enter into this Agreement. In the event of a network-based attack (such as a DDoS attack) against Customer's Equipment or a malfunction of Customer's Equipment that threatens ViaWest's ability to provide services to other ViaWest customers,

ViaWest may, at its sole option and in its sole discretion, black hole, disconnect, shut off or deactivate any portion or all of Customer's Equipment or Service. If possible given the urgency of the situation, ViaWest shall attempt to contact Customer to determine mutually acceptable remediation measures prior to taking any such action. At Customer's request, ViaWest shall use commercially reasonable efforts to secure domain names and to assign Internet Protocol ("IP") address space for Customer during a Service Term and to route those IP addresses on ViaWest's network. Customer shall have no right to route such IP addresses. ViaWest shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the Agreement.

8. **Disclaimer of Warranties.** ViaWest exercises no control over and accepts no responsibility for the information or content accessible on the Internet or for the products or services of third parties that may be included in the Services. The Internet is not a secure network; confidential or sensitive information should not be transmitted over the Internet or stored on computers directly connected to the Internet. ViaWest disclaims any liability for loss or theft of information transmitted over the Internet or stored on computers directly connected to the Internet. THE SERVICE AND ANY RELATED SOFTWARE AND/OR EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NEITHER VIAWEST NOR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS WARRANT THAT THE SERVICE SHALL BE ERROR-FREE, UNINTERRUPTED, SECURE, OR PRODUCE PARTICULAR RESULTS OR THAT THE INFORMATION OBTAINED ON THE INTERNET SHALL BE RELIABLE OR UNOBJECTIONABLE. NO ADVICE OR INFORMATION GIVEN BY VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS SHALL CREATE A WARRANTY.

9. **Indemnification**

A. **Indemnification by ViaWest.** ViaWest shall indemnify, defend, and hold harmless Customer and its employees and affiliates from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising from or related to (a) tangible personal property damage to Customer's equipment located in the ViaWest datacenter resulting from ViaWest's negligence or willful misconduct, up to the full replacement cost of the damaged equipment and (b) actual personal injury damage resulting from ViaWest's negligence or willful misconduct, in each case up to the limits covered by ViaWest's applicable insurance policies, provided, however that indemnification relating to personal injury shall not apply to any claims made by Customer's employees that are covered under applicable workers' compensation laws. In addition, if any portion of the Service becomes, or in ViaWest's opinion is likely to become, the subject of a claim of infringement of any third party Intellectual property rights recognized in the United States of America, then ViaWest, at its option and expense, shall do one of the following: procure for Customer the right to continue using such portion of the Service, replace or modify such portion of the Service so that it becomes non-infringing, or terminate this Agreement and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of ViaWest set forth in the preceding sentence does not apply (a) with respect to portions or components of the Service that are not supplied directly by ViaWest, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by ViaWest to the extent the infringement relates to such combination; or (b) where Customer's use of the Service is not strictly in accordance with the terms of this Agreement and the applicable software license agreement provided by ViaWest to Customer or agreed to by Customer during installation, if any. Notwithstanding anything to the contrary set forth in this Agreement, Customer's sole and exclusive remedies against ViaWest for intellectual property infringement are as set forth in this Section 9.A.

B. **Indemnification by Customer.** Customer shall indemnify, defend, and hold harmless ViaWest and its employees, affiliates, contractors, and agents from and against any and all Losses arising from or related to (a) any breach of this Agreement, ViaWest's AUP or ViaWest's Data Center Rules; or (b) any use of the Service, or any negligent or willful act or omission by Customer or any of its invitees, employees, affiliates, contractors, or agents.

10. **Limitation of Liability.** IN NO EVENT SHALL VIAWEST OR ITS EMPLOYEES, AFFILIATES, CONTRACTORS, OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS, REVENUE, DATA,

OR USE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, INCLUDING, WITHOUT LIMITATION, LEGAL THEORIES OF CONTRACT, TORT, OR STRICT LIABILITY, EVEN IF VIAWEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, IN NO EVENT SHALL VIAWEST'S LIABILITY FOR ANY DAMAGES EXCEED THE ACTUAL DOLLAR AMOUNT PAID BY CUSTOMER FOR THE SERVICE DURING THE SIXTY-MONTH PERIOD PRIOR TO THE DATE THE DAMAGES OCCURRED OR THE CAUSE OF ACTION AROSE. With the exception of any monetary obligations under this Agreement, neither party shall be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, interruption of or delay in transportation or telecommunication service, act of its vendors or suppliers or their products and services, or inability to obtain raw materials, supplies, or power used in or equipment needed for the provision of the Service.

11. **Insurance.** If Customer is purchasing colocation Services, Customer must procure and maintain the following insurance during the Service Term: (a) "all risk" property insurance covering all Customer Equipment in an amount not less than its full replacement cost; (b) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence for bodily injury and property damage; (c) employer's liability insurance in an amount not less than \$1,000,000 per occurrence; and (d) worker's compensation insurance in an amount not less than that required by applicable law. If Customer is purchasing Managed or Cloud Services, Customer must additionally obtain professional liability insurance and standard form property insurance, including business interruption and electronic data processing media insurance, in each case in the amount not less than \$1,000,000 per occurrence. The above policies must list ViaWest as additional insured, and must contain provisions providing that such insurance is primary insurance insofar as ViaWest and Customer are concerned, with any other insurance maintained by ViaWest being excess and noncontributing with the insurance required of Customer. Upon request, Customer shall provide a certificate of insurance to ViaWest evidencing such insurance requirements.

12. **Assignment; Governing Law; Venue.** Customer shall not assign this Agreement without the prior written consent of ViaWest, which consent shall not be unreasonably withheld. This Agreement shall be governed by the laws of the State of Nevada, without regard to its conflicts of laws principles. Each of the parties hereby irrevocably submits to the exclusive personal jurisdiction of any federal or state court of competent jurisdiction located in Clark County, Nevada, in any action or proceeding relating to this Agreement. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.

13. **Non-Disclosure.** During the Service Term, each party may have access to certain confidential and proprietary information disclosed by the other party, including, without limitation, information relating to either party's clients, customers, or business operations (including the terms of this Agreement and the rates charged for the Service), whether disclosed orally or in writing by any other media (collectively, "Confidential Information"). Each party (the "Receiving Party") acknowledges that the Confidential Information of the other party (the "Disclosing Party") may contain information valuable to the Disclosing Party and that any such Confidential Information shall remain the property of the Disclosing Party. Each party shall use the Confidential Information provided hereunder only for purposes directly related to the purpose for which it was provided and shall restrict disclosure of Confidential Information solely to its employees and subcontractors with a need to know, or to other third parties expressly permitted by the Disclosing Party, and not disclose such Confidential Information to any other parties, and otherwise to protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. The Receiving Party shall be responsible for any breach of this Section by its employees, subcontractors or any third parties to whom Receiving Party discloses the Confidential Information. "Confidential Information" shall not include information that: (a) was in the public domain free of any obligation of confidence at the time it was communicated to the Receiving Party; (b) is rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was communicated to the Receiving Party; or (c) was in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party. Notwithstanding the above, the Receiving Party shall not be in violation of this Section for a disclosure made in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with written notice of such disclosure where reasonably

possible in order to permit the Disclosing Party to seek confidential treatment of such information. The obligations of confidentiality of each party under this shall survive for two years from the termination of this Agreement. The parties recognize and agree that any breach of this Section would cause irreparable harm and, accordingly, that injunctive relief is an appropriate remedy to prevent any threatened or ongoing breach of such confidentiality obligations. Notwithstanding anything to the contrary set forth in this Section, any disclosure of confidential or proprietary information by means of a third-party attack, probe, theft, or other breach of network security shall not be deemed to be a breach of this Section. The terms of this Section shall supersede and replace any non-disclosure or confidentiality agreement entered into by the parties prior to the Effective Date of this Agreement. Pursuant to Chapter 239 of the Nevada Revised Statutes, documents provided to Customer may be a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. Customer shall not in any way be liable to ViaWest, its subcontractors, principals or agents, for the disclosure of any public record. In the event Customer is required to defend an action with regard to a public records request for documents submitted by ViaWest its subcontractors, principals or agents, ViaWest agrees to indemnify, hold harmless, and defend Customer from all damages, costs, and expenses, including court costs and reasonable attorney fees related to such public records request. This section shall survive the expiration or earlier termination of this Agreement.

14. Service Level Commitments.

A. **Satisfaction Guarantee.** In the event that Customer is not 100% satisfied with the Service's power, network, HVAC or redundant hardware availability, then Customer may provide written notice to ViaWest of its dissatisfaction (the "Mad Notice"). The Mad Notice must identify the affected Service, refer to this satisfaction guarantee, and document Customer's eligibility for credits due to noncompliance of the Service with the commitments set forth in Section 14.C., D., I., or J as applicable. If ViaWest does not cure the issue causing the noncompliance or provide documentation to Customer demonstrating that the Service is in compliance with the applicable commitment within 10 days from receiving the Mad Notice, then Customer may terminate the affected Service without penalty upon written notice to ViaWest within 15 days following the end of ViaWest's 10-day cure period. In addition, if Customer provides a Mad Notice to ViaWest two or more times over any consecutive 6-month period for noncompliance of the same commitment (which notice is not countered by documentation demonstrating that the Service is in compliance with the applicable commitment), then Customer may terminate the affected Service without penalty upon written notice to ViaWest. Any termination pursuant to this Section 14.A. shall be effective 10 business days after receipt of written notice by ViaWest. In the event of any incident of which ViaWest becomes aware affecting Customer's Service, ViaWest shall use commercially reasonable efforts to notify Customer, via any immediately available method, of any such incident.

B. **Installation Commitment.** ViaWest's commitment is to install all standard Services set forth on a fully executed Order Form by the Billing Start Date set forth on the Order Form or issued in writing or via e-mail by ViaWest following execution of the Order Form. If ViaWest fails to meet this installation commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 50% of the installation fees charged to Customer.

C. **Power Availability Commitment.** ViaWest's commitment is to maintain availability of the power provided to Customer's environment in the ViaWest datacenter 100% of the time. Power unavailability is measured by the number of seconds from the time power unavailability to Customer's environment is determined by ViaWest to the time power is restored. "Power Unavailability" shall mean and refer to the unavailability of the power to Customer Space whereby both the primary and secondary/supplemental power circuits have failed. Power shall not be considered to be unavailable if provided through any secondary or supplemental power circuit without disconnection of service (the availability of power through only one power circuit where such power is supplied through a primary and redundant circuit is not considered "Power Unavailability"). If ViaWest fails to meet this power availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service. Customer shall not be eligible for credits for power unavailability unless Customer properly installs and configures redundant power circuits and

utilizes such circuits in a redundant manner and in accordance with the provisions of Section 15 hereof.

D. **Network Availability Commitment.** ViaWest's commitment is to maintain availability of the ViaWest Network 100% of the time. Unavailability of the ViaWest Network is measured over a calendar month and is based on total outage time incurred by Customer. Network unavailability shall exist when (i) a particular Customer Port is unable to transmit IP data packets from such Customer Port to the Public Internet via the ViaWest Network and (ii) such failure is recorded in ViaWest's trouble ticket system. Network unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this ViaWest Network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

E. **Network Connections Availability Commitment.** ViaWest's commitment is to maintain availability of Customer's network connections (i.e., cross connects provided by ViaWest) 100% of the time. Unavailability of Customer's network connections is measured over a calendar month and is based on total outage time incurred by Customer. Customer's network connections begin at the initial piece of ViaWest owned and operated equipment to which the applicable circuit connects and end at the demarcation point installed in Customer's cabinet and/or cage. Network connection unavailability exists when (a) due to a failure of Customer's network connection(s) (i.e., cross connects provided by ViaWest), a particular Customer Port is unable to transmit data from the ViaWest network connection(s) and (b) such failure is recorded in ViaWest's trouble ticket system. Network connection unavailability is measured from the time the trouble ticket is opened to the time ViaWest confirms that the affected Service is again able to transmit and receive data. If ViaWest fails to meet this network availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

F. **ViaWest Network Packet Loss Commitment.** ViaWest's commitment is to maintain average packet loss of no more than 1% across the ViaWest Network. Average packet loss across the ViaWest Network is measured on an ongoing basis over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network packet loss commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

G. **ViaWest Network Roundtrip Delay Commitment.** ViaWest's commitment is to maintain average roundtrip delay of no more than 40 milliseconds across the ViaWest Network. Average roundtrip delay across the ViaWest Network is measured over a 24-hour period beginning at 12:01 A.M. mountain time each day. If ViaWest fails to meet this ViaWest Network roundtrip delay commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each 24-hour measurement period during which ViaWest fails to meet the commitment during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

H. **ViaWest Support Response Commitment.** ViaWest's service support for colocation Service is available 24 x 7. ViaWest's commitment is to respond to any failure of Customer's colocation Service within the following time frames following ViaWest's confirmation of such failure:

Severity	Response Time
Level 1 - Critical	15 minutes

For the purposes of this Section 14.H., (a) "Critical" Issues shall mean all issues in which Customer's Operating System, Server Infrastructure, ViaWest Network Infrastructure, and/or the power to Customer's space are unavailable for normal use; and (b) "response" shall mean that a ViaWest representative is working to resolve the issue. If ViaWest fails to meet this support response commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

I. ViaWest Redundant Hardware Availability Commitment. ViaWest's commitment is to maintain availability of ViaWest-owned and operated hardware, consisting of Communications, controller, routers, switches, firewalls, other network infrastructure, KINECTed storage, and CPU and/or processing platform for which Customer has ordered a redundant unit (the "Redundant Hardware") 100% of the time. Unavailability of the Redundant Hardware is measured over a calendar month and is based on total outage time incurred by Customer, measured from the time a trouble ticket is opened to the time ViaWest confirms that at least one of the affected units is again operational. Redundant Hardware unavailability shall exist when (1) both the primary and the redundant units that are in production for provision of the Service are unable to operate in accordance with industry standards and cause unavailability of the Service and (2) such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet this Redundant Hardware availability commitment and Customer provides ViaWest with a written request within 30 days of the date on which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

J. ViaWest KINECTed Cloud Availability Commitment. ViaWest's commitment for KINECTed Cloud Service availability in any given monthly billing period is: KINECTed Enterprise Cloud Service and KINECTed Health Cloud Service – 99.9%; and KINECTed Synergy Class Cloud Service – 0%. Unavailability of the KINECTed Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure impacting multiple customers simultaneously below the applicable commitment level, and such failure is recorded in ViaWest's trouble ticket system ("Cloud Unavailability"). For each instance of Cloud Unavailability in a given month, upon Customer's written request (provided within 30 days of the date on which such failure occurred), ViaWest shall provide a service credit to Customer's account equal to 10% of the monthly service charges for Committed Reserves charged by ViaWest to Customer for each cumulative hour of Cloud Unavailability during the applicable month, up to a maximum of the total monthly service charges for Committed Reserves charged by ViaWest to Customer during the applicable month. "Committed Reserves" means the amount of CPU, RAM and Disk reserved by Customer as set forth on an Order Form to support the Customer running one or more Virtual Machines. "Virtual Machine" means a portion of a physical machine that includes all of the attributes of a physical machine such as an operating system, a server and a central processing unit (CPU). "Cloud infrastructure" means the ViaWest-controlled portion of the infrastructure supporting the KINECTed Cloud Service.

K. KINECTed Cloud Desktop Availability. ViaWest's commitment is to maintain availability of the KINECTed Cloud Desktop Service 100% of the time. Unavailability of the KINECTed Cloud Desktop Services is measured over a calendar month and is based on the total outage time incurred by Customer. KINECTed Cloud Desktop unavailability shall exist when there is a KINECTed Cloud Desktop Infrastructure failure impacting multiple customers simultaneously and such failure is recorded in ViaWest's trouble ticket system. If ViaWest fails to meet the KINECTed Cloud Desktop commitment set forth herein and Customer provides ViaWest with a written request within five business days of the last day of the month in which such failure occurred, ViaWest shall provide a service credit to Customer's account equal to 10% of Customer's Monthly Service Charges for the affected Service for each cumulative hour of unavailability or failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

L. HVAC Availability Commitment. ViaWest's commitment is to provide delivered air to the Customer's space within the data center at a temperature

not to exceed 80.6 degrees Fahrenheit and at a humidity level between 20% and 80% (as per the ASHRAE allowable standards), measured 12 inches above the unobstructed perforated tiles in Customer's space. If ViaWest fails to meet this HVAC availability commitment for two or more consecutive hours and Customer provides ViaWest with a written request within 30 days following the date of such occurrence, ViaWest shall provide a service credit to Customer's account equal to ten percent (10%) of Customer's Monthly Service Charges for the affected Service for each failure during the applicable month, up to a maximum of the total Monthly Service Charges charged by ViaWest to Customer during the applicable month for the affected Service.

M. Definitions; Service Credit Eligibility. For purposes of this Section 14, "Monthly Service Charges" means the service charges (excluding any taxes, pass-through charges, set-up or installation charges, or other one-time charges) billed for the affected Service during the month. A "trouble ticket" may be opened in ViaWest's trouble ticketing system by ViaWest, Customer, or ViaWest's monitoring systems. ViaWest reserves the right to verify the validity of any tickets opened by Customer or ViaWest's monitoring systems. "ViaWest Network" means that portion of the system facilitating Customer's use of and connection to the Internet beginning where Customer's colocation uplink (the "Customer Port") connects to the network and ending where ViaWest delivers IP data packets to the Public Internet on the Customer's behalf. "Public Internet" means the gateway router interface between the ViaWest Network and ViaWest's upstream providers' networks. In the event that Customer is eligible to receive multiple credits under this Section 14 from the same event pursuant to different commitments, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event under the service level commitment corresponding to the root service failure. THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR EQUIPMENT AND/OR SOFTWARE FAILURES, SERVICE INTERRUPTIONS, SERVICE RESPONSE ISSUES, AND/OR SERVICE DEFICIENCIES OF ANY KIND WHATSOEVER.

N. Service Credit Exceptions. For each commitment set forth in this Section 14, service credits shall not be available to Customer in cases where the Service is unavailable as a result of (a) the acts or omissions of Customer or its employees, contractors, agents or end-users; (b) the failure, malfunction, or limitation of throughput of equipment, network, software, applications or systems not owned or directly controlled by ViaWest (including third-party products and services that may be included in the Services); (c) circumstances or causes beyond the control of ViaWest, such as events of force majeure and third-party attacks on the ViaWest Network; (d) scheduled maintenance with prior notice posted at mysupport.viawest.net, which URL is subject to change upon prior notice; or (e) urgent maintenance with notice provided as soon as is commercially practicable under the circumstances. ViaWest reserves the right to re-route IP data packets to any and all Internet carriers connected to the ViaWest Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in this Section 14.

O. Managed and Cloud Services Roles and Responsibilities. Unless otherwise set forth on a roles and responsibilities matrix agreed to in writing and signed by each of ViaWest and Customer, the following sets forth the roles and responsibilities for each party with respect to Managed and Cloud Services purchased by Customer.

ViaWest Responsibilities. (a) *Operating System Management:* ViaWest shall manage, maintain, and support the applicable Red Hat Linux and/or Windows Server operating system (the "Operating System"). ViaWest shall perform the initial setup and installation of the Operating System and ongoing maintenance, including reasonable upgrades or fixes. ViaWest shall use commercially reasonable efforts to notify Customer of any upgrades to the Operating System in advance of such upgrade. (b) *Server Infrastructure Management:* ViaWest shall manage, maintain, and support the following server infrastructure elements: CPU, memory, hard disk, power supply, and motherboard (collectively, "Server Infrastructure"). If Customer purchases any server upgrades, ViaWest also shall provide installation as necessary. (c) *Network Infrastructure Management:* ViaWest shall manage, maintain, and support the following network infrastructure elements: routers, switches, Internet connectivity on the ViaWest Network, and, to the extent ordered by Customer and provided by ViaWest as part of the Service, firewalls and load balancers (collectively, "ViaWest Network Infrastructure"). (d) *Monitoring:* ViaWest shall provide 24x7 monitoring of the Operating System, Server Infrastructure, and ViaWest Network Infrastructure for health and failure of these systems and infrastructures. (e) *Usage.* In order to ensure system-wide availability, ViaWest has the right to limit Cloud usage at any time by Customer to Customer's committed reserves.

Customer Responsibilities. (a) **Application, Code, and Content Management:** Customer shall manage, maintain, and support any application code or content that is not provided and installed by ViaWest. Customer also shall be responsible for application, code, and content compatibility with the Operating System, including upgrades and loading software to the server remotely. (b) **Server Access:** Customer shall be responsible for providing its own access to the server through an administration tool such as SSH, VNC, or Remote Desktop and for any Internet access needed to access the server. (c) **Security:** Customer shall be responsible for the security of its Operating System, application, code, and content. If ViaWest is providing database administration, patching or other Services that require access to the Operating System, Customer shall provide ViaWest with passwords or other applicable access to the Operating System required for ViaWest to perform its obligations. Customer shall report to ViaWest any misuse or unauthorized disclosure of sensitive information on equipment managed by ViaWest immediately upon becoming aware of such misuse or disclosure. (d) **Backup Service:** Customer shall be responsible for backup and recovery of its content unless backup services are purchased through ViaWest. Customer acknowledges and agrees that ViaWest is not responsible for the integrity or security of any data or information stored by Customer on the ViaWest managed hosting or cloud environment except as otherwise expressly provided in an amendment to this Agreement. (e) **Content Management:** All data or information stored by Customer on the ViaWest managed hosting or cloud environment is owned by Customer. Customer is responsible for the use of the Services by any employee of Customer, any person to whom Customer has given access, or any person who gains access to Customer's data. (f) **Third Party O/S T&Cs.** Customer agrees to comply with the Terms & Conditions regarding use of the applicable third-party operating system (such as Microsoft or RedHat/Linux) as required by the O/S provider (the "Third-Party O/S T&Cs").

Additional Cloud Billing Terms. Committed Reserves and availability are calculated using a Service Hours based on a 730-hour month. Usage for any portion of any 15 minute period within an hour will result in the full 15 minute period being charged. Operating system license fees for Cloud Service users are billed on a monthly basis. Any usage of Cloud Services during a portion of a month will result in the monthly fee being charged.

15. Power and Circuit Breaker Utilization (Colocation Services Only).

A. Power Utilization. Customer acknowledges that ViaWest's engineering team specifically designs Customer's space to accommodate Customer's power utilization requirements in accordance with ViaWest's datacenter design. Customer agrees to cooperate with ViaWest's sales engineering team in this design process and to abide by power utilization design provided by ViaWest.

B. Circuit Breaker Utilization. In the event that any of Customer's allocated circuit breaker(s) carry greater than eighty percent (80%) of its continuous current load based on National Fire Protection Association 70 Article 210.20(A), then one of the following must occur as determined by ViaWest: (a) Customer shall purchase additional power circuits at the then-current rates in order to reduce circuit breaker utilization to less than eighty percent (80%) of its rated current or (b) Customer shall decrease its circuit breaker utilization to eighty percent (80%) of its rated current.


C. Primary and Redundant Power. In the event that Customer orders a primary power circuit or a redundant power circuit, such Service must be utilized as set forth on the applicable Order Form. If Customer is found to be using a redundant power circuit as a primary power circuit, then one of the following must occur as determined by ViaWest: (a) ViaWest shall increase Customer's power pricing set forth on the applicable Order Form, at its reasonable discretion, to the then-current rates for primary power circuit or (b) Customer shall begin utilizing the redundant power circuit in a redundant manner as reasonably determined by ViaWest. For purposes of this Section 15.C., any redundant power circuit with utilization greater than 40% of the rated breaker capacity shall be deemed to be utilized as a primary power circuit.

16. Miscellaneous. This Agreement, including any Order Forms, ViaWest's AUP, ViaWest's Datacenter Rules, and any applicable Third-Party O/S T&Cs, constitutes the entire agreement between the parties with respect to the Service and supersedes all prior representations, understandings, and agreements between the parties with respect to the Service. This Agreement may only be amended in a writing signed by both parties. ViaWest's AUP and Datacenter Rules may be amended from time to time in ViaWest's sole discretion. Customer agrees that ViaWest may refer to Customer by trade name and trademark, and may briefly describe customer's business in ViaWest's marketing materials. ViaWest, in its discretion, may alter its provision of any Service upon notice to Customer, provided that such alteration does not result in a material adverse change in the Service, as

determined in accordance with industry standards, provided, however, that ViaWest's ability to alter provision of any Service shall not in any way alter or affect ViaWest's obligations pursuant to Section 14 of this Agreement. Customer shall cooperate with ViaWest in any investigation of the use or possible use of the Customer's Equipment, ViaWest's facilities or the Services for any illegal purpose or other than in strict compliance with ViaWest's AUP. In connection therewith, Customer acknowledges that ViaWest may cooperate with law enforcement agencies in investigations of such use or possible use in accordance with ViaWest's privacy statement available at <http://www.viawest.com/privacy-statement.html>. No failure by either party to insist upon strict performance of any provision of this Agreement shall be construed as a waiver of any of its rights hereunder. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties and the remainder shall remain in full force and effect. All terms and provisions of this Agreement that should by their nature survive the termination of this Agreement shall so survive, including, without limitation, Sections 3, 4, 6, 8, 9, 10, 12, 13, and 16. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures to this Agreement may be transmitted facsimile signature or in portable document format via electronic mail.

Agreed to and accepted by:

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation


Qing X. Liu, P.E., P.T.O.E., Interim City Manager

9/24/14
Date

ATTEST:


Barbara A. Andolina, City Clerk

Approved as to form:


Sandra Douglass Morgan, City Attorney

City of North Las Vegas
2250 Las Vegas Blvd. North, Suite 700
North Las Vegas, Nevada 89030

VIAWEST, INC.


Signature of Authorized Representative

Date

SEAN MCCAFFERY VP SALES OPERATIONS
Name and Title of Authorized Representative

6400 S. Fiddler's Green Circle
Suite 2000
Greenwood Village, CO 80111



VIAWEST ORDER INFORMATION

Sales Rep: Corey Huish
Contract Term: 63 Months
Installation Location: Las Vegas - Lone Mountain

Type of Service: Colocation Services
Order Number: 57252

CUSTOMER INFORMATION

Company Name: City of North Las Vegas
Billing Address: 2250 Las Vegas Boulevard North
City: North Las Vegas State: NV Zip: 89030

	Name	Phone/Cell Phone	E-mail
Contract Contact:	Christopher Craft	(702) 633-2442	CraftC@cityofnorthlasvegas.com
Technical Contact:	Adam Cohen	(702) 633-1854	cohenA@cityofnorthlasvegas.com
Billing Contact:	Accounts Payable	(702) 633-1460	accountspayable@cityofnorthlasvegas.com

PRODUCTS/SERVICES ORDER DETAILS

	Colocation and Power Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	500 Sq Ft Colocation Cage Includes: cage construction and space, cage door with physical key and combo lock box, and cabinet grounding. Customer may provide: cabinets, ladder racking, power strips, cable management as required.	1	\$18,540.00	\$10.00	\$18,540.00	\$5,000.00
New	PCI Compliant Cabinet Bundle - Camera & Bio Card Reader Includes: Controlled hardened facility, 24x7 physical security monitoring, 90 day video surveillance and retention, Colocation cabinet perimeter security (2 surveillance cameras and 2 card readers), electronic cabinet access device and user reports (standard weekly access reports sent to all designated administrators in Customer's MySupport account), independent audit reports, and security incident notification. Available in Cornell, Delong, Synergy Park, Arapahoe, Carson I and II, Lone Mountain, and Hillsboro data centers.	1	\$4,210.00	\$400.00	\$4,210.00	\$400.00
New	Colocation Cage - Secure Cage Ceiling Secure wire mesh cage ceiling.	1	\$2,330.00	\$0.00	\$2,330.00	\$0.00
New	Colocation Cage - Secure Raised Floor Tiles Secured floor tiles within customer cage environment.	1	\$2,580.00	\$0.00	\$2,580.00	\$0.00
New	34840 kWh Minimum Monthly Kilowatt Hour Charge Additional Per kWh Charge: \$0.32	1	\$0.00	\$0.20	\$0.00	\$6,968.00
New	208 Volt 30 Amp AC Primary Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	208 Volt 30 Amp AC Redundant Power	12	\$206.00	\$0.00	\$2,472.00	\$0.00
New	Custom Full Colocation Cabinet 28x48 colocation cabinet - CCVG2006337 **SKU CCV005708, 47RU, 87.63H x 28W x 42D, 19inch square mounting holes, Fully perforated front and back doors with integrated 3 point combination lock	12	\$1,075.00	\$0.00	\$12,900.00	\$0.00
	Subtotal:				\$45,504.00	\$12,368.00

	Network and Security Services	Quantity	Install Charge (per qty)	Monthly Charge (per unit)	Total Installation Charges	Total Monthly Charges
New	OC-X / Gigabit Ethernet Cross Connect (Fiber, CPA)	6	\$500.00	\$0.00	\$3,000.00	\$0.00
	Subtotal:				\$3,000.00	\$0.00

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Customer Initials: _____

	Total Installation Charges	Total Monthly Charges
Total:	\$48,504.00	\$12,368.00

Notes:

Notwithstanding anything to the contrary in the Agreement or this Order Form, the Billing Start Date for all Services set forth on this Order Form shall be November 1, 2014.

Additional Notes:

Monthly recurring charges for all new Service set forth on this Order Form shall begin billing (the "Billing Start Date") on the earlier to occur of (a) the date the Service is first made available to Customer and (b) 45 days from the Effective Date of this Order Form.

All terms and conditions of the Master Service Agreement between ViaWest and Customer, including this Order Form (collectively, the "Agreement"), shall prevail over any terms and conditions set forth in payments or other forms, all of which are hereby rejected. ViaWest's provision of the services set forth above and Customer's use of such services are subject to the terms of the Agreement. The signatory below has full power and authority to act on behalf of the Customer and hereby confirms the Customer's agreement with the terms of this Order Form.

CITY OF NORTH LAS VEGAS,
a Nevada municipal corporation

Dr. Qiong X. Liu, B.E., P.T.O.E., Interim City Manager

ViaWest, Inc.

By:

Name:

Its:

ATTEST:

Barbara A. Andolina, City Clerk

Approved as to form:

Sandra Douglass Morgan, City Attorney

Customer Initials: _____

EXHIBIT H

Updated Quotes

Please see attached page(s).



Renewal Proposal

Quote Q-155469

Presented To:

Jeremy Jami

7026331683

jamij@cityofnorthlasvegas.com

Prepared By:

Paul Escobedo

702.479.5276

paul.escobedo@flexential.com

Flexential
600 Forest Point Circle, Suite 100
Charlotte, NC 28273
www.flexential.com



Cover Sheet

FLEXENTIAL

Address	600 Forest Point Circle, Suite 100, Charlotte, NC 28273
Name	Paul Escobedo
Phone	702.479.5276
Email	paul.escobedo@flexential.com
Legal Notices	600 Forest Point Circle, Suite 100, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

Renewal Effective Date	September 01, 2024
Renewal Term	60.0 months

This **Master Services Agreement** is made by and between Flexential LLC, a Delaware limited liability company (“Flexential”), for itself and on behalf of its affiliated entities, and City of North Las Vegas (“**Customer**”). Upon signature, this MSA shall become legally binding. Except as permitted in the Standard Terms and Conditions, this MSA is non-cancelable. If Customer and Flexential (including any subsidiaries of the legal entities included in the definition of Flexential) are party to an agreement pursuant to which services are provided to Customer (the “**Prior MSA**”), then the parties hereby expressly agree that the Prior MSA is hereby terminated and superseded in its entirety by this MSA, and any Quotes previously issued under the Prior MSA that are in effect as of the Effective Date are hereby deemed to be issued pursuant to, and subject to the terms and conditions set forth in, the MSA. Flexential Corp. will be directly obligated to Customer to perform the Services on Exhibit A at Facilities, if any, that are identified on Exhibit A as “Flexential Corp.”

This **Master Services Agreement** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing
- iii. The attached Master Services Agreement Standard Terms and Conditions
- iv. The attached Exhibit B – Security and Compliance Roles & Responsibilities Matrix
- v. The attached Exhibit C – Service Level Agreement
- vi. The attached Exhibit D – Acceptable Use Policy
- vii. The attached Exhibit E – Datacenter Rules

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential LLC

Signature:

Name:

Title:

Date:

City of North Las Vegas

Signature:

Name:

Title:

Date:



Document
Date: August 19, 2024

City of North Las Vegas

Account
Executive: Jeff Howard

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001

Quote #: Q-155469

Colocation: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Flexential Provided Cabinet within a Cage	Add	12.0	EA				
Steel frame cabinet with front and rear locking doors, adjustable mounting rails, and at least 40U of space within a cage. Power subscriptions are sold separately. Total power consumption not to exceed 12kW per cabinet without Flexential approval. Higher power density configurations may be available.							
Secure Cage Space optional roof installation	Add	500.0	EA				
Service provides for the installation of an optional cage roof priced per square foot. The square footage must equal the square footage of the cage space for which the roof will be installed.							
kW commit - all in power pricing	Add	50.0	kW				
kW power threshold available for customer usage. Overages above the kW commit subject to overage fees. All in kW power pricing with no additional metered power pass through.							
20A 120V AC Power - Single Phase	Add	1.0	Each				
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.							
30A 208V AC Power - Single Phase	Add	14.0	Each				
Primary and redundant power whip including L6-30 twist-lock receptacle. Includes two rack mount PDUs. This product is used in conjunction with a usage-based power subscription.							
Cage Security - Badge+Bio+Camera	Add	1.0	EA				
This service provides use of a proximity badge reader with biometric scanner, standard access reporting, video surveillance camera facing the door, and associated management as an add-on to a Flexential data center cage space subscription.							
Secure Raised Floor Tiles	Add	1.0	SQ FT				
Secured floor tiles within customer cage space.							
Secure Cage Space - kW based pricing models	Add	500.0	SQFT				
Secure cage space within a Flexential data center. Power is not included with this service and requires a separate subscription. Cabinets / data racks are not included either and must be provided or subscribed to as a service.							
Colocation: Las Vegas - North Total:						\$0.00	\$13,722.92

Cross Connect Service: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Carrier Cross Connect - Fiber	Add	6.0	EA				
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.							
Cross Connect Service: Las Vegas - North Total:						\$0.00	\$1,500.00

Colocation: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
30A 208V AC Power - Single Phase	Add	1.0	Each				

Prices do not include applicable sales tax and are valid until 09/18/2024. The MSA includes automatic renewal and annual price escalation provisions unless otherwise agreed.

Per Unit prices are displayed as rounded to the nearest penny but may include up to four decimals. Total prices are calculated using actual Per Unit pricing and will govern in the event of any discrepancy with displayed Per Unit prices. This document is private and confidential.



Document
Date: August 19, 2024

City of North Las Vegas

Account
Executive: Jeff Howard

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001
Quote #: Q-155469

Primary and redundant power whip - maximum power utilization not to exceed 80% of the rated capacity of the circuit pair. Includes two rack mount PDUs and L6-30 twist lock receptacle. This product is used in conjunction with a usage-based power subscription.

Colocation: Las Vegas - North Total:	\$0.00	\$0.00
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Totals:	Setup	Monthly
	\$ 0.00	\$ 15,222.92



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms shall have the meaning set forth below or elsewhere in the MSA.
- a. **“Colocation Services”** means Services related to the storage of Customer Equipment in the Equipment Space as set forth on the applicable Quote.
 - b. **“Cloud Services”** means Services related to an information technology system, operated, maintained, and housed by Flexential, which may consist of software and hardware including data storage, physical computing equipment (hosts), and networking components.
 - c. **“Cover Sheet”** means a cover sheet to which these Standard Terms and Conditions are attached, that identifies the parties and their notice addresses and includes signature blocks for Flexential and Customer to execute the MSA and the initial Quote for Services.
 - d. **“Customer Data”** means all information stored, maintained, received or transmitted by Customer using the Services.
 - e. **“Customer Equipment”** means any equipment provided by Customer in connection with the MSA, whether or not owned by Customer.
 - f. **“Customer Port”** means the egress port on Customer Equipment connecting to Flexential Equipment used to provide network Services.
 - g. **“Customer Portal”** mean the online platform designated by Flexential with respect to a particular Service through which Flexential customers may create service tickets and review reports and other information related to the Service
 - h. **“Data Protection Services”** means those additional information technology and network/data transport Services set forth in a Quote.
 - i. **“Dispute”** means any controversy or claim arising out of or relating to the conduct of the parties under, or the interpretation of the terms, conditions or provisions of, the MSA.
 - j. **“Eligible Customer”** means Customer: (i) does not have an undisputed balance more than sixty (60) days past due or (ii) is not in breach of this MSA at the time in which the service commitment was not met.
 - k. **“Equipment Space”** means the designated area within the Facility that Customer may access and use.
 - l. **“Facility”** means the Flexential data center(s) where the Customer Equipment is located, for Colocation Services, and where the Flexential Equipment containing Customer Data is located, for Cloud Services.
 - m. **“Flexential Equipment”** means any equipment provided and operated by Flexential to provide the Services. Such equipment may be located inside or outside the Equipment Space.
 - n. **“Flexential Network”** means that portion of the network Services beginning at the ingress port of Flexential Equipment used to provide network Services and ending at the egress port of Flexential Equipment used to provide network Services.
 - o. **“Installation Date”** means the date when all or a portion of Service is first made available to Customer.
 - p. **“MSA”** means these Standard Terms and Conditions together with the Cover Sheet to which these Standard Terms and Conditions are attached or incorporated by reference, and all Quotes, exhibits and other documents incorporated by reference into the MSA.
 - q. **“MSA Effective Date”** means the first date that the MSA has been signed by both parties.

- r. **“Pass Through Costs”** out of pocket costs or expenses actually incurred by Flexential with respect to the Services that may not be specifically included as a line item in a Quote, including fees related to services provided by or through a third-party. Such Pass Through Costs may include utilities (power), software licenses, hardware costs, maintenance, support providers, and property tax.
- s. **“Quote”** means an order executed by both parties that identifies Services to be provided by Flexential to Customer pursuant to this MSA. Each Quote will reference this MSA and will be incorporated into this MSA.
- t. **“Quote Effective Date”** means the first date that the applicable Quote has been signed by both parties.
- u. **“Regulated Customer Data”** means any Customer Data that is personally identifiable information (**“PII”**), protected health information (**“PHI”**) or otherwise subject to legal or regulatory requirements.
- v. **“Service(s)”** means the services to be provided by Flexential, as detailed in the applicable Quote(s). Additional terms related to specific Services are set forth in Attachment 1.

2. SCOPE OF SERVICES AND CONFLICT.

- a. **Services.** Flexential will provide Customer with the Services set forth on one or more Quote(s). In the event of a conflict between the terms of this MSA and the terms of a Quote, the terms of the MSA will govern except as explicitly stated otherwise in the applicable Quote. Services may be provided by employees or independent contractors of Flexential or its affiliated entities, and Flexential shall be responsible to Customer for the performance of all Services. The terms and conditions contained in any Customer-provided purchase order or other similar ordering document are not binding on Flexential.
- b. **Alteration of Services.** Flexential may, in its discretion, alter its provision of any Service to Customer, so long as Flexential does not materially and adversely impact the Services. No alteration shall modify Flexential's obligations, or Customer's remedies, pursuant to Section 11. If, within 60 days after the service alteration, Flexential fails to comply with an SLA in two separate instances and such failures are the direct result of the service alteration, Customer may terminate the affected Service without penalty so long as (i) Customer is an Eligible Customer and (ii) Customer delivers termination notice to Flexential within 15 days after Customer notifies Flexential of the second SLA failure that gives rise to the termination right.
- c. **CUSTOMER PORTAL.** Flexential will provide Customer with an account and password to access the Customer Portal. Customer is responsible for all activities that occur under Customer's account on the Customer Portal. Flexential may permit Customer to add or modify Services through the Customer Portal. In such event, modification of the services by way of the Customer Portal will be considered a valid Quote for such Services.

3. TERM AND RENEWAL.

- a. **MSA Term.** This MSA shall become effective on the MSA Effective Date and shall remain in effect until the termination of the last Quote, at which point it will terminate and be of no further force and effect except as set forth in Section 28(j).
- b. **Service Renewal.** The **“Service Term Start Date”** for Services on a Quote will be the first of the month following the Installation Date, unless the Installation Date is on the first of the month, in which case the Service Term Start Date will be the same date as the Installation Date. Each Quote will begin on the Billing Start Date for the applicable Quote and will terminate as specified in the Quote (the **“Initial Service Term”**). After the expiration of the Initial Service Term, the Services on the applicable Quote will automatically renew for successive one (1) year periods on the same terms and conditions (each, a **“Renewal Service Term”**) unless either party informs the other party in writing of its intent not to renew such Service in at least 90 days prior to the scheduled expiration of the then-current Service Term. The Service Term Start Date for Renewal Service Terms shall be the first day first day of the Renewal Service Term. The Initial Service Term and any Renewal Service Terms are collectively referred to as the **“Service Term”**. The Parties understand and agree that no Service Term shall extend beyond the term of the underlying lease in the applicable Facility unless the parties agree to relocate the Service to another Flexential-operated Facility.

4. PAYMENTS.

- a. **Billing Start Date.** Billing for Services will begin on the Installation Date unless otherwise set forth below:
- i. **Flexential Delay.** In the event Customer is not able to use the Service(s) on the Installation Date solely as a result of delays caused by Flexential, the Billing Start Date shall be extended for each day of delay caused by Flexential.
 - ii. **Customer Delay.** In the event Flexential is unable to complete the installation of all or a usable portion of the Service as a result of delays caused by the Customer, Flexential reserves the right to start billing 45 days from the Quote Effective Date.

In the event a portion of the Services are available and have been Installed, Flexential will invoice Customer for such portions which have been Installed and Customer will pay for such Services in accordance with this Section.

- b. **Payment Due Date.** Payments on all undisputed invoices are due within 30 days of the date the invoice is sent to the Customer and will be paid in U.S. Dollars.
- c. **Invoices.**
- i. **Recurring Charges.** All recurring charges for Services will be invoiced by Flexential on a monthly basis. Charges that are dependent upon the level of usage will be billed monthly in arrears and overages for these Services will be billed at the rate(s) set forth in the applicable Quote. Invoicing for partial months will be prorated based on a calendar month (and may be billed in arrears).
 - ii. **Non-recurring Charges.** Flexential reserves the right to invoice Customer for a percentage (not to exceed 50%) of the non-recurring charges related to the Services (the "NRCs") which payment shall be due upon on the invoice date. Customer shall pay Flexential the remaining percentage of the NRCs following the Installation Date and such amounts will be due upon the date the invoice is sent to the Customer.
 - iii. **Late Payments.** Any undisputed late payment will be subject to late charges of 1.5% per month, and Customer will be liable for any reasonable attorneys' fees or other costs associated with collecting late payments. In the event Customer fails to pay undisputed late invoices more than two times in a 12-month period, Flexential may require Customer to provide security deposit in the amount of one month of recurring fees and charges
- d. **Pass-Through Costs.** Upon 30 days prior notice, Flexential may increase the applicable rates and charges set forth in a Quote in a proportional amount to account for increases to Pass Through Costs.
- e. **Restricted Access for Non-Payment.** Flexential may limit or restrict Customer's access to the Services, Facility and Customer Equipment if past-due undisputed balances remain unpaid for more than 30 days after Flexential provides notice of initial delinquency to Customer.
- f. **Taxes.** Except for taxes based on Flexential's income, Customer will be responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise or other local, state and federal taxes, fees, charges or surcharges, however designated, imposed on or based upon the provision, sale or use of the Services provided hereunder.
- g. **Invoice Disagreements.** In the event of an invoice Dispute, Customer must notify Flexential via email to: billingdisputes@flexential.com within 60 days of the date the invoice is sent to the Customer and pay all undisputed portions by the applicable due date. In such notice, Customer must describe the nature of the Dispute with sufficient detail to reasonably permit Flexential to investigate the Dispute. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account and amounts payable to Flexential shall be paid within 10 days of Dispute resolution.

5. TERMINATION AND REDUCTION IN SERVICES.

- a. **Termination for Breach.** Either party may terminate the MSA without liability if the other party materially breaches the terms of this MSA and the breaching party fails to cure the breach within 30 days of receipt of notice from the non-breaching party. Customer may not terminate the MSA or any Quote pursuant to this Section as a result of Service-related issues that are subject

to the sole and exclusive remedies provided in Section 11. Either party shall have the right to immediately terminate the MSA without liability if (i) the material breach caused by the breaching party is not reasonably capable of a cure or (ii) the other party is the subject of an involuntary bankruptcy filing that is not withdrawn or dismissed within 60 days of filing or any voluntary bankruptcy filing, becomes insolvent, or is liquidated. In the event Flexential terminates all or portion of the Services in accordance with this Section 5(a), Customer shall pay Flexential the early termination fee set forth in Section 5(c).

b. Termination for Convenience. Customer may terminate any Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives Flexential at least 90 days prior notice. The date of termination shall be effective the last day of the month in which the 90 day notice period expires (the "Termination Effective Date"). For example, if Customer provides notice of termination to Flexential on June 15, 2023, the Termination Effective Date shall be September 30, 2023. In the event Customer exercises the early termination option, Customer shall pay Flexential an early termination fee as set forth in Section 5(c).

c. Early Termination Fee. Pursuant to Section 5(a) and (b), Customer shall pay Flexential an early termination fee, as liquidated damages, not as penalty, based on the applicable then-current Service Term, calculated as follows: (i) 100% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 1 through 12; plus (ii) 90% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 13 through 24, if any; plus (iii) 80% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 25 through the end of the Service Term, if any; plus (iv) any installation or other fees identified on the Quote for the terminated Service or portion thereof as having been previously waived; plus (v) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer; plus (vi) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum. The parties agree that the above formula represents a reasonable estimate of Flexential's anticipated damages from an early termination, which are difficult to calculate with precision. Customer shall not be liable for the early termination fee if Customer terminates this MSA pursuant to Section 5(a) or any other Section that permits termination by Customer "without liability".

6. UTILIZATION OF FLEXENTIAL NETWORK; CONTENT OF TRANSMISSIONS. At Customer's request, Flexential shall use commercially reasonable efforts to assign Internet Protocol ("**IP**") address space specified on a Quote for Customer during a Service Term and to route those IP addresses on Flexential's network. Customer shall have no right to route such IP addresses outside of the Flexential Network and Flexential Facilities. Flexential shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the MSA or the applicable Service. Customer is solely responsible for the content of any transmissions utilizing the Services. The use of another organization's network or computing resources is subject to its respective permission and usage policies. Customer further agrees not to use the Services for illegal purposes. Flexential reserves the right to re-route IP data packets to any and all Internet carriers connected to the Flexential Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in Exhibit C.

7. HAZARDS OR INTERFERENCE. Customer agrees not to interfere with or disrupt other network users, other Flexential customers, network services or network equipment. In the event that Customer Equipment poses a threat to Flexential's ability to provide service to other customers, Flexential may immediately disconnect all or a portion of the Service or, in the case of DDos attacks, blackhole the affected IP address, despite Flexential's scrubbing service. Customer will maintain the Equipment Space in an orderly and safe condition. If Customer or any Customer Equipment creates a hazard or interferes with Flexential's operation and/or maintenance of the Facility, Flexential will use reasonable efforts to notify Customer of such hazard or interference. Upon Flexential notification under this Section 7, Customer must promptly and as applicable: (a) remove the hazard or cease the interference within 5 days after Flexential's notice, or Flexential may clean the Equipment Space and pass the reasonable cost on to Customer, (b) provide a plan to remove the hazard or cease the interference that is reasonably acceptable to Flexential, or (c) authorize Flexential to take such necessary action (billed at applicable rates) to remediate the hazard or interference. Customer understands that a hazard or interference may cause imminent harm to Flexential, its customers or its Facilities, in which case notice to Customer may not be reasonable prior to Flexential taking necessary action.

8. SECURITY.

a. Flexential Responsibilities. Flexential shall take commercially reasonable measures to provide the security safeguards listed as a Flexential responsibility with respect to the specific Services set forth in Exhibit B. Unless otherwise specified in Exhibit B, Customer acknowledges and agrees that Flexential is not responsible for the integrity or security of any Customer Data.

Flexential agrees to notify Customer promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility, or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Flexential may update Exhibit B as Services are added or as new measures are implemented, provided in no event will such updates decrease existing responsibilities.

- b. **Customer Data Ownership.** As between Flexential and Customer, Customer Data is and will remain the exclusive property of Customer.
- c. **Customer Responsibilities.** Customer shall (i) use commercially reasonable security precautions in connection with the use of the Services, (ii) require its end users and customers to use commercially reasonable security precautions; and (iii) encrypt Regulated Customer Data. Unless otherwise stated in Exhibit B, Customer shall ensure logical security protection and backup and recovery of Customer Data. Customer agrees to notify Flexential promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility or a Lost Device (as defined in Attachment 1), or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Customer shall cooperate with Flexential in any investigation of the use or possible use of the Customer's Equipment, the Facilities or the Services for any purpose that is not intended by this MSA. Customer must apply, and with respect to Services managed by Flexential, consents to Flexential's application of all security patches or updates to Customer's software, firmware or operating system used in Flexential's provision of the Services.

9. EQUIPMENT AND SOFTWARE.

- a. **Rights To.** Customer represents, warrants and covenants that it owns or has the legal right and authority to use, as applicable Customer Equipment and any software provided or used by Customer in connection with use of the Services.
- b. **Flexential Equipment.** To the extent Flexential procures specific equipment for Customer's use, Flexential reserves the right to substitute such equipment with comparable equipment of the same make, model and performance specifications. Such substituted equipment shall not negatively impact Flexential's provision of the applicable Services. Customer does not have any right in or to the equipment. Flexential will coordinate any equipment substitutions with Customer.
- c. **Software Terms.** With respect to any third-party software provided by Flexential for Customer's use in connection with the Services (the "**Software**"), Customer represents, warrants and covenants that it will abide by the Additional Software Terms located on the "Legal Information" page on Flexential's website (the "**Additional Software Terms**") (currently available: https://www.flexential.com/system/files/file/2020-01/Additional-Software-Terms-Flexential-June-2018_1.pdf). The Additional Software Terms are hereby incorporated into the MSA. In the event of any conflict between this MSA and the Additional Software Terms, the Additional Software Terms will control, but only with respect to the Software. Flexential will provide Customer with prior notice (e-mail acceptable) of any material modifications to the Additional Software Terms.

10. ACCEPTABLE USE POLICY AND DATA CENTER RULES. Customer shall, and shall cause any parties permitted by Customer to enter the Facility or directly use the Services to, comply with: (a) Flexential's Acceptable Use Policy attached hereto as Exhibit D, (the "**AUP**"), and (b) Flexential's Data Center Rules attached hereto as Exhibit E, (the "**Data Center Rules**"). The AUP and Data Center Rules may be updated by Flexential from time to time and Flexential will provide Customer with reasonable prior notice of any substantive modifications. If Customer (a) notifies Flexential in writing within 15 days of Flexential's notice that Customer does not approve of such modification and (b) can reasonably demonstrate an adverse impact to its use of the Services is the direct result of such modification, then the parties will use commercially reasonable efforts to reach a mutually agreeable solution to address the issue. If the parties cannot reach a mutually agreeable solution within 30 days after Customer's notice (the "**Resolution Period**"), and so long as such modifications are not required to ensure Flexential's compliance with applicable law, then Customer shall have the right to terminate this MSA upon 30 days' notice without penalty. Customer's notice of termination must be delivered to Flexential within 30 days after expiration of the Resolution Period.

11. SERVICE LEVEL AGREEMENTS.

- a. **Credits.** If Flexential fails to meet the service level criteria outlined in Exhibit C (the "**SLA**"), Customer will be entitled to receive the Service Credits set forth on Exhibit C. "**Service Credits**" will be calculated as 1/30th of the monthly Service charge for the month in which Flexential fails to meet the applicable service level. Under no circumstance will the total maximum Service Credits for any month exceed one month's recurring charges for the affected Service. Customer must request Service Credits in a support ticket/case within 10 business days of a service interruption ("**SLA Disruption Notice**") and be an Eligible

Customer. Flexential will apply any Service Credits against future payments or will apply any credits to undisputed past due invoices. If Customer is eligible to receive multiple credits under this Section 11 from the same event, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event as set forth in Exhibit C.

- b. **Satisfaction Guarantee.** If, within 10 days after receiving the SLA Disruption Notice from Customer and Flexential does not cure the issue causing noncompliance or provide documentation to Customer demonstrating that the Service was in compliance with the applicable SLA (the "**SLA Response**"), then Customer may terminate the affected Service without penalty, so long as such termination notice is delivered to Flexential within 15 days following the end of Flexential's 10-day cure period. If Customer provides an SLA Disruption Notice to Flexential four or more times over any consecutive 12-month period for the same event that results in noncompliance of the same SLA and Flexential does not provide Customer with an SLA Response, then Customer may terminate the affected Service without penalty upon notice to Flexential. Such termination notice under this Section must be delivered to Flexential within 15 days following delivery of the fourth such SLA Disruption Notice. Any Service termination pursuant to this Section 11(b) will be effective upon the earlier of: (i) the effective date stated in Customer's termination notice delivered to Flexential, or (ii) the last day of the third calendar month after the calendar month in which the termination notice is delivered to Flexential.
- c. **Sole and Exclusive Remedy.** Sections 2(b), 11(a) and 11(b) state the sole and exclusive remedy for any equipment and/or software failures, service interruptions, service response issues, and/or service deficiencies of any kind.

12. SUSPENSION OF SERVICES. Flexential reserves the right to suspend all Services in the event: (a) Flexential has the right to terminate the MSA as a result of undisputed invoices being past due; or (b) Flexential reasonably believes: (i) Customer is in violation of the MSA, provided, however, that Flexential will make reasonable efforts under the circumstances to provide Customer an opportunity to cure such breach; (ii) Customer is in violation of any applicable law; (iii) it is required to suspend Services under applicable law or government order; or (iv) continuing to provide the Services would result in significant damage to Flexential, the Flexential Network or other Flexential customers. Flexential will have no liability for any damages that Customer may incur as a result of any suspension of Services pursuant to this Section.

13. INSURANCE.

- a. **Customer Obligations.** Customer shall procure and maintain, at Customer's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence or, if Customer does not provide automobiles to its personnel, Customer must require each of its personnel driving to the Facility to maintain personal auto liability insurance in an amount not less than \$100,000; (v) "All Risk" Property insurance covering all of Customer's Equipment colocated in any Facility in an amount not less than its full replacement cost, as well as business interruption coverage; and (vi) Cyber Breach Liability Insurance in an amount not less than \$1,000,000. Customer's Commercial General Liability and Auto Liability policies shall be endorsed to show Flexential (and any underlying property owner, as requested by Flexential) as an additional insured, and must contain provisions providing that such insurance is primary insurance insofar as Flexential and Customer are concerned, with any other insurance maintained by Flexential being excess and noncontributing with the insurance required of Customer. Customer shall either require any contractor entering the Equipment Space on its behalf to procure and maintain the same types, amounts and coverage for Workers' Compensation, Employer's Liability, Commercial General Liability Insurance and Auto Liability as are required of Customer, or add such contractor as an additional insured on such policies of Customer.
- b. **Flexential Obligations.** Flexential shall procure and maintain, at Flexential's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence; (v) "All Risk" Property Insurance in an amount equal to the full replacement cost of any Flexential Equipment used to provide the Services and (v) Professional Liability (Errors and Omissions) Insurance Policy, including Cyber Breach Liability, in an amount not less than \$1,000,000. All Flexential insurance policies, with the exception of Workers Compensation and Employer's Liability, shall be secondary and in excess of Customer's insurance required to be maintained hereunder and non-contributory with Customer's policies.

- c. **General Obligations.** Each party shall: (i) provide the other party upon request with evidence of compliance with this Section 13, and (ii) notify the other party in writing at least 30 days in advance of cancellation or reduction in required coverage. None of the foregoing requirements in this Section 13 as to the type and limits of insurance to be maintained by either party are intended to and shall not in any manner limit or qualify the liabilities and obligations for which such party is responsible under any other section of the MSA or by law. All insurance shall be with reputable insurers having an AM Best rating of A- or better and may be under an umbrella, blanket or similar policy. No coverage required to be maintained by either party pursuant to this Section 13 may have a Self-Insured Retention (SIR) in an amount greater than \$500,000.
14. **NOTICES.** All notices required under this MSA will be in writing, unless otherwise specified herein, and may be delivered by a nationally recognized courier or e-mail to the addresses set forth on the Cover Sheet. Notices delivered by courier will be deemed delivered upon actual receipt by recipient and notice delivered by email in will be deemed delivered upon the date the notice is sent. Unless otherwise provided herein, notices will be delivered to the addresses most recently provided by a party in a Quote. All notices by Customer to Flexential to terminate, cancel or avoid auto-renewal of this MSA or any Quote must be provided by way of email to cancel@flexential.com and legal@flexential.com.
15. **CASUALTY OR EMINENT DOMAIN.** Solely with respect to Colocation Services, in the event of a taking by eminent domain or damage by fire or other casualty to the Facility, Flexential will notify Customer in writing. In the event the taking or casualty event materially negatively impacts the provision of Colocation Services, either party may terminate the affected Services without penalty upon 30 days prior notice.
16. **SERVICE AGREEMENT.** The parties acknowledge and agree that this MSA is a service agreement and is not intended to, and will not constitute, a lease, sublease or easement. and that Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.
17. **INDEMNITY.**
- a. **Flexential Indemnification Obligations.**
- i. Flexential shall indemnify and defend Customer, Customer's affiliated entities and its employees, officers, contractors and agents (collectively, **"Customer Indemnified Parties"**) from and against any claim, brought against Customer Indemnified Parties by a third party, and all liability, judgment, or cost, including reasonable attorney fees arising out of such claim, to the extent such claims arises from or relates to the following: (i) tangible personal property damage to Customer's Equipment located in the Facility resulting from Flexential's negligence or willful misconduct, up to the full replacement cost of the damaged equipment, (ii) actual personal injury damage in the Facility resulting from Flexential's negligence or willful misconduct, provided, however that indemnification relating to personal injury shall not apply to any claims made by employees of Customer or any Customer Indemnified Party that are covered under applicable workers' compensation law, or (iii) infringement by the Services of a third party intellectual property rights recognized in the United States of America.
- ii. In addition, if any portion of the Service becomes, or in Flexential's opinion is likely to become, the subject of a claim of infringement of any third party intellectual property rights recognized in the United States of America, then Flexential, at its option and expense, may: (I) procure for Customer the right to continue using such portion of the Service, or (II) replace or modify such portion of the Service so that it becomes non-infringing, or (III) terminate the MSA and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of Flexential set forth in the preceding sentence does not apply (x) with respect to portions or components of the Service that are not supplied directly by Flexential, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by Flexential to the extent the infringement relates to such combination; or (y) where Customer's use of the Service is not strictly in accordance with the terms of this MSA including any applicable Additional Software Terms. Notwithstanding anything to the contrary set forth elsewhere in the MSA, Customer's sole and exclusive remedies against Flexential and the Flexential Indemnified Parties for intellectual property infringement are as set forth in this paragraph.
- b. **Customer Indemnification Obligations.** Customer shall indemnify and defend Flexential, Flexential's affiliated entities and its employees, officers, contractors and agents (collectively, **"Flexential Indemnified Parties"**) from and against any claims brought against Flexential Indemnified Parties by a third party and all liability, judgment, or cost, including reasonable attorney's

fees arising from such claim, to the extent that such claims arise from or relates to the following (i) any breach of this MSA (including, without limitation, the AUP and the Data Center Rules); (ii) any use of the Service, (iii) or any negligence or willful misconduct, by Customer, any Customer Indemnified Party or any of its or their invitees, assignees or customers, or (iv) the removal, storage and/or disposal by Flexential of Abandoned Customer Equipment or destruction by Flexential of Abandoned Customer Data pursuant Attachment 1.

- c. **Indemnification Procedures.** The indemnified party will promptly notify the indemnifying party in writing of any losses for which the indemnified party seeks indemnification. Lack of notice will not invalidate the indemnifying party's obligation except to the extent that lack of notice prejudiced the outcome of the claim. The indemnified party will cooperate with the indemnifying party in the defense and permit the indemnifying party full control over the defense and settlement of any matter subject to indemnification. The indemnifying party will not enter into any settlement that affects the indemnified party's right or interests without the indemnified party's prior written consent which will not be unreasonably withheld. The indemnified party will have the right to participate in the defense at its expense.

18. REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

- a. **Flexential.** Flexential represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Flexential is a party. Flexential shall comply with all applicable federal, state and local laws in the performance of the Services.
- b. **Customer.** Customer represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Customer is a party. Customer shall comply with all applicable federal, state and local laws in using the Services, including, without limitation, applicable laws related to the storage, transmission and use of Customer Data, information and content. To the extent Customer receives Colocation Services, Customer also agrees that it shall not make any material alterations to the Equipment Space without first obtaining the written consent of Flexential and that Customer shall not allow personnel or contractors to enter the Equipment Space who have not been approved by Flexential in advance in accordance with Attachment 1.

- 19. DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES, INCLUDING THE EQUIPMENT SPACE, ARE DELIVERED BY FLEXENTIAL AND ACCEPTED BY CUSTOMER "AS IS" AND "AS AVAILABLE" AND FLEXENTIAL DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER ACKNOWLEDGES THAT THERE ARE INHERENT RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY AND PROPERTY, INCLUDING CONFIDENTIAL INFORMATION. FLEXENTIAL ASSUMES NO LIABILITY FOR ANY DAMAGE, THEFT OR LOSS TO CUSTOMER'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CUSTOMER EQUIPMENT AND CUSTOMER DATA) RESULTING FROM THE ACTS OR OMISSIONS OF ANY THIRD PARTY OTHER THAN FLEXENTIAL'S CONTRACTORS, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING), EXCEPT TO THE EXTENT SUCH DAMAGE, THEFT OR LOSS RESULTS FROM FLEXENTIAL'S FAILURE TO PROVIDE THE SECURITY SAFEGUARDS WITH RESPECT TO THE APPLICABLE SERVICES LISTED AS FLEXENTIAL'S RESPONSIBILITY IN EXHIBIT B. FLEXENTIAL EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES ANY CLAIM AGAINST FLEXENTIAL WITH RESPECT TO, ANY LIABILITY FOR LOSS OF CUSTOMER DATA OR DAMAGE TO CUSTOMER EQUIPMENT WHERE CUSTOMER HAS REQUESTED THAT FLEXENTIAL PACK, SHIP, RECEIVE AND/OR STORE SUCH CUSTOMER EQUIPMENT OR WHERE CUSTOMER HAS FAILED TO REMOVE SUCH CUSTOMER DATA FOLLOWING THE END OF A SERVICE TERM.

- 20. LIMITATION ON LIABILITY.** THE ENTIRE CUMULATIVE LIABILITY OF FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES OF WHATEVER NATURE ARISING OUT OF THE MSA AND THE FURNISHING OF, OR THE FAILURE TO FURNISH, THE SERVICES DESCRIBED IN THE MSA, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, NEGLIGENCE, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE LESSER OF (I) \$500,000 OR (II) THE RECURRING CHARGES FOR SERVICES PAID OR PAYABLE BY CUSTOMER TO FLEXENTIAL OVER THE 12-MONTH PERIOD PRECEDING THE EVENT ON WHICH THE CLAIM OF LIABILITY IS BASED. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY LOST OR IMPUTED

PROFITS OR REVENUES OR BUSINESS, CUSTOMER DATA OR USE, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF FLEXENTIAL OR ANY OF THE FLEXENTIAL INDEMNIFIED PARTIES, AND REGARDLESS OF WHETHER FLEXENTIAL OR CUSTOMER HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THIS LIMITATION ON LIABILITY SURVIVES ANY REMEDY'S FAILURE OF ESSENTIAL PURPOSE.

21. **LIMITATION ON LAWSUITS.** As a condition for recovery of any liability, a party must provide notice of a claim with a description of the basis of the claim under the MSA and provide the other party such notice within three months after discovery or sixty days after the termination or expiration of this MSA, whichever is earlier.
22. **PROPRIETARY RIGHTS.** The MSA will not be construed to grant to Customer any ownership right, title or interest in any intellectual property rights embodied in or associated with the Services, other than to the limited extent that any licenses are included in the Services as specified on any Quote or the Additional Software Terms. All intellectual property rights, title and interest in the methodology, technology and know-how that Flexential uses to provide the Services will remain exclusively with Flexential and its licensors, as applicable.
23. **ASSIGNMENT OR TRANSFER.** Both parties may assign their respective rights and obligations under the MSA (a) to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, and upon such assignment, the assigning party will be released of all its obligations under the MSA arising from and after the date of such assignment, provided that any such assignee entity delivers to the other party a signed writing evidencing its agreement to be bound by the terms and conditions of the MSA, or (b) by operation of law. Flexential may assign the MSA to an affiliate or division so long as Flexential exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate, Flexential may continue to collect and receive all or any portion of the amounts payable hereunder by the Customer as agent for and on behalf of such affiliate-transferee/assignee and notify the Customer thereof in writing this MSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Customer may permit its affiliated entities to use the Services, provided Customer shall be directly responsible and liable to Flexential for any breach of this MSA by affiliated entities. Customer shall not resell any of the Services provided by Flexential to an unaffiliated third party without first obtaining the written consent of Flexential. Unless otherwise set forth herein, neither party may assign the MSA in whole or in part without the prior written consent of the other party, which consent will not be unreasonably withheld.
24. **ENTIRE UNDERSTANDING.** The MSA, together with any attachments or exhibits hereto and all referenced documents constitutes the entire understanding of the parties related to the subject matter hereof and expressly supersedes all prior or contemporaneous oral or written agreements, including any prior non-disclosure or confidentiality agreements.
25. **GOVERNING LAW AND VENUE.** The parties will attempt in good faith to resolve any Dispute within the timeframes set forth herein, or, if no timeframe is set, within 30 days. The MSA will be governed and construed in accordance with the laws of the state of Colorado without regard to any conflict of law principles. Any Dispute arising from this MSA, shall be subject to the exclusive jurisdiction of the state and federal courts of Denver, Colorado. The parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS MSA, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.
26. **CONFIDENTIALITY.**
 - a. In connection with the MSA, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**"). Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary, including pricing information, data center designs and Flexential audit and security reports. Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information disclosed to Recipient by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any Services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The obligations of confidentiality of each party under this Section

shall survive for two years from the termination of the MSA or, if longer with respect to any particular item of Confidential Information, for so long as such item of Confidential Information meets the definition of a "trade secret" under applicable law. Flexential may share the MSA as well as information relating to the Services received by Customer and the fees paid by Customer (but not any Customer Data) to Flexential alliance partner(s) who are associated with Customer's account for the purposes of allowing the partner(s) to verify commissions payable by Flexential, so long as such partner(s) are bound to a confidentiality provision substantially similar to this Section. Unless set forth herein, the terms of this MSA and all Quotes are Confidential Information. Except as otherwise provided in this Section 26, at all times during the term of this MSA and for two years thereafter, Recipient shall not disclose Discloser's Confidential Information to a third party without the Discloser's prior written consent or use the Confidential Information for purposes other than the performance of this MSA. Where disclosure is required by law, such disclosure shall not constitute a breach of this MSA provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

- b. **Exceptions.** Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) was provided to Recipient by a third party not subject to an obligation of confidentiality to Disclosing Party with respect to the Disclosing Party's Confidential Information. Notwithstanding Section 26(a) above, Recipient may disclose the Disclosing Party's Confidential Information as required by a legal, judicial or governmental entity, or as otherwise required by law or regulation (including disclosures required in filings with the Securities and Exchange Commission or other governmental body and via subpoena, search warrant or other similar demand for production of information or materials).

27. COMPLIANCE.

- a. **Customer Responsibility.** Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of Customer Data or information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information, including Regulated Customer Data. If any international, state or federal law requires any specific agreement about such information, Customer will notify Flexential and the parties will work together in good faith to modify the MSA as may be required by applicable law.
- b. **Risk Assessment.** Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer's purposes and Customer's compliance with applicable law; and (iii) Flexential is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.
- c. **CCPA.** If and to the extent the California Consumer Privacy Act of 2018, (as amended "**CCPA**"), applies to the provision and use of the Services, Flexential hereby agrees as follows: (i) Flexential is a Service Provider, and Flexential shall not: (x) Sell Personal Information or (y) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Services including retaining, using, or disclosing Personal Information for a Commercial Purpose; and (ii) Flexential shall promptly take such actions and provide such information as Customer may reasonably request to help Customer fulfill requests of individuals to exercise their rights under the CCPA, including, without limitation, requests to access, delete, opt out of the sale of, or receive information about Personal Information. Flexential shall inform Customer of Flexential's receipt of any requests under clause (ii) of the preceding sentence, and Flexential may direct individuals making such to Customer. Customer and Flexential acknowledge and agree that Flexential's access to Personal Information is not part of the consideration exchanged by the parties in respect of the MSA. For the purposes of this Section 27(d), the terms "Commercial Purpose," "Sell," and "Service Provider," shall have the meanings given in the CCPA, and the term "Personal Information" means any information that Flexential has at any time, whether before or after the date hereof, collected, accessed, received, used, disclosed, or otherwise processed on behalf of Customer in relation to Flexential's provision of Services to Customer under the MSA and that constitutes "personal information" under the CCPA.

28. MISCELLANEOUS.

- a. **Counterparts.** The MSA and any Quote may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. An electronically scanned signature shall be deemed an original.

- b. **Tariffs.** Customer understands that Internet use, and related products and services provided under the MSA, may require registration and related administrative reports which are public in nature. Flexential may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by Flexential to Customer. In the event that such tariffs are filed related to Services ordered by Customer, then the terms set forth in the applicable tariff will govern Flexential's delivery of, and Customer's consumption or use of, such Services.
- c. **Publicity.** Neither party will use the other party's name, trademarks or logos without the prior written consent of the other party unless otherwise required by applicable law; provided, however, Flexential may include Customer's name and logo in a list of customers in its marketing materials, including on the Flexential website.
- d. **Severability, Modifications and Waiver.** If any provision of the MSA is invalid or unenforceable, such provision will be severed from this MSA so that the remaining provisions are unaffected. Except to the extent specifically set forth herein the MSA may not be modified except by a writing signed by an authorized signatory of each party. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.
- e. **Independent Contractors.** Flexential and Customer are independent contractors and nothing in the MSA will be deemed to create a partnership, joint venture, association, employment relationship between the parties.
- f. **No Brokers.** Customer covenants and represents that it has negotiated the MSA directly with Flexential, and has not authorized any broker, salesperson or finder to act for it in the negotiation and execution of the MSA. Customer agrees to indemnify and hold harmless Flexential from any and all claims by any such broker, salesperson or finder for a commission or finder's fee as a result of Customer having entered into the MSA.
- g. **Third Party Beneficiaries.** Except as otherwise explicitly agreed, there will be no third party beneficiaries to the MSA.
- h. **Force Majeure.** Notwithstanding Section 11, Flexential will not be liable for any failure of performance or equipment due to causes beyond its reasonable control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, terrorist attack or wars.
- i. **Non-Solicitation.** Unless otherwise approved in writing, during the Term and for one (1) year thereafter, Customer will not hire any person who is or was an employee of Flexential during the Term, provided, however, that this provision will not apply to general advertising solicitations or similar efforts not targeted towards current or former Flexential employees.
- j. **Survival.** All provisions which by their nature are intended to survive, will survive the expiration or termination of the MSA.

Attachment 1
Service Specific Terms and Conditions

Flexential may provide Customer with one or more of the Services further described below

1. Colocation Services. The following terms and conditions apply only to the extent that Customer receives Colocation Services.

- a. **Access to Facility and Use.** Starting on the applicable Quote Effective Date, Flexential hereby grants Customer a limited, revocable license to install, operate, maintain and access the Customer Equipment within the Equipment Space. Customer will be entitled to access and use the Equipment Space during the Service Term and in accordance with Section 1(c) only for placement, operation and maintenance of computer or telecommunications equipment. Flexential may require that Customer and any of Customer's agents be escorted when they are in the Facility. Flexential will have the right to access the Equipment Space as reasonably required to provide the Service and may suspend Customer's access to the Facility as directed by government order or emergency responders or, in Flexential's reasonable discretion, as may be reasonably required to prevent injury or illness to persons or damage to property.
- b. **Remote Hands.** Customer may request Flexential perform routine service and monitoring services by phone or through the Customer Portal. Customer will be billed the then-current non-contracted hourly rate with a minimum of 1 hour per event; additional time used on the event will be billed in 15-minute increments.
- c. **Installation and Operation.** Customer will install and maintain the Customer Equipment in a reasonable and professional manner that does not adversely impact the operations of Flexential or other Flexential customers. Flexential will not be responsible for the operation or maintenance of Customer Equipment.
- d. **Access to Equipment Space; Access Devices.** Customer will provide to Flexential a written authorization of employees, agents, or contractors who may physically access the Equipment Space (the "Approved Access List"). Any changes to the Approved Access List must be provided to Flexential in writing or loaded in the Customer Portal. Flexential shall provide Customer with access cards, keys or other access devices ("**Devices**") unless Customer has elected to manage its own access devices for the Equipment Space. Customer is responsible for notifying Flexential in writing if a Device is lost or stolen ("**Lost Device**") and Customer will be responsible for the cost of replacing any Lost Devices. In the event unauthorized parties gain access to the Facility through use of a Lost Device, Customer will be responsible for any damages incurred as a result of the unauthorized access that occur prior to Customer notifying Flexential of the Lost Device.
- e. **Effect of Termination of Colocation Services.** Upon termination or expiration of the MSA or all or a portion of the Colocation Services (the "**Facility Exit Date**") Customer shall promptly remove all or the applicable portion of Customer Equipment from the Equipment Space and the Facility and shall leave the Equipment Space in the same condition as when Customer first occupied the space, normal wear and tear excepted. Flexential may remove all Flexential Equipment from the applicable Equipment Space and repair any damage to the applicable Equipment Space on or after the Facility Exit Date. Customer shall reimburse Flexential promptly for the reasonable cost of such repairs. If Customer fails to remove Customer Equipment from the Facility or Equipment Space by the Facility Exit Date, Customer shall continue to be billed for all Services at a rate equal to 150% of the rates set forth in the applicable Quote(s) until all such Customer Equipment is removed. In the event Customer Equipment is not removed within 90 days of the Facility Exit Date, Flexential shall be entitled to remove all Customer Equipment (the "**Abandoned Customer Equipment**") from the Equipment Space. Flexential may, in its sole discretion and in accordance with applicable law, remove and dispose of any such Abandoned Customer Equipment. Customer is responsible for all costs associated with the removal of Abandoned Customer Equipment and Flexential shall not be liable to Customer or any third party as a result of such removal or disposal.
- f. **ANNUAL ESCALATOR.** The monthly recurring charges for all Services will increase 6% per year beginning on the first anniversary of the Service Term Start Date.
- g. **Power Hedging.** Customer acknowledges and agrees that in deregulated power markets, Flexential may enter into energy hedging and/or forward purchasing agreements with applicable energy companies [and may charge based on the fees set forth in those agreements, as may be modified from time to time.

2. CLOUD, DATA PROTECTION AND OTHER SERVICES.

- a. **Location.** Unless otherwise set forth in the applicable Quote, the location of Flexential Equipment used to provide Cloud Services or Data Protection Services is at Flexential's sole discretion. All Services performed by Flexential personnel are performed in the United States unless expressly stated otherwise.
- b. **Removal of Customer Data from Flexential Equipment Upon Termination.** Upon termination or expiration of the MSA or all or a portion of the Cloud or Data Protection Services, Customer shall promptly remove and delete all Customer Data from applicable Flexential Equipment. Customer may request Flexential to provide professional services as defined in a Professional Services Agreement to assist Customer with such removal and deletion and all deletion of Customer Data shall be at Customer's sole expense. To the extent Customer does not remove and delete all Customer as set above for any reason (the **"Abandoned Customer Data"**), Flexential shall have no responsibility to Customer or any third party with respect to such Abandoned Customer Data and shall be entitled to destroy such Abandoned Customer Data at Customer's sole risk and expense, in accordance with applicable law.

Exhibit B
Security and Compliance Roles & Responsibilities Matrix

Legend:

1. F = Flexential's responsibility
2. C = Customer's responsibility
3. C* = Responsibility dependent on whether the applicable Service has been purchased ("F" if purchased; "C" if not purchased)
4. "Colocation Services" as used in this Exhibit includes colocation space and power, and associated network and Data Protection Services purchased by Customer.
5. "Cloud Services" as used in this Exhibit includes the applicable Cloud Service environment (Multi-tenant Cloud, Hosted Private (Single-tenant) Cloud, DRaaS/Recovery Cloud Services, Backup as a Service (Baas) and/or Object Storage), and associated network and Data Protection Services purchased by Customer. The responsibilities for Dedicated Servers are set forth under "Additional Data Protection Services" in the table below.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Audits & Information Security Program			
Flexential Compliance Assessments and Certifications	Obtain and maintain during the Term the following assessments and certifications: ISO 27001, PCI-DSS, HITRUST, FISMA, SOC-1, SOC-2 and SOC-3 or successor standards, covering U.S. Facility operations and Cloud Service infrastructure up to and including the hypervisor level, and, as applicable, Flexential corporate (i.e. non-Service) environments, as described in each case in such assessment reports and certifications ("Flexential Audits"). Copies of the most recent Flexential Audits are available to Customer on the Customer Portal.	F	F
Other Compliance Assessments and Certifications	Obtain and maintain, to the extent desired by Customer, assessments and certifications with respect to the Customer information environment not covered in the scope of the Flexential Audits, including any dedicated/private infrastructure and Customer's private network, servers, applications, data, personnel and operational practices.	C	C
Flexential Information Security Program and Background Checks	Implement and maintain Information Security Program governing Flexential's operation of the Services and corporate environments during the Term in compliance with the Flexential Audits and Flexential's contractual responsibilities including this Matrix. Obtain and review a pre-hire background screen from a third-party vendor for all Flexential employees with a look-back period of at least seven (7) years, to include: arrest record, sex offender registry, driver record, education verification, excluded parties list, federal criminal record, multi-state/jurisdiction (non-sex offender) record, Social Security Number trace, state criminal repository record and county criminal record.	F	F
Customer Information Security Program	Implement and maintain Information Security Program governing Customer operations as desired by the Customer.	C	C
Flexential Infrastructure Management			
Flexential Facility - Physical & Environmental			
Environmental	Facility with redundant power and communications to reduce risk of system damage and destruction, including emergency shut-off, emergency power, emergency lighting, fire protection, water damage protection, and temperature/humidity controls.	F	F
Video	Video surveillance of entry and exit points to white floor and operations monitoring.	F	F
Video Retention	Video logs stored 90 days.	F	F
Access	Limit access to raised floor through role-based access, isolated phases, and validation procedures through identification, detection and alerting.	F	F
Access reports	Visitor and authorized Facility access logs, monthly review of activity reports.	F	F
Customer Colocation Cage, Cabinet or Suite - Physical			
Video	Video surveillance and operations monitoring of Customer Equipment Space.	C*	n/a
Video Retention	Video logs stored 90 days (only available if Video Service is purchased).	C*	n/a
Access	Limit access to scoped environment through role-based access, isolated phases, locked cages and cabinets, validation procedures and customer-authorized list through identification, detection and alerting.	C	n/a

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Access Control Device	Electronic access control device on scoped environment.	C*	n/a
Access reports	Customer Equipment Space access logs (only available if Access Control Device is purchased).	C*	n/a
Flexential Cloud Services Infrastructure			
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Flexential Equipment used to provide Cloud Services (the "Cloud Node") is located (excluding Amsterdam).	n/a	F
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to Cloud Node through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on Cloud Node.	n/a	F
Cloud Services Infrastructure Firewall	Redundant firewalls with IDPS deployed in the Cloud Services infrastructure with respect to all connections outside the Flexential Network to provide proper segmentation and isolation, built to industry hardening standards in conjunction with authorized traffic requirements and build approval. Firewall resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Compute Environment	Physical hardware platform designed with a segmented network controlled and managed by authorized staff. Compute resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Vulnerability Management	Continuous infrastructure device hardening, vulnerability and configuration management, including installation of recommended security patches and updates.	n/a	F
Storage Environment	Storage environment utilizing a segmented network controlled and managed by authorized staff. Encryption-at-rest is enabled on multi-tenant Cloud Service (including Recovery Cloud, DRaaS, BaaS and Object Storage) storage arrays. ¹	n/a	F
Logical Access Control	Unique logical (system) 2-factor authentication access control to Flexential Cloud Services Infrastructure based on Flexential role-based requirements, IP restriction and business need.	n/a	F
Scanning, pen testing	Quarterly internal network vulnerability scanning and annual network external and internal penetration testing, up to and including the Hypervisor level.	n/a	F
Additional Data Protection Services			
Managed Firewall Service	Applicable only to the extent Customer purchases Managed Firewall Service		
Virtual Firewall	Virtual firewall restricting network access to Customer's cloud environment.	n/a	F
Physical Firewall	Physical firewall restricting network access to Customer's hardware including VLAN configuration.	F	n/a
Networking Access	Enforcement of authorized access controls.	F	F
Firewall – Vulnerability Management	Vulnerability and configuration management, including installation of recommended security updates.	F	F
IDPS/IDS – Advanced Firewall Service only	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
2 factor/ VPN	SSL and IPSEC with soft tokens.	C*	C*
Managed Operating System (OS) and Managed Database Services	Applicable only to the extent Customer purchases Managed OS Service and, if applicable, Managed Database Service		
Setup, patching and maintenance	Provision, patch, and maintain the OS and, if Managed Database Service is purchased, the Database server.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client at the OS level with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key OS files and directories.	n/a	C*
Dedicated Servers	Applicable only to the extent Customer purchases Dedicated Servers with Managed OS Service		
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Dedicated Servers are located.	n/a	F

¹ Note: Encryption-at-rest is not enabled for renewals of previously installed Capacity Storage legacy Service.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to cage or cabinet through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on cage or cabinet.	n/a	F
Setup, patching and maintenance	Provision, patch, and maintain the Operating System.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key O/S files and directories.	n/a	C*
Other Data Protection Services	Applicable only to the extent Customer purchases the applicable Data Protection Service		
Log Management Service	Log collection, retention, reporting and alerting.	C*	C*
Vulnerability Scanning	Quarterly internal and external network vulnerability scanning.	C*	C*
IDPS/IDS	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
Encryption as a Service	Provisioning, setup and infrastructure maintenance for encryption service.	C*	C*
Encryption as a Service	Determination of which Customer Data to encrypt, and encryption key management custodian responsibilities.	C	C
Active Directory as a Service (ADaaS)	Provisioning, setup and infrastructure maintenance for ADaaS service.	C*	C*
Active Directory as a Service (ADaaS)	Management and configuration of active directory instance.	C	C
Flexential Professional Services	Applicable only to the extent Customer purchases the applicable Professional Service		
Penetration Testing	Network external and internal penetration testing of Customer environments as specified in applicable SOW.	C*	C*
Migration Services	Migration of Customer virtual servers and data as specified in applicable SOW.	C*	C*
Disaster Recovery Design, Planning and Testing Services	Disaster Recovery consulting, planning, documentation, and testing as specified in applicable SOW.	C*	C*
Security and Compliance Assessment Services	Assessment of Customer environment security controls and compliance status as specified in applicable SOW.	C*	C*
Managed DevOps Services	24x7 Full Stack management of DevOps environments as specified in applicable SOW.	C*	C*
Security Remediation	Remediation of technical vulnerabilities and implementation of security controls as specified in applicable SOW.	C*	C*
Security Forensics & Incident Response	Acquisition of forensic evidence and investigation of compromise as specified in applicable SOW.	C*	C*

Exhibit C

Service Level Agreement

The Service Level Agreement ("SLA") does not cover Service unavailability caused either directly or indirectly by:

- 1) Acts or omissions of Customer or its employees, contractors, agents or end-users, including software or hardware configuration changes not made or approved by Flexential;
- 2) Regular scheduled or emergency system maintenance;
- 3) Failure, malfunction or limitation of throughput of any equipment, network, software, applications, systems, components or services not managed by Flexential, including but not limited to third party vendor support; or
- 4) Circumstances or causes beyond the control of Flexential, including third-party attacks (such as ping or denial of service attacks) on the Flexential Network.

Co-location Services

Service Level	Non-compliance	Applicable Service Credits
Power will be available to Customer computer infrastructure in the Flexential data center 100% of the time provided Customer subscribes to redundant power circuits. Customer is responsible for proper connectivity and cabling of circuits to support redundancy within the Customer Equipment Space. This SLA does not cover outages caused, either directly or indirectly, by overloaded power strips or circuits. The availability of power through only one power circuit where such power is supplied through a primary and redundant circuit does not entitle Customer to a credit under this SLA.	Any failure of both primary and redundant circuits	One Service Credit for each day in which there is non-compliance during any month

Data Center Network Services

Service Level	Non-compliance	Applicable Service Credits
Network availability. Network unavailability shall exist when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. For Customers subscribing to redundant network connections, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network connection < 100% for Customers subscribing to redundant network connections	One Service Credit for each day in which there is non-compliance during any month
Network cross-connect availability. Customer's network cross-connects begin at the initial piece of Flexential Equipment or third-party carrier equipment, as applicable, to which the applicable circuit connects, and end at the demarcation point installed in Customer's cabinet and/or cage. Network cross-connect unavailability exists when due to a failure of Customer's network cross-connect(s), a particular Customer Port is unable to transmit data from the Flexential Network or third-party carrier connection(s), as applicable. For Customers subscribing to redundant network cross-connects, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network cross-connect < 100% for Customers subscribing to redundant network cross-connects	One Service Credit for each day in which there is non-compliance during any month
Packet loss between any two points on the Flexential Network	>1%	One Service Credit for each day in which there is non-compliance during any month
Round-trip Latency between any two points in the U.S. on the Flexential Network	>90 ms	One Service Credit for each day in which there is non-compliance during any month

Cloud Services

Service Level	Non-compliance	Applicable Service Credits
Cloud Service availability. Availability for Cloud Service is access to compute, network and storage resources, provided Customer subscribes to and configures redundant resources. Unavailability of the Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure below the applicable commitment level, or, with respect to the network component of Cloud Services, when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. Failure of Customer to maintain compliance with Flexential sizing recommendations may render this SLA void. Downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.999% (26 seconds per month)	One Service Credit for each day in which there is non-compliance during any month
Flexential DRaaS/Recovery Cloud – Recovery time. Recovery time is defined as the duration of time from customer service request to instantiation (power-on ready) of the disaster recovery virtual machine instance, not including instance boot time and boot priority controlled by Customer. The instance must be in a valid virtual protection group and in a Protected state as reported by Flexential Portal. This SLA is not valid with respect to any particular disaster recovery event unless a successful failover test was completed within the preceding 12 months or, if a material change in the Customer's protected environment occurred at any point during the preceding 12 months, after the most recent such material change.	Standard DRaaS/Essentials* > 8 hours RTO 4-hour Package/Prime* > 4 hours RTO 2-hour Package/Premium* > 2 hours	One Service Credit for each day in which there is non-compliance during any month

* RTO 4-hour and RTO 2-hour Packages are additional Services that can be purchased as separate line items on a Quote, and "Essentials", "Prime" and "Premium" refer to Service names. If no RTO 4-hour or 2-hour hour Package has been purchased for Flexential DRaaS, the time commitment for "Standard DRaaS" shall apply.

Data Protection Services

Service Level	Non-compliance	Applicable Service Credits
Backup jobs will start within 4 hours of scheduled start time slot*	>3 failures in a month	One Service Credit for the fourth and each successive failure during any month
Restores initiated within 4 hours of receiving the request	Any failure	One Service Credit for each day in which there is non-compliance during any month
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure	One Service Credit for each day in which there is non-compliance during any month

*Reporting on job start performance will be by Customer request. Flexential is not responsible for jobs failing to start due to previous job still running where Customer server/configuration is the cause of the job completion delay.

Incident Response Time

Service Level	Non-compliance	Applicable Service Credits
Flexential shall Respond to any request for incident resolution from an authorized Customer representative with respect to any Service within 1 hour of creation of the applicable ticket for a "high priority" incident, and within 2 hours of creation of the applicable ticket for any non-high priority incident. A "high priority" incident means that the Service is unavailable or has been materially impacted. "Respond" means that a ticket has been created/submitted and the incident has been assigned to the Flexential team responsible for resolving the incident.	Any failure to Respond within the required timeframe	One Service Credit for each day in which there is a non-compliance during any month

Exhibit D

AUP

Acceptable Use Policy

Flexential Corp., formerly known as Peak 10, Inc., and its affiliated entities ("Flexential") has published this acceptable use policy ("AUP") in an effort to provide reliable, high-quality service to our clients. By using Flexential's services or network, you agree to the latest version of this AUP. We may modify this policy at any time by posting a revised version on the Flexential website.

Illegal, Harmful, or Offensive Conduct

You may not use Flexential's services or network for illegal purposes or to take actions that are infringing, offensive, fraudulent or harmful to the Flexential network or others. Examples of prohibited activities include any use of the Flexential services or network:

- in violation of any applicable local, state, or federal law or regulation;
- in a manner that infringes or may infringe upon any copyrights, trademarks, patents, trade secrets, or other types of intellectual property;
- to transmit offensive or threatening materials, including materials that are obscene, pornographic, defamatory, libelous, abusive, hateful, excessively violent, or otherwise inappropriate;
- to export software to points outside the United States in violation of applicable export control laws;
- to transmit fraudulent, deceptive, or misleading materials or to advance any type of financial scam;
- to transmit any materials that harass another person or entity;
- to transmit viruses, Trojan horses, or other materials or components harmful to any network or equipment or other users or third parties; or
- in a manner that exposes or may expose Flexential, its clients, partners, or vendors, or any other person or entity using the Flexential network to abuse, complaints, retaliation, connectivity issues, or other negative impact.

Network, Application and System Security

You may not use Flexential's services or network to violate, monitor or interfere with, or to attempt to violate, monitor or interfere with, the security or reliability of any network, service, data, or other system without proper authorization. Examples of prohibited activities include any attempt to:

- access any network, service, data, or other system that you are not authorized to access;
- probe, scan, or test the vulnerability of any network, service, or system without proper authorization;
- breach any security or authentication measures;
- monitor data or traffic on any network or system without proper authorization or in a manner that disrupts or impairs the network or system;
- interfere with service to any user, host, or network, including, without limitation, by means of overloading, mailbombing, flooding, crushing, or any denial of service attacks;
- forge any TCP/IP packet header or any part of the header information in an e-mail message or a newsgroup posting;
- attempt any action designed to circumvent or alter any method of measuring or billing for services; or
- use the account name of another person without proper authorization.

Flexential reserves the right to investigate any actual or suspected security violation or incident. In the event of an actual or suspected security violation or incident, Flexential may take any actions that Flexential deems reasonably necessary to prevent harm to Flexential and/or Flexential clients, including the network, systems and data of Flexential and/or Flexential clients. Such actions may include, but are not limited to, the following:

- removing, disabling access to, or suspending Services;
- disconnecting a host from the network and preparing for investigative services;
- reporting to appropriate law enforcement officials, regulators, or other appropriate third parties any activity that Flexential believes may violate any applicable law or regulation; and
- cooperating with law enforcement agencies and regulators to assist with any investigation and/or prosecution.

In order to maintain network, application and system reliability and security for you and other Flexential clients, you must use commercially reasonable efforts to keep your network, applications and systems secure and current by applying, or consenting to Flexential applying, if applicable, the most recent patches, updates and upgrades as they are made available by the applicable providers, and appropriately configuring your firewalls and other components of your network, application and system security.

If Flexential notifies you in writing, including by sending an email or notification through Flexential's ticketing system to any of the persons identified by you as administrators with respect to your Services, of particular patches, updates, upgrades or configuration settings that Flexential identifies as "critical", then you must apply those critical patches, updates, upgrades or configurations, or consent to Flexential applying those critical patches, updates, upgrades or configurations, as applicable, within thirty calendar days of the notification. If you fail to timely comply with your obligations in the previous sentence, then (1) you shall reimburse Flexential, at Flexential's standard rates, for all labor, administrative time, or other activity of Flexential's personnel expended in an effort to cure, mitigate or otherwise resolve any problems attributable to such failure and, (2) Flexential shall not be obligated to provide any credits to you with respect to any failure by Flexential to meet its service level commitments that is attributable to such failure.

You are prohibited from taking any action, intentional or unintentional with respect to the Services, which will negatively impact the Flexential business operations, the operations of our clients including shared infrastructure, such as cloud or network services, as a whole.

You are responsible for the use of the Services by any of your employees, any person to whom you have given access or any person who gains access to your data.

Abuse Violations

No spam. You may not use Flexential's services or network to transmit any unsolicited commercial or unsolicited bulk e-mail messages (commonly known as "spam"). In addition, you may not use the services or network of another provider to send spam or to promote a site hosted on or associated with Flexential's services or network.

Newsgroups and Online Forums. All postings to newsgroups and online forums must comply with the written charters, rules, or FAQs for that group. You are responsible for determining the policies of a newsgroup or online forum before posting to it. In addition, you may not attempt to flood or disrupt the newsgroups.

Web Pages. As part of the services, Flexential may provide web hosting services. You are solely responsible for any content that you publish or display on your web pages or web site, including ensuring that the content complies with the terms of this AUP.

Content. Flexential is not responsible for any material created, stored, distributed or accessible on or through the services. Flexential is not obligated to monitor or exercise any editorial control over such material but reserves the right to do so. Flexential reserves the right to block access to such material and suspend or terminate services in the event Flexential determines, in its sole discretion, that any materials may expose Flexential to civil or criminal liability. To the extent you use cloud-related services, all Microsoft® licenses must be provided by Flexential unless specifically approved by Flexential. In all events, you will provide Flexential with a count of all Microsoft licenses used by you in connection with the services.

Attacks

If you are using Flexential network services and:

- you are the subject of a network attack, such as a DDoS attack, that is large enough to affect network traffic, or

- your server and/or application is compromised;

Flexential has the right, immediately and without prior notice, to terminate routing, block ports and IP address space, and/or suspend services in order to protect the integrity of the Flexential network and preserve the services provided to other users.

IP Addressing

Flexential endeavors to utilize its ARIN (American Registry of Internet Numbers) IP space allocations as efficiently as possible, as IP address space is a finite resource that is shrinking quickly and going up in cost. ARIN requires Flexential to justify current and future allocations when additional IP space is requested for customer and or Flexential network use, which requires that 80% of all past allocations are in legitimate use and that the use of said space is within ARIN's allocation guidelines. Therefore your IP space assignments are required to meet the same ARIN guidelines, which can be found at: www.arin.net. In the event you violate the ARIN guidelines or this AUP with respect to IP Addressing, Flexential may revoke your IP addresses without liability to you.

You may not advertise your Flexential-assigned IP space or use it outside of the Flexential ASN (13649) or outside of Flexential owned facilities without prior express written approval from Flexential. This includes utilizing Flexential IP space and 3rd party services such as DDOS or DNS.

You have no right to route IP addresses assigned by Flexential. Flexential shall retain ownership of all such IP addresses at all times, and your access to such IP addresses shall cease immediately upon termination of your Agreement for services with Flexential.

Flexential assigns IP space based off individual customer datacenter assignment/installation. IP blocks may not be transportable between datacenters below a /24. If you desire to move an IP block with /24 or larger IP assignments to a different datacenter, you must request approval for the move, and Flexential shall have no liability to you if Flexential is unable to accommodate such request.

INetU Terms of Use and Acceptable Use Policy

If you are using services pursuant to an agreement with INetU, Inc. ("INetU") then:

(1) This AUP supersedes, replaces, amends and restates in its entirety the Schedule B Terms of Service and Acceptable Use Policy of INetU applicable to you through your agreement with INetU, effective as of the date this AUP is first published online and provided to you in writing;

(2) you must provide INetU with accurate information to help INetU determine if any tax is due with respect to the provision of the services;

(3) you are responsible for keeping your billing and other account information with INetU up to date; and

(4) you must pay when due the fees for the services stated in your agreement with INetU and any additional services order(s) or other agreements between you and INetU.

Consequences

If Flexential determines that you have violated any of the terms of this AUP, Flexential has the right to (i) demand immediate removal of the violating material and/or (ii) restrict, suspend or terminate all or a portion of your services. Flexential may involve and will cooperate with law enforcement authorities. In addition, if you violate this AUP, you may be subject to civil or criminal liability. Flexential shall not be liable for any damages suffered by any user or third party resulting directly or indirectly from any actions taken by Flexential pursuant to this AUP. All determinations by Flexential as to whether abuse or violations of the AUP have occurred shall be conclusive and binding.

Violation Reporting

Violations or potential violations of this AUP may be reported to Flexential at abuse@Flexential.com.

Exhibit E

Data Center Rules

Welcome to Flexential

These rules and procedures are designed to provide for the safety of the individuals visiting and working at our facilities, to protect the confidentiality of our customers, and to support the safe operation of our facilities. All individuals accessing a Flexential facility must strictly comply with these rules. **Any individual found to be in violation of these rules while in the Flexential facility will have their access rights immediately terminated.**

General Rules

- Access badges must be worn and clearly visible at all times in all areas of the facility.
- Customers and vendors are responsible for requiring their employees, agents, vendors and contractors to comply with these Data Center rules.
- No one under 16 years of age may enter the raised floor.
- Drinking, eating, or smoking is not allowed except in designated areas, and is never allowed on the raised floor.
- Weapons, explosives, hazardous materials, electro-magnetic devices which could interfere with computer and telecommunications equipment, radioactive materials, mace, alcohol, or illegal drugs are never allowed in the facility.
- Doors may not be left partially open or blocked under any circumstances.
- No photographing or filming any areas in the data center or the entrances to the facility without Flexential's consent (see "Data Center Security" section below for rules governing security cameras in the customer space).
- Customer-owned or operated wireless access points are not permitted in Flexential facilities without consent.
- Combustible materials, such as paper or cardboard, may not be stored in customer space/equipment space.
- Customer space must be kept clean of debris and spare equipment at all times.
- No boxes or equipment may be stored in the facility unless arrangements for storage have been approved by Flexential.
- Customers must maintain their space in compliance with all applicable legal requirements (including OSHA).
- Customers are not allowed to remove floor or ceiling tiles and are not allowed to access under the floor tiles or above the ceiling tiles.
- Customer must install equipment in accordance with hot and cold aisle arrangement as directed by Flexential. Flexential reserves the right immediately to disconnect power to any Customer equipment installed contrary to the prescribed hot and cold aisle arrangement.

Access Procedures

- Each individual with data center access must pass through access control systems and use his or her own access badge to enter the data center, even when entering as a group. No tailgating is allowed.
- Access badges may not be transferred or loaned to other individuals, including other employees, subcontractors or vendors.
- Access badges are linked to a central monitoring system that identifies individuals and records access activities.
- Each customer must identify the individuals (employees or third-party vendors) who are authorized to access colocation facilities on their behalf through the customer's Customer Portal account by customer-designated User Administrators.

- Customer representatives without a permanently issued access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge (day pass) if their contact record designates them as authorized for Day Pass or Permanent Badge distribution or a customer's designated User Administrator has approved, in writing, the specific visit.
- Vendor permanent access badges must be approved by Flexential data center operations.
- Vendor representatives without a permanent access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge if Flexential data center operations approve the specific visit.
- Each properly badged customer or vendor representative is allowed up to three (3) visitors to accompany him/her into the facility for the purpose of installation or support assistance only. The customer or vendor representative must check-in and obtain the necessary temporary badges for their guests. Each customer or vendor has full responsibility for their guests and must accompany them at all times.
- Flexential, in its sole discretion, may require that Customer and any Customer agents be escorted in the Flexential data center, and may suspend Customer's access as directed or required in an emergency situation.
- **Notify Flexential immediately if an access badge is lost or stolen.**

Data Center Security

- Closed-circuit television security cameras monitor entrances and are strategically located throughout the facilities.
- Customer-provided video monitoring must exclusively capture customer space. Camera placement is subject to Flexential review and approval. Customer must provide camera screenshots to Flexential upon request.
- Customer spaces are secured individually; it is each customer's responsibility to ensure that their space is locked after use.
- Lost or stolen keys and access cards are subject to replacement fees at then-current rates.

Equipment Delivery & Storage

- Customers must provide Flexential with advance notice of all equipment deliveries.
- All shipping charges must be pre-paid by the customer.
- If any equipment is delivered for a customer by a third party, Flexential will receive the equipment on behalf of the customer provided that the customer has pre-scheduled the delivery with Flexential. ***The customer must arrange for shipping crate or pallet removal.***
 - The following information must be included with all equipment delivered to the facility. Failure to follow these instructions may result in delays locating stored packages: Flexential ticket number; customer's name and/or customer billing ID, if possible; and number of pieces shipped.
 - Upon receipt of any equipment delivered by a third party on a customer's behalf, Flexential will notify the customer of receipt and store the equipment
- Customers must claim their equipment within 7 calendar days of notification of receipt by Flexential or storage charges will be charged to the customer at the then-current rates.
 - All equipment left in storage for more than 30 calendar days may be shipped back to the customer at the customer's expense.
 - Flexential is not responsible for loss or damage to customer equipment stored in the common areas of a Flexential facility or in transit or packaged and shipped by Flexential at Customer's request.
 - Flexential cannot guarantee storage space availability and will provide this service on a "reasonable efforts" basis.
 - Flexential package acceptance services do not include verifying the contents of a box or boxes.

Power

- All individual power whips/power under the floor must be installed and maintained by Flexential.
- All equipment installed in the facility must meet the standards of Underwriters Laboratories (UL) listing or a similarly recognized governing board.
- No soldering or open flames are allowed.
- Customer's primary/redundant, or A/B circuit pair total power utilization across the circuit pair must not exceed 80% of the rated power of the primary circuit, and customer's power utilization must not exceed 80% of the circuit breaker's rated current. If customer exceeds either of these thresholds, then one of the following must occur: (1) customer shall purchase additional power circuits in order to reduce the overall power load on the circuit pair below the threshold; or (2) customer shall reduce its power load on the applicable circuit pair below the threshold. If customer does not



Data Center Rules

implement one of the two foregoing options within 7 business days of written notification from Flexential, then Flexential shall have the right to charge a power overage fee and/or limit power consumption or disconnect power circuits in order to reduce customer's power load across the circuit pair below the thresholds.

- Only data center rated electrical equipment allowed. Examples of equipment not allowed are: In cabinet UPS modules; lead acid batteries; home type 120V power strips; small step-down transformers for 208V to 120V. We reserve the right to deny installation or request removal of electrical equipment that does not meet our standards
- **None of customer's equipment, connections, or wiring is permitted to enter any space outside of the customer's cabinet and/or rack.**

Telecommunication Facilities

All interconnects (telecom cross-connect) must be approved by Flexential and are subject to fees and charges.



Renewal Proposal

Quote Q-155473

Presented To:

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Cover Sheet

FLEXENTIAL

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CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

Renewal Effective Date	September 01, 2024
Renewal Term	60.0 months

This **Master Services Agreement** is made by and between Flexential LLC, a Delaware limited liability company (“Flexential”), for itself and on behalf of its affiliated entities, and City of North Las Vegas (“**Customer**”). Upon signature, this MSA shall become legally binding. Except as permitted in the Standard Terms and Conditions, this MSA is non-cancelable. If Customer and Flexential (including any subsidiaries of the legal entities included in the definition of Flexential) are party to an agreement pursuant to which services are provided to Customer (the “**Prior MSA**”), then the parties hereby expressly agree that the Prior MSA is hereby terminated and superseded in its entirety by this MSA, and any Quotes previously issued under the Prior MSA that are in effect as of the Effective Date are hereby deemed to be issued pursuant to, and subject to the terms and conditions set forth in, the MSA. Flexential Corp. will be directly obligated to Customer to perform the Services on Exhibit A at Facilities, if any, that are identified on Exhibit A as “Flexential Corp.”

This **Master Services Agreement** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing
- iii. The attached Master Services Agreement Standard Terms and Conditions
- iv. The attached Exhibit B – Security and Compliance Roles & Responsibilities Matrix
- v. The attached Exhibit C – Service Level Agreement
- vi. The attached Exhibit D – Acceptable Use Policy
- vii. The attached Exhibit E – Datacenter Rules

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential LLC

Signature:

Name:

Title:

Date:

City of North Las Vegas

Signature:

Name:

Title:

Date:



Document
Date: August 20, 2024

City of North Las Vegas

Account
Executive: Jeff Howard

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001
Quote #: Q-155473

IP Bandwidth: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Burstable IP Bandwidth with 95th Percentile Billing Add 1000.0 Mbps Burstable multi-carrier IP Bandwidth including auto-DDoS mitigation. No burst limits when delivered on a port speed of 1Gb or less. On a 10Gb port, bursting is capped at 2 times the commit rate. Overage is billed at the 95th percentile on the higher of in or out traffic.							
IPv4 Allocation and VLAN: /24 or 256 IP Addresses Add 1.0 EA Public IPv4 address allocation of 256 IP addresses, known as a /24 or a Class C, delivered via a dedicated VLAN. Flexential reserves 5 addresses of a primary allocation for core network interfaces. Customer will receive 251 usable addresses. If this is a secondary, routed block Customer will receive 254 usable addresses.							
Flexential Dedicated Ports 1G Copper Add 2.0 Port Dedicated 1000BASE-T Copper Port with cross connect that connect to Flexential advanced solutions.							
IP Bandwidth: Las Vegas - North Total:						\$0.00	\$2,048.00

Totals:	Setup	Monthly
	\$ 0.00	\$ 2,048.00



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms shall have the meaning set forth below or elsewhere in the MSA.
- a. **“Colocation Services”** means Services related to the storage of Customer Equipment in the Equipment Space as set forth on the applicable Quote.
 - b. **“Cloud Services”** means Services related to an information technology system, operated, maintained, and housed by Flexential, which may consist of software and hardware including data storage, physical computing equipment (hosts), and networking components.
 - c. **“Cover Sheet”** means a cover sheet to which these Standard Terms and Conditions are attached, that identifies the parties and their notice addresses and includes signature blocks for Flexential and Customer to execute the MSA and the initial Quote for Services.
 - d. **“Customer Data”** means all information stored, maintained, received or transmitted by Customer using the Services.
 - e. **“Customer Equipment”** means any equipment provided by Customer in connection with the MSA, whether or not owned by Customer.
 - f. **“Customer Port”** means the egress port on Customer Equipment connecting to Flexential Equipment used to provide network Services.
 - g. **“Customer Portal”** mean the online platform designated by Flexential with respect to a particular Service through which Flexential customers may create service tickets and review reports and other information related to the Service
 - h. **“Data Protection Services”** means those additional information technology and network/data transport Services set forth in a Quote.
 - i. **“Dispute”** means any controversy or claim arising out of or relating to the conduct of the parties under, or the interpretation of the terms, conditions or provisions of, the MSA.
 - j. **“Eligible Customer”** means Customer: (i) does not have an undisputed balance more than sixty (60) days past due or (ii) is not in breach of this MSA at the time in which the service commitment was not met.
 - k. **“Equipment Space”** means the designated area within the Facility that Customer may access and use.
 - l. **“Facility”** means the Flexential data center(s) where the Customer Equipment is located, for Colocation Services, and where the Flexential Equipment containing Customer Data is located, for Cloud Services.
 - m. **“Flexential Equipment”** means any equipment provided and operated by Flexential to provide the Services. Such equipment may be located inside or outside the Equipment Space.
 - n. **“Flexential Network”** means that portion of the network Services beginning at the ingress port of Flexential Equipment used to provide network Services and ending at the egress port of Flexential Equipment used to provide network Services.
 - o. **“Installation Date”** means the date when all or a portion of Service is first made available to Customer.
 - p. **“MSA”** means these Standard Terms and Conditions together with the Cover Sheet to which these Standard Terms and Conditions are attached or incorporated by reference, and all Quotes, exhibits and other documents incorporated by reference into the MSA.
 - q. **“MSA Effective Date”** means the first date that the MSA has been signed by both parties.

- r. **“Pass Through Costs”** out of pocket costs or expenses actually incurred by Flexential with respect to the Services that may not be specifically included as a line item in a Quote, including fees related to services provided by or through a third-party. Such Pass Through Costs may include utilities (power), software licenses, hardware costs, maintenance, support providers, and property tax.
- s. **“Quote”** means an order executed by both parties that identifies Services to be provided by Flexential to Customer pursuant to this MSA. Each Quote will reference this MSA and will be incorporated into this MSA.
- t. **“Quote Effective Date”** means the first date that the applicable Quote has been signed by both parties.
- u. **“Regulated Customer Data”** means any Customer Data that is personally identifiable information (**“PII”**), protected health information (**“PHI”**) or otherwise subject to legal or regulatory requirements.
- v. **“Service(s)”** means the services to be provided by Flexential, as detailed in the applicable Quote(s). Additional terms related to specific Services are set forth in Attachment 1.

2. SCOPE OF SERVICES AND CONFLICT.

- a. **Services.** Flexential will provide Customer with the Services set forth on one or more Quote(s). In the event of a conflict between the terms of this MSA and the terms of a Quote, the terms of the MSA will govern except as explicitly stated otherwise in the applicable Quote. Services may be provided by employees or independent contractors of Flexential or its affiliated entities, and Flexential shall be responsible to Customer for the performance of all Services. The terms and conditions contained in any Customer-provided purchase order or other similar ordering document are not binding on Flexential.
- b. **Alteration of Services.** Flexential may, in its discretion, alter its provision of any Service to Customer, so long as Flexential does not materially and adversely impact the Services. No alteration shall modify Flexential's obligations, or Customer's remedies, pursuant to Section 11. If, within 60 days after the service alteration, Flexential fails to comply with an SLA in two separate instances and such failures are the direct result of the service alteration, Customer may terminate the affected Service without penalty so long as (i) Customer is an Eligible Customer and (ii) Customer delivers termination notice to Flexential within 15 days after Customer notifies Flexential of the second SLA failure that gives rise to the termination right.
- c. **CUSTOMER PORTAL.** Flexential will provide Customer with an account and password to access the Customer Portal. Customer is responsible for all activities that occur under Customer's account on the Customer Portal. Flexential may permit Customer to add or modify Services through the Customer Portal. In such event, modification of the services by way of the Customer Portal will be considered a valid Quote for such Services.

3. TERM AND RENEWAL.

- a. **MSA Term.** This MSA shall become effective on the MSA Effective Date and shall remain in effect until the termination of the last Quote, at which point it will terminate and be of no further force and effect except as set forth in Section 28(j).
- b. **Service Renewal.** The **“Service Term Start Date”** for Services on a Quote will be the first of the month following the Installation Date, unless the Installation Date is on the first of the month, in which case the Service Term Start Date will be the same date as the Installation Date. Each Quote will begin on the Billing Start Date for the applicable Quote and will terminate as specified in the Quote (the **“Initial Service Term”**). After the expiration of the Initial Service Term, the Services on the applicable Quote will automatically renew for successive one (1) year periods on the same terms and conditions (each, a **“Renewal Service Term”**) unless either party informs the other party in writing of its intent not to renew such Service in at least 90 days prior to the scheduled expiration of the then-current Service Term. The Service Term Start Date for Renewal Service Terms shall be the first day first day of the Renewal Service Term. The Initial Service Term and any Renewal Service Terms are collectively referred to as the **“Service Term”**. The Parties understand and agree that no Service Term shall extend beyond the term of the underlying lease in the applicable Facility unless the parties agree to relocate the Service to another Flexential-operated Facility.

4. PAYMENTS.

- a. **Billing Start Date.** Billing for Services will begin on the Installation Date unless otherwise set forth below:
- i. **Flexential Delay.** In the event Customer is not able to use the Service(s) on the Installation Date solely as a result of delays caused by Flexential, the Billing Start Date shall be extended for each day of delay caused by Flexential.
 - ii. **Customer Delay.** In the event Flexential is unable to complete the installation of all or a usable portion of the Service as a result of delays caused by the Customer, Flexential reserves the right to start billing 45 days from the Quote Effective Date.

In the event a portion of the Services are available and have been Installed, Flexential will invoice Customer for such portions which have been Installed and Customer will pay for such Services in accordance with this Section.

- b. **Payment Due Date.** Payments on all undisputed invoices are due within 30 days of the date the invoice is sent to the Customer and will be paid in U.S. Dollars.
- c. **Invoices.**
- i. **Recurring Charges.** All recurring charges for Services will be invoiced by Flexential on a monthly basis. Charges that are dependent upon the level of usage will be billed monthly in arrears and overages for these Services will be billed at the rate(s) set forth in the applicable Quote. Invoicing for partial months will be prorated based on a calendar month (and may be billed in arrears).
 - ii. **Non-recurring Charges.** Flexential reserves the right to invoice Customer for a percentage (not to exceed 50%) of the non-recurring charges related to the Services (the "NRCs") which payment shall be due upon on the invoice date. Customer shall pay Flexential the remaining percentage of the NRCs following the Installation Date and such amounts will be due upon the date the invoice is sent to the Customer.
 - iii. **Late Payments.** Any undisputed late payment will be subject to late charges of 1.5% per month, and Customer will be liable for any reasonable attorneys' fees or other costs associated with collecting late payments. In the event Customer fails to pay undisputed late invoices more than two times in a 12-month period, Flexential may require Customer to provide security deposit in the amount of one month of recurring fees and charges
- d. **Pass-Through Costs.** Upon 30 days prior notice, Flexential may increase the applicable rates and charges set forth in a Quote in a proportional amount to account for increases to Pass Through Costs.
- e. **Restricted Access for Non-Payment.** Flexential may limit or restrict Customer's access to the Services, Facility and Customer Equipment if past-due undisputed balances remain unpaid for more than 30 days after Flexential provides notice of initial delinquency to Customer.
- f. **Taxes.** Except for taxes based on Flexential's income, Customer will be responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise or other local, state and federal taxes, fees, charges or surcharges, however designated, imposed on or based upon the provision, sale or use of the Services provided hereunder.
- g. **Invoice Disagreements.** In the event of an invoice Dispute, Customer must notify Flexential via email to: billingdisputes@flexential.com within 60 days of the date the invoice is sent to the Customer and pay all undisputed portions by the applicable due date. In such notice, Customer must describe the nature of the Dispute with sufficient detail to reasonably permit Flexential to investigate the Dispute. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account and amounts payable to Flexential shall be paid within 10 days of Dispute resolution.

5. TERMINATION AND REDUCTION IN SERVICES.

- a. **Termination for Breach.** Either party may terminate the MSA without liability if the other party materially breaches the terms of this MSA and the breaching party fails to cure the breach within 30 days of receipt of notice from the non-breaching party. Customer may not terminate the MSA or any Quote pursuant to this Section as a result of Service-related issues that are subject

to the sole and exclusive remedies provided in Section 11. Either party shall have the right to immediately terminate the MSA without liability if (i) the material breach caused by the breaching party is not reasonably capable of a cure or (ii) the other party is the subject of an involuntary bankruptcy filing that is not withdrawn or dismissed within 60 days of filing or any voluntary bankruptcy filing, becomes insolvent, or is liquidated. In the event Flexential terminates all or portion of the Services in accordance with this Section 5(a), Customer shall pay Flexential the early termination fee set forth in Section 5(c).

b. Termination for Convenience. Customer may terminate any Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives Flexential at least 90 days prior notice. The date of termination shall be effective the last day of the month in which the 90 day notice period expires (the "Termination Effective Date"). For example, if Customer provides notice of termination to Flexential on June 15, 2023, the Termination Effective Date shall be September 30, 2023. In the event Customer exercises the early termination option, Customer shall pay Flexential an early termination fee as set forth in Section 5(c).

c. Early Termination Fee. Pursuant to Section 5(a) and (b), Customer shall pay Flexential an early termination fee, as liquidated damages, not as penalty, based on the applicable then-current Service Term, calculated as follows: (i) 100% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 1 through 12; plus (ii) 90% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 13 through 24, if any; plus (iii) 80% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 25 through the end of the Service Term, if any; plus (iv) any installation or other fees identified on the Quote for the terminated Service or portion thereof as having been previously waived; plus (v) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer; plus (vi) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum. The parties agree that the above formula represents a reasonable estimate of Flexential's anticipated damages from an early termination, which are difficult to calculate with precision. Customer shall not be liable for the early termination fee if Customer terminates this MSA pursuant to Section 5(a) or any other Section that permits termination by Customer "without liability".

6. UTILIZATION OF FLEXENTIAL NETWORK; CONTENT OF TRANSMISSIONS. At Customer's request, Flexential shall use commercially reasonable efforts to assign Internet Protocol ("**IP**") address space specified on a Quote for Customer during a Service Term and to route those IP addresses on Flexential's network. Customer shall have no right to route such IP addresses outside of the Flexential Network and Flexential Facilities. Flexential shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the MSA or the applicable Service. Customer is solely responsible for the content of any transmissions utilizing the Services. The use of another organization's network or computing resources is subject to its respective permission and usage policies. Customer further agrees not to use the Services for illegal purposes. Flexential reserves the right to re-route IP data packets to any and all Internet carriers connected to the Flexential Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in Exhibit C.

7. HAZARDS OR INTERFERENCE. Customer agrees not to interfere with or disrupt other network users, other Flexential customers, network services or network equipment. In the event that Customer Equipment poses a threat to Flexential's ability to provide service to other customers, Flexential may immediately disconnect all or a portion of the Service or, in the case of DDos attacks, blackhole the affected IP address, despite Flexential's scrubbing service. Customer will maintain the Equipment Space in an orderly and safe condition. If Customer or any Customer Equipment creates a hazard or interferes with Flexential's operation and/or maintenance of the Facility, Flexential will use reasonable efforts to notify Customer of such hazard or interference. Upon Flexential notification under this Section 7, Customer must promptly and as applicable: (a) remove the hazard or cease the interference within 5 days after Flexential's notice, or Flexential may clean the Equipment Space and pass the reasonable cost on to Customer, (b) provide a plan to remove the hazard or cease the interference that is reasonably acceptable to Flexential, or (c) authorize Flexential to take such necessary action (billed at applicable rates) to remediate the hazard or interference. Customer understands that a hazard or interference may cause imminent harm to Flexential, its customers or its Facilities, in which case notice to Customer may not be reasonable prior to Flexential taking necessary action.

8. SECURITY.

a. Flexential Responsibilities. Flexential shall take commercially reasonable measures to provide the security safeguards listed as a Flexential responsibility with respect to the specific Services set forth in Exhibit B. Unless otherwise specified in Exhibit B, Customer acknowledges and agrees that Flexential is not responsible for the integrity or security of any Customer Data.

Flexential agrees to notify Customer promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility, or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Flexential may update Exhibit B as Services are added or as new measures are implemented, provided in no event will such updates decrease existing responsibilities.

- b. **Customer Data Ownership.** As between Flexential and Customer, Customer Data is and will remain the exclusive property of Customer.
- c. **Customer Responsibilities.** Customer shall (i) use commercially reasonable security precautions in connection with the use of the Services, (ii) require its end users and customers to use commercially reasonable security precautions; and (iii) encrypt Regulated Customer Data. Unless otherwise stated in Exhibit B, Customer shall ensure logical security protection and backup and recovery of Customer Data. Customer agrees to notify Flexential promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility or a Lost Device (as defined in Attachment 1), or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Customer shall cooperate with Flexential in any investigation of the use or possible use of the Customer's Equipment, the Facilities or the Services for any purpose that is not intended by this MSA. Customer must apply, and with respect to Services managed by Flexential, consents to Flexential's application of all security patches or updates to Customer's software, firmware or operating system used in Flexential's provision of the Services.

9. EQUIPMENT AND SOFTWARE.

- a. **Rights To.** Customer represents, warrants and covenants that it owns or has the legal right and authority to use, as applicable Customer Equipment and any software provided or used by Customer in connection with use of the Services.
- b. **Flexential Equipment.** To the extent Flexential procures specific equipment for Customer's use, Flexential reserves the right to substitute such equipment with comparable equipment of the same make, model and performance specifications. Such substituted equipment shall not negatively impact Flexential's provision of the applicable Services. Customer does not have any right in or to the equipment. Flexential will coordinate any equipment substitutions with Customer.
- c. **Software Terms.** With respect to any third-party software provided by Flexential for Customer's use in connection with the Services (the "**Software**"), Customer represents, warrants and covenants that it will abide by the Additional Software Terms located on the "Legal Information" page on Flexential's website (the "**Additional Software Terms**") (currently available: https://www.flexential.com/system/files/file/2020-01/Additional-Software-Terms-Flexential-June-2018_1.pdf). The Additional Software Terms are hereby incorporated into the MSA. In the event of any conflict between this MSA and the Additional Software Terms, the Additional Software Terms will control, but only with respect to the Software. Flexential will provide Customer with prior notice (e-mail acceptable) of any material modifications to the Additional Software Terms.

10. ACCEPTABLE USE POLICY AND DATA CENTER RULES. Customer shall, and shall cause any parties permitted by Customer to enter the Facility or directly use the Services to, comply with: (a) Flexential's Acceptable Use Policy attached hereto as Exhibit D, (the "**AUP**"), and (b) Flexential's Data Center Rules attached hereto as Exhibit E, (the "**Data Center Rules**"). The AUP and Data Center Rules may be updated by Flexential from time to time and Flexential will provide Customer with reasonable prior notice of any substantive modifications. If Customer (a) notifies Flexential in writing within 15 days of Flexential's notice that Customer does not approve of such modification and (b) can reasonably demonstrate an adverse impact to its use of the Services is the direct result of such modification, then the parties will use commercially reasonable efforts to reach a mutually agreeable solution to address the issue. If the parties cannot reach a mutually agreeable solution within 30 days after Customer's notice (the "**Resolution Period**"), and so long as such modifications are not required to ensure Flexential's compliance with applicable law, then Customer shall have the right to terminate this MSA upon 30 days' notice without penalty. Customer's notice of termination must be delivered to Flexential within 30 days after expiration of the Resolution Period.

11. SERVICE LEVEL AGREEMENTS.

- a. **Credits.** If Flexential fails to meet the service level criteria outlined in Exhibit C (the "**SLA**"), Customer will be entitled to receive the Service Credits set forth on Exhibit C. "**Service Credits**" will be calculated as 1/30th of the monthly Service charge for the month in which Flexential fails to meet the applicable service level. Under no circumstance will the total maximum Service Credits for any month exceed one month's recurring charges for the affected Service. Customer must request Service Credits in a support ticket/case within 10 business days of a service interruption ("**SLA Disruption Notice**") and be an Eligible

Customer. Flexential will apply any Service Credits against future payments or will apply any credits to undisputed past due invoices. If Customer is eligible to receive multiple credits under this Section 11 from the same event, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event as set forth in Exhibit C.

- b. **Satisfaction Guarantee.** If, within 10 days after receiving the SLA Disruption Notice from Customer and Flexential does not cure the issue causing noncompliance or provide documentation to Customer demonstrating that the Service was in compliance with the applicable SLA (the "**SLA Response**"), then Customer may terminate the affected Service without penalty, so long as such termination notice is delivered to Flexential within 15 days following the end of Flexential's 10-day cure period. If Customer provides an SLA Disruption Notice to Flexential four or more times over any consecutive 12-month period for the same event that results in noncompliance of the same SLA and Flexential does not provide Customer with an SLA Response, then Customer may terminate the affected Service without penalty upon notice to Flexential. Such termination notice under this Section must be delivered to Flexential within 15 days following delivery of the fourth such SLA Disruption Notice. Any Service termination pursuant to this Section 11(b) will be effective upon the earlier of: (i) the effective date stated in Customer's termination notice delivered to Flexential, or (ii) the last day of the third calendar month after the calendar month in which the termination notice is delivered to Flexential.
- c. **Sole and Exclusive Remedy.** Sections 2(b), 11(a) and 11(b) state the sole and exclusive remedy for any equipment and/or software failures, service interruptions, service response issues, and/or service deficiencies of any kind.

12. SUSPENSION OF SERVICES. Flexential reserves the right to suspend all Services in the event: (a) Flexential has the right to terminate the MSA as a result of undisputed invoices being past due; or (b) Flexential reasonably believes: (i) Customer is in violation of the MSA, provided, however, that Flexential will make reasonable efforts under the circumstances to provide Customer an opportunity to cure such breach; (ii) Customer is in violation of any applicable law; (iii) it is required to suspend Services under applicable law or government order; or (iv) continuing to provide the Services would result in significant damage to Flexential, the Flexential Network or other Flexential customers. Flexential will have no liability for any damages that Customer may incur as a result of any suspension of Services pursuant to this Section.

13. INSURANCE.

- a. **Customer Obligations.** Customer shall procure and maintain, at Customer's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence or, if Customer does not provide automobiles to its personnel, Customer must require each of its personnel driving to the Facility to maintain personal auto liability insurance in an amount not less than \$100,000; (v) "All Risk" Property insurance covering all of Customer's Equipment colocated in any Facility in an amount not less than its full replacement cost, as well as business interruption coverage; and (vi) Cyber Breach Liability Insurance in an amount not less than \$1,000,000. Customer's Commercial General Liability and Auto Liability policies shall be endorsed to show Flexential (and any underlying property owner, as requested by Flexential) as an additional insured, and must contain provisions providing that such insurance is primary insurance insofar as Flexential and Customer are concerned, with any other insurance maintained by Flexential being excess and noncontributing with the insurance required of Customer. Customer shall either require any contractor entering the Equipment Space on its behalf to procure and maintain the same types, amounts and coverage for Workers' Compensation, Employer's Liability, Commercial General Liability Insurance and Auto Liability as are required of Customer, or add such contractor as an additional insured on such policies of Customer.
- b. **Flexential Obligations.** Flexential shall procure and maintain, at Flexential's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence; (iv) "All Risk" Property Insurance in an amount equal to the full replacement cost of any Flexential Equipment used to provide the Services and (v) Professional Liability (Errors and Omissions) Insurance Policy, including Cyber Breach Liability, in an amount not less than \$1,000,000. All Flexential insurance policies, with the exception of Workers Compensation and Employer's Liability, shall be secondary and in excess of Customer's insurance required to be maintained hereunder and non-contributory with Customer's policies.

- c. **General Obligations.** Each party shall: (i) provide the other party upon request with evidence of compliance with this Section 13, and (ii) notify the other party in writing at least 30 days in advance of cancellation or reduction in required coverage. None of the foregoing requirements in this Section 13 as to the type and limits of insurance to be maintained by either party are intended to and shall not in any manner limit or qualify the liabilities and obligations for which such party is responsible under any other section of the MSA or by law. All insurance shall be with reputable insurers having an AM Best rating of A- or better and may be under an umbrella, blanket or similar policy. No coverage required to be maintained by either party pursuant to this Section 13 may have a Self-Insured Retention (SIR) in an amount greater than \$500,000.
14. **NOTICES.** All notices required under this MSA will be in writing, unless otherwise specified herein, and may be delivered by a nationally recognized courier or e-mail to the addresses set forth on the Cover Sheet. Notices delivered by courier will be deemed delivered upon actual receipt by recipient and notice delivered by email in will be deemed delivered upon the date the notice is sent. Unless otherwise provided herein, notices will be delivered to the addresses most recently provided by a party in a Quote. All notices by Customer to Flexential to terminate, cancel or avoid auto-renewal of this MSA or any Quote must be provided by way of email to cancel@flexential.com and legal@flexential.com.
15. **CASUALTY OR EMINENT DOMAIN.** Solely with respect to Colocation Services, in the event of a taking by eminent domain or damage by fire or other casualty to the Facility, Flexential will notify Customer in writing. In the event the taking or casualty event materially negatively impacts the provision of Colocation Services, either party may terminate the affected Services without penalty upon 30 days prior notice.
16. **SERVICE AGREEMENT.** The parties acknowledge and agree that this MSA is a service agreement and is not intended to, and will not constitute, a lease, sublease or easement. and that Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.
17. **INDEMNITY.**
- a. **Flexential Indemnification Obligations.**
- i. Flexential shall indemnify and defend Customer, Customer's affiliated entities and its employees, officers, contractors and agents (collectively, **"Customer Indemnified Parties"**) from and against any claim, brought against Customer Indemnified Parties by a third party, and all liability, judgment, or cost, including reasonable attorney fees arising out of such claim, to the extent such claims arises from or relates to the following: (i) tangible personal property damage to Customer's Equipment located in the Facility resulting from Flexential's negligence or willful misconduct, up to the full replacement cost of the damaged equipment, (ii) actual personal injury damage in the Facility resulting from Flexential's negligence or willful misconduct, provided, however that indemnification relating to personal injury shall not apply to any claims made by employees of Customer or any Customer Indemnified Party that are covered under applicable workers' compensation law, or (iii) infringement by the Services of a third party intellectual property rights recognized in the United States of America.
- ii. In addition, if any portion of the Service becomes, or in Flexential's opinion is likely to become, the subject of a claim of infringement of any third party intellectual property rights recognized in the United States of America, then Flexential, at its option and expense, may: (I) procure for Customer the right to continue using such portion of the Service, or (II) replace or modify such portion of the Service so that it becomes non-infringing, or (III) terminate the MSA and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of Flexential set forth in the preceding sentence does not apply (x) with respect to portions or components of the Service that are not supplied directly by Flexential, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by Flexential to the extent the infringement relates to such combination; or (y) where Customer's use of the Service is not strictly in accordance with the terms of this MSA including any applicable Additional Software Terms. Notwithstanding anything to the contrary set forth elsewhere in the MSA, Customer's sole and exclusive remedies against Flexential and the Flexential Indemnified Parties for intellectual property infringement are as set forth in this paragraph.
- b. **Customer Indemnification Obligations.** Customer shall indemnify and defend Flexential, Flexential's affiliated entities and its employees, officers, contractors and agents (collectively, **"Flexential Indemnified Parties"**) from and against any claims brought against Flexential Indemnified Parties by a third party and all liability, judgment, or cost, including reasonable attorney's

fees arising from such claim, to the extent that such claims arise from or relates to the following (i) any breach of this MSA (including, without limitation, the AUP and the Data Center Rules); (ii) any use of the Service, (iii) or any negligence or willful misconduct, by Customer, any Customer Indemnified Party or any of its or their invitees, assignees or customers, or (iv) the removal, storage and/or disposal by Flexential of Abandoned Customer Equipment or destruction by Flexential of Abandoned Customer Data pursuant Attachment 1.

- c. **Indemnification Procedures.** The indemnified party will promptly notify the indemnifying party in writing of any losses for which the indemnified party seeks indemnification. Lack of notice will not invalidate the indemnifying party's obligation except to the extent that lack of notice prejudiced the outcome of the claim. The indemnified party will cooperate with the indemnifying party in the defense and permit the indemnifying party full control over the defense and settlement of any matter subject to indemnification. The indemnifying party will not enter into any settlement that affects the indemnified party's right or interests without the indemnified party's prior written consent which will not be unreasonably withheld. The indemnified party will have the right to participate in the defense at its expense.

18. REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

- a. **Flexential.** Flexential represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Flexential is a party. Flexential shall comply with all applicable federal, state and local laws in the performance of the Services.
- b. **Customer.** Customer represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Customer is a party. Customer shall comply with all applicable federal, state and local laws in using the Services, including, without limitation, applicable laws related to the storage, transmission and use of Customer Data, information and content. To the extent Customer receives Colocation Services, Customer also agrees that it shall not make any material alterations to the Equipment Space without first obtaining the written consent of Flexential and that Customer shall not allow personnel or contractors to enter the Equipment Space who have not been approved by Flexential in advance in accordance with Attachment 1.

- 19. DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES, INCLUDING THE EQUIPMENT SPACE, ARE DELIVERED BY FLEXENTIAL AND ACCEPTED BY CUSTOMER "AS IS" AND "AS AVAILABLE" AND FLEXENTIAL DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER ACKNOWLEDGES THAT THERE ARE INHERENT RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY AND PROPERTY, INCLUDING CONFIDENTIAL INFORMATION. FLEXENTIAL ASSUMES NO LIABILITY FOR ANY DAMAGE, THEFT OR LOSS TO CUSTOMER'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CUSTOMER EQUIPMENT AND CUSTOMER DATA) RESULTING FROM THE ACTS OR OMISSIONS OF ANY THIRD PARTY OTHER THAN FLEXENTIAL'S CONTRACTORS, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING), EXCEPT TO THE EXTENT SUCH DAMAGE, THEFT OR LOSS RESULTS FROM FLEXENTIAL'S FAILURE TO PROVIDE THE SECURITY SAFEGUARDS WITH RESPECT TO THE APPLICABLE SERVICES LISTED AS FLEXENTIAL'S RESPONSIBILITY IN EXHIBIT B. FLEXENTIAL EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES ANY CLAIM AGAINST FLEXENTIAL WITH RESPECT TO, ANY LIABILITY FOR LOSS OF CUSTOMER DATA OR DAMAGE TO CUSTOMER EQUIPMENT WHERE CUSTOMER HAS REQUESTED THAT FLEXENTIAL PACK, SHIP, RECEIVE AND/OR STORE SUCH CUSTOMER EQUIPMENT OR WHERE CUSTOMER HAS FAILED TO REMOVE SUCH CUSTOMER DATA FOLLOWING THE END OF A SERVICE TERM.

- 20. LIMITATION ON LIABILITY.** THE ENTIRE CUMULATIVE LIABILITY OF FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES OF WHATEVER NATURE ARISING OUT OF THE MSA AND THE FURNISHING OF, OR THE FAILURE TO FURNISH, THE SERVICES DESCRIBED IN THE MSA, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, NEGLIGENCE, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE LESSER OF (I) \$500,000 OR (II) THE RECURRING CHARGES FOR SERVICES PAID OR PAYABLE BY CUSTOMER TO FLEXENTIAL OVER THE 12-MONTH PERIOD PRECEDING THE EVENT ON WHICH THE CLAIM OF LIABILITY IS BASED. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY LOST OR IMPUTED

PROFITS OR REVENUES OR BUSINESS, CUSTOMER DATA OR USE, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF FLEXENTIAL OR ANY OF THE FLEXENTIAL INDEMNIFIED PARTIES, AND REGARDLESS OF WHETHER FLEXENTIAL OR CUSTOMER HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THIS LIMITATION ON LIABILITY SURVIVES ANY REMEDY'S FAILURE OF ESSENTIAL PURPOSE.

21. **LIMITATION ON LAWSUITS.** As a condition for recovery of any liability, a party must provide notice of a claim with a description of the basis of the claim under the MSA and provide the other party such notice within three months after discovery or sixty days after the termination or expiration of this MSA, whichever is earlier.
22. **PROPRIETARY RIGHTS.** The MSA will not be construed to grant to Customer any ownership right, title or interest in any intellectual property rights embodied in or associated with the Services, other than to the limited extent that any licenses are included in the Services as specified on any Quote or the Additional Software Terms. All intellectual property rights, title and interest in the methodology, technology and know-how that Flexential uses to provide the Services will remain exclusively with Flexential and its licensors, as applicable.
23. **ASSIGNMENT OR TRANSFER.** Both parties may assign their respective rights and obligations under the MSA (a) to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, and upon such assignment, the assigning party will be released of all its obligations under the MSA arising from and after the date of such assignment, provided that any such assignee entity delivers to the other party a signed writing evidencing its agreement to be bound by the terms and conditions of the MSA, or (b) by operation of law. Flexential may assign the MSA to an affiliate or division so long as Flexential exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate, Flexential may continue to collect and receive all or any portion of the amounts payable hereunder by the Customer as agent for and on behalf of such affiliate-transferee/assignee and notify the Customer thereof in writing this MSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Customer may permit its affiliated entities to use the Services, provided Customer shall be directly responsible and liable to Flexential for any breach of this MSA by affiliated entities. Customer shall not resell any of the Services provided by Flexential to an unaffiliated third party without first obtaining the written consent of Flexential. Unless otherwise set forth herein, neither party may assign the MSA in whole or in part without the prior written consent of the other party, which consent will not be unreasonably withheld.
24. **ENTIRE UNDERSTANDING.** The MSA, together with any attachments or exhibits hereto and all referenced documents constitutes the entire understanding of the parties related to the subject matter hereof and expressly supersedes all prior or contemporaneous oral or written agreements, including any prior non-disclosure or confidentiality agreements.
25. **GOVERNING LAW AND VENUE.** The parties will attempt in good faith to resolve any Dispute within the timeframes set forth herein, or, if no timeframe is set, within 30 days. The MSA will be governed and construed in accordance with the laws of the state of Colorado without regard to any conflict of law principles. Any Dispute arising from this MSA, shall be subject to the exclusive jurisdiction of the state and federal courts of Denver, Colorado. The parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS MSA, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.
26. **CONFIDENTIALITY.**
 - a. In connection with the MSA, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**"). Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary, including pricing information, data center designs and Flexential audit and security reports. Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information disclosed to Recipient by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any Services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The obligations of confidentiality of each party under this Section

shall survive for two years from the termination of the MSA or, if longer with respect to any particular item of Confidential Information, for so long as such item of Confidential Information meets the definition of a "trade secret" under applicable law. Flexential may share the MSA as well as information relating to the Services received by Customer and the fees paid by Customer (but not any Customer Data) to Flexential alliance partner(s) who are associated with Customer's account for the purposes of allowing the partner(s) to verify commissions payable by Flexential, so long as such partner(s) are bound to a confidentiality provision substantially similar to this Section. Unless set forth herein, the terms of this MSA and all Quotes are Confidential Information. Except as otherwise provided in this Section 26, at all times during the term of this MSA and for two years thereafter, Recipient shall not disclose Discloser's Confidential Information to a third party without the Discloser's prior written consent or use the Confidential Information for purposes other than the performance of this MSA. Where disclosure is required by law, such disclosure shall not constitute a breach of this MSA provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

- b. **Exceptions.** Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) was provided to Recipient by a third party not subject to an obligation of confidentiality to Disclosing Party with respect to the Disclosing Party's Confidential Information. Notwithstanding Section 26(a) above, Recipient may disclose the Disclosing Party's Confidential Information as required by a legal, judicial or governmental entity, or as otherwise required by law or regulation (including disclosures required in filings with the Securities and Exchange Commission or other governmental body and via subpoena, search warrant or other similar demand for production of information or materials).

27. COMPLIANCE.

- a. **Customer Responsibility.** Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of Customer Data or information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information, including Regulated Customer Data. If any international, state or federal law requires any specific agreement about such information, Customer will notify Flexential and the parties will work together in good faith to modify the MSA as may be required by applicable law.
- b. **Risk Assessment.** Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer's purposes and Customer's compliance with applicable law; and (iii) Flexential is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.
- c. **CCPA.** If and to the extent the California Consumer Privacy Act of 2018, (as amended "**CCPA**"), applies to the provision and use of the Services, Flexential hereby agrees as follows: (i) Flexential is a Service Provider, and Flexential shall not: (x) Sell Personal Information or (y) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Services including retaining, using, or disclosing Personal Information for a Commercial Purpose; and (ii) Flexential shall promptly take such actions and provide such information as Customer may reasonably request to help Customer fulfill requests of individuals to exercise their rights under the CCPA, including, without limitation, requests to access, delete, opt out of the sale of, or receive information about Personal Information. Flexential shall inform Customer of Flexential's receipt of any requests under clause (ii) of the preceding sentence, and Flexential may direct individuals making such to Customer. Customer and Flexential acknowledge and agree that Flexential's access to Personal Information is not part of the consideration exchanged by the parties in respect of the MSA. For the purposes of this Section 27(d), the terms "Commercial Purpose," "Sell," and "Service Provider," shall have the meanings given in the CCPA, and the term "Personal Information" means any information that Flexential has at any time, whether before or after the date hereof, collected, accessed, received, used, disclosed, or otherwise processed on behalf of Customer in relation to Flexential's provision of Services to Customer under the MSA and that constitutes "personal information" under the CCPA.

28. MISCELLANEOUS.

- a. **Counterparts.** The MSA and any Quote may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. An electronically scanned signature shall be deemed an original.

- b. **Tariffs.** Customer understands that Internet use, and related products and services provided under the MSA, may require registration and related administrative reports which are public in nature. Flexential may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by Flexential to Customer. In the event that such tariffs are filed related to Services ordered by Customer, then the terms set forth in the applicable tariff will govern Flexential's delivery of, and Customer's consumption or use of, such Services.
- c. **Publicity.** Neither party will use the other party's name, trademarks or logos without the prior written consent of the other party unless otherwise required by applicable law; provided, however, Flexential may include Customer's name and logo in a list of customers in its marketing materials, including on the Flexential website.
- d. **Severability, Modifications and Waiver.** If any provision of the MSA is invalid or unenforceable, such provision will be severed from this MSA so that the remaining provisions are unaffected. Except to the extent specifically set forth herein the MSA may not be modified except by a writing signed by an authorized signatory of each party. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.
- e. **Independent Contractors.** Flexential and Customer are independent contractors and nothing in the MSA will be deemed to create a partnership, joint venture, association, employment relationship between the parties.
- f. **No Brokers.** Customer covenants and represents that it has negotiated the MSA directly with Flexential, and has not authorized any broker, salesperson or finder to act for it in the negotiation and execution of the MSA. Customer agrees to indemnify and hold harmless Flexential from any and all claims by any such broker, salesperson or finder for a commission or finder's fee as a result of Customer having entered into the MSA.
- g. **Third Party Beneficiaries.** Except as otherwise explicitly agreed, there will be no third party beneficiaries to the MSA.
- h. **Force Majeure.** Notwithstanding Section 11, Flexential will not be liable for any failure of performance or equipment due to causes beyond its reasonable control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, terrorist attack or wars.
- i. **Non-Solicitation.** Unless otherwise approved in writing, during the Term and for one (1) year thereafter, Customer will not hire any person who is or was an employee of Flexential during the Term, provided, however, that this provision will not apply to general advertising solicitations or similar efforts not targeted towards current or former Flexential employees.
- j. **Survival.** All provisions which by their nature are intended to survive, will survive the expiration or termination of the MSA.

Attachment 1
Service Specific Terms and Conditions

Flexential may provide Customer with one or more of the Services further described below

1. Colocation Services. The following terms and conditions apply only to the extent that Customer receives Colocation Services.

- a. **Access to Facility and Use.** Starting on the applicable Quote Effective Date, Flexential hereby grants Customer a limited, revocable license to install, operate, maintain and access the Customer Equipment within the Equipment Space. Customer will be entitled to access and use the Equipment Space during the Service Term and in accordance with Section 1(c) only for placement, operation and maintenance of computer or telecommunications equipment. Flexential may require that Customer and any of Customer's agents be escorted when they are in the Facility. Flexential will have the right to access the Equipment Space as reasonably required to provide the Service and may suspend Customer's access to the Facility as directed by government order or emergency responders or, in Flexential's reasonable discretion, as may be reasonably required to prevent injury or illness to persons or damage to property.
- b. **Remote Hands.** Customer may request Flexential perform routine service and monitoring services by phone or through the Customer Portal. Customer will be billed the then-current non-contracted hourly rate with a minimum of 1 hour per event; additional time used on the event will be billed in 15-minute increments.
- c. **Installation and Operation.** Customer will install and maintain the Customer Equipment in a reasonable and professional manner that does not adversely impact the operations of Flexential or other Flexential customers. Flexential will not be responsible for the operation or maintenance of Customer Equipment.
- d. **Access to Equipment Space; Access Devices.** Customer will provide to Flexential a written authorization of employees, agents, or contractors who may physically access the Equipment Space (the "Approved Access List"). Any changes to the Approved Access List must be provided to Flexential in writing or loaded in the Customer Portal. Flexential shall provide Customer with access cards, keys or other access devices ("**Devices**") unless Customer has elected to manage its own access devices for the Equipment Space. Customer is responsible for notifying Flexential in writing if a Device is lost or stolen ("**Lost Device**") and Customer will be responsible for the cost of replacing any Lost Devices. In the event unauthorized parties gain access to the Facility through use of a Lost Device, Customer will be responsible for any damages incurred as a result of the unauthorized access that occur prior to Customer notifying Flexential of the Lost Device.
- e. **Effect of Termination of Colocation Services.** Upon termination or expiration of the MSA or all or a portion of the Colocation Services (the "**Facility Exit Date**") Customer shall promptly remove all or the applicable portion of Customer Equipment from the Equipment Space and the Facility and shall leave the Equipment Space in the same condition as when Customer first occupied the space, normal wear and tear excepted. Flexential may remove all Flexential Equipment from the applicable Equipment Space and repair any damage to the applicable Equipment Space on or after the Facility Exit Date. Customer shall reimburse Flexential promptly for the reasonable cost of such repairs. If Customer fails to remove Customer Equipment from the Facility or Equipment Space by the Facility Exit Date, Customer shall continue to be billed for all Services at a rate equal to 150% of the rates set forth in the applicable Quote(s) until all such Customer Equipment is removed. In the event Customer Equipment is not removed within 90 days of the Facility Exit Date, Flexential shall be entitled to remove all Customer Equipment (the "**Abandoned Customer Equipment**") from the Equipment Space. Flexential may, in its sole discretion and in accordance with applicable law, remove and dispose of any such Abandoned Customer Equipment. Customer is responsible for all costs associated with the removal of Abandoned Customer Equipment and Flexential shall not be liable to Customer or any third party as a result of such removal or disposal.
- f. **ANNUAL ESCALATOR.** The monthly recurring charges for all Services will increase 6% per year beginning on the first anniversary of the Service Term Start Date.
- g. **Power Hedging.** Customer acknowledges and agrees that in deregulated power markets, Flexential may enter into energy hedging and/or forward purchasing agreements with applicable energy companies [and may charge based on the fees set forth in those agreements, as may be modified from time to time.

2. CLOUD, DATA PROTECTION AND OTHER SERVICES.

- a. **Location.** Unless otherwise set forth in the applicable Quote, the location of Flexential Equipment used to provide Cloud Services or Data Protection Services is at Flexential's sole discretion. All Services performed by Flexential personnel are performed in the United States unless expressly stated otherwise.
- b. **Removal of Customer Data from Flexential Equipment Upon Termination.** Upon termination or expiration of the MSA or all or a portion of the Cloud or Data Protection Services, Customer shall promptly remove and delete all Customer Data from applicable Flexential Equipment. Customer may request Flexential to provide professional services as defined in a Professional Services Agreement to assist Customer with such removal and deletion and all deletion of Customer Data shall be at Customer's sole expense. To the extent Customer does not remove and delete all Customer as set above for any reason (the **"Abandoned Customer Data"**), Flexential shall have no responsibility to Customer or any third party with respect to such Abandoned Customer Data and shall be entitled to destroy such Abandoned Customer Data at Customer's sole risk and expense, in accordance with applicable law.

Exhibit B
Security and Compliance Roles & Responsibilities Matrix

Legend:

1. F = Flexential's responsibility
2. C = Customer's responsibility
3. C* = Responsibility dependent on whether the applicable Service has been purchased ("F" if purchased; "C" if not purchased)
4. "Colocation Services" as used in this Exhibit includes colocation space and power, and associated network and Data Protection Services purchased by Customer.
5. "Cloud Services" as used in this Exhibit includes the applicable Cloud Service environment (Multi-tenant Cloud, Hosted Private (Single-tenant) Cloud, DRaaS/Recovery Cloud Services, Backup as a Service (Baas) and/or Object Storage), and associated network and Data Protection Services purchased by Customer. The responsibilities for Dedicated Servers are set forth under "Additional Data Protection Services" in the table below.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Audits & Information Security Program			
Flexential Compliance Assessments and Certifications	Obtain and maintain during the Term the following assessments and certifications: ISO 27001, PCI-DSS, HITRUST, FISMA, SOC-1, SOC-2 and SOC-3 or successor standards, covering U.S. Facility operations and Cloud Service infrastructure up to and including the hypervisor level, and, as applicable, Flexential corporate (i.e. non-Service) environments, as described in each case in such assessment reports and certifications ("Flexential Audits"). Copies of the most recent Flexential Audits are available to Customer on the Customer Portal.	F	F
Other Compliance Assessments and Certifications	Obtain and maintain, to the extent desired by Customer, assessments and certifications with respect to the Customer information environment not covered in the scope of the Flexential Audits, including any dedicated/private infrastructure and Customer's private network, servers, applications, data, personnel and operational practices.	C	C
Flexential Information Security Program and Background Checks	Implement and maintain Information Security Program governing Flexential's operation of the Services and corporate environments during the Term in compliance with the Flexential Audits and Flexential's contractual responsibilities including this Matrix. Obtain and review a pre-hire background screen from a third-party vendor for all Flexential employees with a look-back period of at least seven (7) years, to include: arrest record, sex offender registry, driver record, education verification, excluded parties list, federal criminal record, multi-state/jurisdiction (non-sex offender) record, Social Security Number trace, state criminal repository record and county criminal record.	F	F
Customer Information Security Program	Implement and maintain Information Security Program governing Customer operations as desired by the Customer.	C	C
Flexential Infrastructure Management			
Flexential Facility - Physical & Environmental			
Environmental	Facility with redundant power and communications to reduce risk of system damage and destruction, including emergency shut-off, emergency power, emergency lighting, fire protection, water damage protection, and temperature/humidity controls.	F	F
Video	Video surveillance of entry and exit points to white floor and operations monitoring.	F	F
Video Retention	Video logs stored 90 days.	F	F
Access	Limit access to raised floor through role-based access, isolated phases, and validation procedures through identification, detection and alerting.	F	F
Access reports	Visitor and authorized Facility access logs, monthly review of activity reports.	F	F
Customer Colocation Cage, Cabinet or Suite - Physical			
Video	Video surveillance and operations monitoring of Customer Equipment Space.	C*	n/a
Video Retention	Video logs stored 90 days (only available if Video Service is purchased).	C*	n/a
Access	Limit access to scoped environment through role-based access, isolated phases, locked cages and cabinets, validation procedures and customer-authorized list through identification, detection and alerting.	C	n/a

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Access Control Device	Electronic access control device on scoped environment.	C*	n/a
Access reports	Customer Equipment Space access logs (only available if Access Control Device is purchased).	C*	n/a
Flexential Cloud Services Infrastructure			
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Flexential Equipment used to provide Cloud Services (the "Cloud Node") is located (excluding Amsterdam).	n/a	F
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to Cloud Node through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on Cloud Node.	n/a	F
Cloud Services Infrastructure Firewall	Redundant firewalls with IDPS deployed in the Cloud Services infrastructure with respect to all connections outside the Flexential Network to provide proper segmentation and isolation, built to industry hardening standards in conjunction with authorized traffic requirements and build approval. Firewall resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Compute Environment	Physical hardware platform designed with a segmented network controlled and managed by authorized staff. Compute resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Vulnerability Management	Continuous infrastructure device hardening, vulnerability and configuration management, including installation of recommended security patches and updates.	n/a	F
Storage Environment	Storage environment utilizing a segmented network controlled and managed by authorized staff. Encryption-at-rest is enabled on multi-tenant Cloud Service (including Recovery Cloud, DRaaS, BaaS and Object Storage) storage arrays. ¹	n/a	F
Logical Access Control	Unique logical (system) 2-factor authentication access control to Flexential Cloud Services Infrastructure based on Flexential role-based requirements, IP restriction and business need.	n/a	F
Scanning, pen testing	Quarterly internal network vulnerability scanning and annual network external and internal penetration testing, up to and including the Hypervisor level.	n/a	F
Additional Data Protection Services			
Managed Firewall Service	Applicable only to the extent Customer purchases Managed Firewall Service		
Virtual Firewall	Virtual firewall restricting network access to Customer's cloud environment.	n/a	F
Physical Firewall	Physical firewall restricting network access to Customer's hardware including VLAN configuration.	F	n/a
Networking Access	Enforcement of authorized access controls.	F	F
Firewall – Vulnerability Management	Vulnerability and configuration management, including installation of recommended security updates.	F	F
IDPS/IDS – Advanced Firewall Service only	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
2 factor/ VPN	SSL and IPSEC with soft tokens.	C*	C*
Managed Operating System (OS) and Managed Database Services	Applicable only to the extent Customer purchases Managed OS Service and, if applicable, Managed Database Service		
Setup, patching and maintenance	Provision, patch, and maintain the OS and, if Managed Database Service is purchased, the Database server.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client at the OS level with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key OS files and directories.	n/a	C*
Dedicated Servers	Applicable only to the extent Customer purchases Dedicated Servers with Managed OS Service		
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Dedicated Servers are located.	n/a	F

¹ Note: Encryption-at-rest is not enabled for renewals of previously installed Capacity Storage legacy Service.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to cage or cabinet through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on cage or cabinet.	n/a	F
Setup, patching and maintenance	Provision, patch, and maintain the Operating System.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key O/S files and directories.	n/a	C*
Other Data Protection Services	Applicable only to the extent Customer purchases the applicable Data Protection Service		
Log Management Service	Log collection, retention, reporting and alerting.	C*	C*
Vulnerability Scanning	Quarterly internal and external network vulnerability scanning.	C*	C*
IDPS/IDS	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
Encryption as a Service	Provisioning, setup and infrastructure maintenance for encryption service.	C*	C*
Encryption as a Service	Determination of which Customer Data to encrypt, and encryption key management custodian responsibilities.	C	C
Active Directory as a Service (ADaaS)	Provisioning, setup and infrastructure maintenance for ADaaS service.	C*	C*
Active Directory as a Service (ADaaS)	Management and configuration of active directory instance.	C	C
Flexential Professional Services	Applicable only to the extent Customer purchases the applicable Professional Service		
Penetration Testing	Network external and internal penetration testing of Customer environments as specified in applicable SOW.	C*	C*
Migration Services	Migration of Customer virtual servers and data as specified in applicable SOW.	C*	C*
Disaster Recovery Design, Planning and Testing Services	Disaster Recovery consulting, planning, documentation, and testing as specified in applicable SOW.	C*	C*
Security and Compliance Assessment Services	Assessment of Customer environment security controls and compliance status as specified in applicable SOW.	C*	C*
Managed DevOps Services	24x7 Full Stack management of DevOps environments as specified in applicable SOW.	C*	C*
Security Remediation	Remediation of technical vulnerabilities and implementation of security controls as specified in applicable SOW.	C*	C*
Security Forensics & Incident Response	Acquisition of forensic evidence and investigation of compromise as specified in applicable SOW.	C*	C*

Exhibit C

Service Level Agreement

The Service Level Agreement ("SLA") does not cover Service unavailability caused either directly or indirectly by:

- 1) Acts or omissions of Customer or its employees, contractors, agents or end-users, including software or hardware configuration changes not made or approved by Flexential;
- 2) Regular scheduled or emergency system maintenance;
- 3) Failure, malfunction or limitation of throughput of any equipment, network, software, applications, systems, components or services not managed by Flexential, including but not limited to third party vendor support; or
- 4) Circumstances or causes beyond the control of Flexential, including third-party attacks (such as ping or denial of service attacks) on the Flexential Network.

Co-location Services

Service Level	Non-compliance	Applicable Service Credits
Power will be available to Customer computer infrastructure in the Flexential data center 100% of the time provided Customer subscribes to redundant power circuits. Customer is responsible for proper connectivity and cabling of circuits to support redundancy within the Customer Equipment Space. This SLA does not cover outages caused, either directly or indirectly, by overloaded power strips or circuits. The availability of power through only one power circuit where such power is supplied through a primary and redundant circuit does not entitle Customer to a credit under this SLA.	Any failure of both primary and redundant circuits	One Service Credit for each day in which there is non-compliance during any month

Data Center Network Services

Service Level	Non-compliance	Applicable Service Credits
Network availability. Network unavailability shall exist when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. For Customers subscribing to redundant network connections, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network connection < 100% for Customers subscribing to redundant network connections	One Service Credit for each day in which there is non-compliance during any month
Network cross-connect availability. Customer's network cross-connects begin at the initial piece of Flexential Equipment or third-party carrier equipment, as applicable, to which the applicable circuit connects, and end at the demarcation point installed in Customer's cabinet and/or cage. Network cross-connect unavailability exists when due to a failure of Customer's network cross-connect(s), a particular Customer Port is unable to transmit data from the Flexential Network or third-party carrier connection(s), as applicable. For Customers subscribing to redundant network cross-connects, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network cross-connect < 100% for Customers subscribing to redundant network cross-connects	One Service Credit for each day in which there is non-compliance during any month
Packet loss between any two points on the Flexential Network	>1%	One Service Credit for each day in which there is non-compliance during any month
Round-trip Latency between any two points in the U.S. on the Flexential Network	>90 ms	One Service Credit for each day in which there is non-compliance during any month

Cloud Services

Service Level	Non-compliance	Applicable Service Credits
Cloud Service availability. Availability for Cloud Service is access to compute, network and storage resources, provided Customer subscribes to and configures redundant resources. Unavailability of the Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure below the applicable commitment level, or, with respect to the network component of Cloud Services, when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. Failure of Customer to maintain compliance with Flexential sizing recommendations may render this SLA void. Downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.999% (26 seconds per month)	One Service Credit for each day in which there is non-compliance during any month
Flexential DRaaS/Recovery Cloud – Recovery time. Recovery time is defined as the duration of time from customer service request to instantiation (power-on ready) of the disaster recovery virtual machine instance, not including instance boot time and boot priority controlled by Customer. The instance must be in a valid virtual protection group and in a Protected state as reported by Flexential Portal. This SLA is not valid with respect to any particular disaster recovery event unless a successful failover test was completed within the preceding 12 months or, if a material change in the Customer's protected environment occurred at any point during the preceding 12 months, after the most recent such material change.	Standard DRaaS/Essentials* > 8 hours RTO 4-hour Package/Prime* > 4 hours RTO 2-hour Package/Premium* > 2 hours	One Service Credit for each day in which there is non-compliance during any month

* RTO 4-hour and RTO 2-hour Packages are additional Services that can be purchased as separate line items on a Quote, and "Essentials", "Prime" and "Premium" refer to Service names. If no RTO 4-hour or 2-hour hour Package has been purchased for Flexential DRaaS, the time commitment for "Standard DRaaS" shall apply.

Data Protection Services

Service Level	Non-compliance	Applicable Service Credits
Backup jobs will start within 4 hours of scheduled start time slot*	>3 failures in a month	One Service Credit for the fourth and each successive failure during any month
Restores initiated within 4 hours of receiving the request	Any failure	One Service Credit for each day in which there is non-compliance during any month
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure	One Service Credit for each day in which there is non-compliance during any month

*Reporting on job start performance will be by Customer request. Flexential is not responsible for jobs failing to start due to previous job still running where Customer server/configuration is the cause of the job completion delay.

Incident Response Time

Service Level	Non-compliance	Applicable Service Credits
Flexential shall Respond to any request for incident resolution from an authorized Customer representative with respect to any Service within 1 hour of creation of the applicable ticket for a "high priority" incident, and within 2 hours of creation of the applicable ticket for any non-high priority incident. A "high priority" incident means that the Service is unavailable or has been materially impacted. "Respond" means that a ticket has been created/submitted and the incident has been assigned to the Flexential team responsible for resolving the incident.	Any failure to Respond within the required timeframe	One Service Credit for each day in which there is a non-compliance during any month

Exhibit D

AUP

Acceptable Use Policy

Flexential Corp., formerly known as Peak 10, Inc., and its affiliated entities ("Flexential") has published this acceptable use policy ("AUP") in an effort to provide reliable, high-quality service to our clients. By using Flexential's services or network, you agree to the latest version of this AUP. We may modify this policy at any time by posting a revised version on the Flexential website.

Illegal, Harmful, or Offensive Conduct

You may not use Flexential's services or network for illegal purposes or to take actions that are infringing, offensive, fraudulent or harmful to the Flexential network or others. Examples of prohibited activities include any use of the Flexential services or network:

- in violation of any applicable local, state, or federal law or regulation;
- in a manner that infringes or may infringe upon any copyrights, trademarks, patents, trade secrets, or other types of intellectual property;
- to transmit offensive or threatening materials, including materials that are obscene, pornographic, defamatory, libelous, abusive, hateful, excessively violent, or otherwise inappropriate;
- to export software to points outside the United States in violation of applicable export control laws;
- to transmit fraudulent, deceptive, or misleading materials or to advance any type of financial scam;
- to transmit any materials that harass another person or entity;
- to transmit viruses, Trojan horses, or other materials or components harmful to any network or equipment or other users or third parties; or
- in a manner that exposes or may expose Flexential, its clients, partners, or vendors, or any other person or entity using the Flexential network to abuse, complaints, retaliation, connectivity issues, or other negative impact.

Network, Application and System Security

You may not use Flexential's services or network to violate, monitor or interfere with, or to attempt to violate, monitor or interfere with, the security or reliability of any network, service, data, or other system without proper authorization. Examples of prohibited activities include any attempt to:

- access any network, service, data, or other system that you are not authorized to access;
- probe, scan, or test the vulnerability of any network, service, or system without proper authorization;
- breach any security or authentication measures;
- monitor data or traffic on any network or system without proper authorization or in a manner that disrupts or impairs the network or system;
- interfere with service to any user, host, or network, including, without limitation, by means of overloading, mailbombing, flooding, crushing, or any denial of service attacks;
- forge any TCP/IP packet header or any part of the header information in an e-mail message or a newsgroup posting;
- attempt any action designed to circumvent or alter any method of measuring or billing for services; or
- use the account name of another person without proper authorization.

Flexential reserves the right to investigate any actual or suspected security violation or incident. In the event of an actual or suspected security violation or incident, Flexential may take any actions that Flexential deems reasonably necessary to prevent harm to Flexential and/or Flexential clients, including the network, systems and data of Flexential and/or Flexential clients. Such actions may include, but are not limited to, the following:

- removing, disabling access to, or suspending Services;
- disconnecting a host from the network and preparing for investigative services;
- reporting to appropriate law enforcement officials, regulators, or other appropriate third parties any activity that Flexential believes may violate any applicable law or regulation; and
- cooperating with law enforcement agencies and regulators to assist with any investigation and/or prosecution.

In order to maintain network, application and system reliability and security for you and other Flexential clients, you must use commercially reasonable efforts to keep your network, applications and systems secure and current by applying, or consenting to Flexential applying, if applicable, the most recent patches, updates and upgrades as they are made available by the applicable providers, and appropriately configuring your firewalls and other components of your network, application and system security.

If Flexential notifies you in writing, including by sending an email or notification through Flexential's ticketing system to any of the persons identified by you as administrators with respect to your Services, of particular patches, updates, upgrades or configuration settings that Flexential identifies as "critical", then you must apply those critical patches, updates, upgrades or configurations, or consent to Flexential applying those critical patches, updates, upgrades or configurations, as applicable, within thirty calendar days of the notification. If you fail to timely comply with your obligations in the previous sentence, then (1) you shall reimburse Flexential, at Flexential's standard rates, for all labor, administrative time, or other activity of Flexential's personnel expended in an effort to cure, mitigate or otherwise resolve any problems attributable to such failure and, (2) Flexential shall not be obligated to provide any credits to you with respect to any failure by Flexential to meet its service level commitments that is attributable to such failure.

You are prohibited from taking any action, intentional or unintentional with respect to the Services, which will negatively impact the Flexential business operations, the operations of our clients including shared infrastructure, such as cloud or network services, as a whole.

You are responsible for the use of the Services by any of your employees, any person to whom you have given access or any person who gains access to your data.

Abuse Violations

No spam. You may not use Flexential's services or network to transmit any unsolicited commercial or unsolicited bulk e-mail messages (commonly known as "spam"). In addition, you may not use the services or network of another provider to send spam or to promote a site hosted on or associated with Flexential's services or network.

Newsgroups and Online Forums. All postings to newsgroups and online forums must comply with the written charters, rules, or FAQs for that group. You are responsible for determining the policies of a newsgroup or online forum before posting to it. In addition, you may not attempt to flood or disrupt the newsgroups.

Web Pages. As part of the services, Flexential may provide web hosting services. You are solely responsible for any content that you publish or display on your web pages or web site, including ensuring that the content complies with the terms of this AUP.

Content. Flexential is not responsible for any material created, stored, distributed or accessible on or through the services. Flexential is not obligated to monitor or exercise any editorial control over such material but reserves the right to do so. Flexential reserves the right to block access to such material and suspend or terminate services in the event Flexential determines, in its sole discretion, that any materials may expose Flexential to civil or criminal liability. To the extent you use cloud-related services, all Microsoft® licenses must be provided by Flexential unless specifically approved by Flexential. In all events, you will provide Flexential with a count of all Microsoft licenses used by you in connection with the services.

Attacks

If you are using Flexential network services and:

- you are the subject of a network attack, such as a DDoS attack, that is large enough to affect network traffic, or

- your server and/or application is compromised;

Flexential has the right, immediately and without prior notice, to terminate routing, block ports and IP address space, and/or suspend services in order to protect the integrity of the Flexential network and preserve the services provided to other users.

IP Addressing

Flexential endeavors to utilize its ARIN (American Registry of Internet Numbers) IP space allocations as efficiently as possible, as IP address space is a finite resource that is shrinking quickly and going up in cost. ARIN requires Flexential to justify current and future allocations when additional IP space is requested for customer and or Flexential network use, which requires that 80% of all past allocations are in legitimate use and that the use of said space is within ARIN's allocation guidelines. Therefore your IP space assignments are required to meet the same ARIN guidelines, which can be found at: www.arin.net. In the event you violate the ARIN guidelines or this AUP with respect to IP Addressing, Flexential may revoke your IP addresses without liability to you.

You may not advertise your Flexential-assigned IP space or use it outside of the Flexential ASN (13649) or outside of Flexential owned facilities without prior express written approval from Flexential. This includes utilizing Flexential IP space and 3rd party services such as DDOS or DNS.

You have no right to route IP addresses assigned by Flexential. Flexential shall retain ownership of all such IP addresses at all times, and your access to such IP addresses shall cease immediately upon termination of your Agreement for services with Flexential.

Flexential assigns IP space based off individual customer datacenter assignment/installation. IP blocks may not be transportable between datacenters below a /24. If you desire to move an IP block with /24 or larger IP assignments to a different datacenter, you must request approval for the move, and Flexential shall have no liability to you if Flexential is unable to accommodate such request.

INetU Terms of Use and Acceptable Use Policy

If you are using services pursuant to an agreement with INetU, Inc. ("INetU") then:

(1) This AUP supersedes, replaces, amends and restates in its entirety the Schedule B Terms of Service and Acceptable Use Policy of INetU applicable to you through your agreement with INetU, effective as of the date this AUP is first published online and provided to you in writing;

(2) you must provide INetU with accurate information to help INetU determine if any tax is due with respect to the provision of the services;

(3) you are responsible for keeping your billing and other account information with INetU up to date; and

(4) you must pay when due the fees for the services stated in your agreement with INetU and any additional services order(s) or other agreements between you and INetU.

Consequences

If Flexential determines that you have violated any of the terms of this AUP, Flexential has the right to (i) demand immediate removal of the violating material and/or (ii) restrict, suspend or terminate all or a portion of your services. Flexential may involve and will cooperate with law enforcement authorities. In addition, if you violate this AUP, you may be subject to civil or criminal liability. Flexential shall not be liable for any damages suffered by any user or third party resulting directly or indirectly from any actions taken by Flexential pursuant to this AUP. All determinations by Flexential as to whether abuse or violations of the AUP have occurred shall be conclusive and binding.

Violation Reporting

Violations or potential violations of this AUP may be reported to Flexential at abuse@Flexential.com.

Exhibit E

Data Center Rules

Welcome to Flexential

These rules and procedures are designed to provide for the safety of the individuals visiting and working at our facilities, to protect the confidentiality of our customers, and to support the safe operation of our facilities. All individuals accessing a Flexential facility must strictly comply with these rules. **Any individual found to be in violation of these rules while in the Flexential facility will have their access rights immediately terminated.**

General Rules

- Access badges must be worn and clearly visible at all times in all areas of the facility.
- Customers and vendors are responsible for requiring their employees, agents, vendors and contractors to comply with these Data Center rules.
- No one under 16 years of age may enter the raised floor.
- Drinking, eating, or smoking is not allowed except in designated areas, and is never allowed on the raised floor.
- Weapons, explosives, hazardous materials, electro-magnetic devices which could interfere with computer and telecommunications equipment, radioactive materials, mace, alcohol, or illegal drugs are never allowed in the facility.
- Doors may not be left partially open or blocked under any circumstances.
- No photographing or filming any areas in the data center or the entrances to the facility without Flexential's consent (see "Data Center Security" section below for rules governing security cameras in the customer space).
- Customer-owned or operated wireless access points are not permitted in Flexential facilities without consent.
- Combustible materials, such as paper or cardboard, may not be stored in customer space/equipment space.
- Customer space must be kept clean of debris and spare equipment at all times.
- No boxes or equipment may be stored in the facility unless arrangements for storage have been approved by Flexential.
- Customers must maintain their space in compliance with all applicable legal requirements (including OSHA).
- Customers are not allowed to remove floor or ceiling tiles and are not allowed to access under the floor tiles or above the ceiling tiles.
- Customer must install equipment in accordance with hot and cold aisle arrangement as directed by Flexential. Flexential reserves the right immediately to disconnect power to any Customer equipment installed contrary to the prescribed hot and cold aisle arrangement.

Access Procedures

- Each individual with data center access must pass through access control systems and use his or her own access badge to enter the data center, even when entering as a group. No tailgating is allowed.
- Access badges may not be transferred or loaned to other individuals, including other employees, subcontractors or vendors.
- Access badges are linked to a central monitoring system that identifies individuals and records access activities.
- Each customer must identify the individuals (employees or third-party vendors) who are authorized to access colocation facilities on their behalf through the customer's Customer Portal account by customer-designated User Administrators.

- Customer representatives without a permanently issued access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge (day pass) if their contact record designates them as authorized for Day Pass or Permanent Badge distribution or a customer's designated User Administrator has approved, in writing, the specific visit.
- Vendor permanent access badges must be approved by Flexential data center operations.
- Vendor representatives without a permanent access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge if Flexential data center operations approve the specific visit.
- Each properly badged customer or vendor representative is allowed up to three (3) visitors to accompany him/her into the facility for the purpose of installation or support assistance only. The customer or vendor representative must check-in and obtain the necessary temporary badges for their guests. Each customer or vendor has full responsibility for their guests and must accompany them at all times.
- Flexential, in its sole discretion, may require that Customer and any Customer agents be escorted in the Flexential data center, and may suspend Customer's access as directed or required in an emergency situation.
- **Notify Flexential immediately if an access badge is lost or stolen.**

Data Center Security

- Closed-circuit television security cameras monitor entrances and are strategically located throughout the facilities.
- Customer-provided video monitoring must exclusively capture customer space. Camera placement is subject to Flexential review and approval. Customer must provide camera screenshots to Flexential upon request.
- Customer spaces are secured individually; it is each customer's responsibility to ensure that their space is locked after use.
- Lost or stolen keys and access cards are subject to replacement fees at then-current rates.

Equipment Delivery & Storage

- Customers must provide Flexential with advance notice of all equipment deliveries.
- All shipping charges must be pre-paid by the customer.
- If any equipment is delivered for a customer by a third party, Flexential will receive the equipment on behalf of the customer provided that the customer has pre-scheduled the delivery with Flexential. ***The customer must arrange for shipping crate or pallet removal.***
 - The following information must be included with all equipment delivered to the facility. Failure to follow these instructions may result in delays locating stored packages: Flexential ticket number; customer's name and/or customer billing ID, if possible; and number of pieces shipped.
 - Upon receipt of any equipment delivered by a third party on a customer's behalf, Flexential will notify the customer of receipt and store the equipment
- Customers must claim their equipment within 7 calendar days of notification of receipt by Flexential or storage charges will be charged to the customer at the then-current rates.
 - All equipment left in storage for more than 30 calendar days may be shipped back to the customer at the customer's expense.
 - Flexential is not responsible for loss or damage to customer equipment stored in the common areas of a Flexential facility or in transit or packaged and shipped by Flexential at Customer's request.
 - Flexential cannot guarantee storage space availability and will provide this service on a "reasonable efforts" basis.
 - Flexential package acceptance services do not include verifying the contents of a box or boxes.

Power

- All individual power whips/power under the floor must be installed and maintained by Flexential.
- All equipment installed in the facility must meet the standards of Underwriters Laboratories (UL) listing or a similarly recognized governing board.
- No soldering or open flames are allowed.
- Customer's primary/redundant, or A/B circuit pair total power utilization across the circuit pair must not exceed 80% of the rated power of the primary circuit, and customer's power utilization must not exceed 80% of the circuit breaker's rated current. If customer exceeds either of these thresholds, then one of the following must occur: (1) customer shall purchase additional power circuits in order to reduce the overall power load on the circuit pair below the threshold; or (2) customer shall reduce its power load on the applicable circuit pair below the threshold. If customer does not



Data Center Rules

implement one of the two foregoing options within 7 business days of written notification from Flexential, then Flexential shall have the right to charge a power overage fee and/or limit power consumption or disconnect power circuits in order to reduce customer's power load across the circuit pair below the thresholds.

- Only data center rated electrical equipment allowed. Examples of equipment not allowed are: In cabinet UPS modules; lead acid batteries; home type 120V power strips; small step-down transformers for 208V to 120V. We reserve the right to deny installation or request removal of electrical equipment that does not meet our standards
- **None of customer's equipment, connections, or wiring is permitted to enter any space outside of the customer's cabinet and/or rack.**

Telecommunication Facilities

All interconnects (telecom cross-connect) must be approved by Flexential and are subject to fees and charges.



Renewal Proposal

Quote Q-155477

Presented To:

Jeremy Jami

7026331683

jamij@cityofnorthlasvegas.com

Prepared By:

Paul Escobedo

702.479.5276

paul.escobedo@flexential.com

Flexential
600 Forest Point Circle, Suite 100
Charlotte, NC 28273
www.flexential.com



Cover Sheet

FLEXENTIAL

Address	600 Forest Point Circle, Suite 100, Charlotte, NC 28273
Name	Paul Escobedo
Phone	702.479.5276
Email	paul.escobedo@flexential.com
Legal Notices	600 Forest Point Circle, Suite 100, Charlotte, NC 28273

CITY OF NORTH LAS VEGAS INFORMATION – PRIMARY CONTACT*

Contact Name	Jeremy Jami
Street Address	2250 Las Vegas Boulevard North
City, State, Zip	North Las Vegas, Nevada, 89030
Phone	7026331683
Email	jamij@cityofnorthlasvegas.com

*Legal notices will be sent to the Primary Contact at the address/email address above.

AGREEMENT INFORMATION

Renewal Effective Date	September 01, 2024
Renewal Term	60.0 months

This **Master Services Agreement** is made by and between Flexential LLC, a Delaware limited liability company (“Flexential”), for itself and on behalf of its affiliated entities, and City of North Las Vegas (“**Customer**”). Upon signature, this MSA shall become legally binding. Except as permitted in the Standard Terms and Conditions, this MSA is non-cancelable. If Customer and Flexential (including any subsidiaries of the legal entities included in the definition of Flexential) are party to an agreement pursuant to which services are provided to Customer (the “**Prior MSA**”), then the parties hereby expressly agree that the Prior MSA is hereby terminated and superseded in its entirety by this MSA, and any Quotes previously issued under the Prior MSA that are in effect as of the Effective Date are hereby deemed to be issued pursuant to, and subject to the terms and conditions set forth in, the MSA. Flexential Corp. will be directly obligated to Customer to perform the Services on Exhibit A at Facilities, if any, that are identified on Exhibit A as “Flexential Corp.”

This **Master Services Agreement** is comprised of the following documents:

- i. This Cover Sheet
- ii. The attached Exhibit A – Services List and Pricing
- iii. The attached Master Services Agreement Standard Terms and Conditions
- iv. The attached Exhibit B – Security and Compliance Roles & Responsibilities Matrix
- v. The attached Exhibit C – Service Level Agreement
- vi. The attached Exhibit D – Acceptable Use Policy
- vii. The attached Exhibit E – Datacenter Rules

In Witness Whereof and Intending to be Bound Hereby, the parties have caused this agreement to be executed by their duly authorized representatives as of the Effective Date:

Flexential LLC

Signature:

Name:

Title:

Date:

City of North Las Vegas

Signature:

Name:

Title:

Date:



Document
Date: August 19, 2024

City of North Las Vegas

Account
Executive: Jeff Howard

Exhibit A

Attention: Jeremy Jami
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Billing ID: NEKIY001
Quote #: Q-155477

Cloud Fabric: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Port 1G	Add	1.0	EA				
1G SMF Cloud Fabric Port including cross connect used to gain access to the Cloud Fabric platform. The service includes one (1) 1G single mode fiber switch port per subscription. Multiple connections are needed if redundancy is required.							
Cloud Fabric: Las Vegas - North Total:						\$0.00	\$240.00

Cloud Fabric: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Port 1G	Add	1.0	EA				
1G SMF Cloud Fabric Port including cross connect used to gain access to the Cloud Fabric platform. The service includes one (1) 1G single mode fiber switch port per subscription. Multiple connections are needed if redundancy is required.							
Cloud Fabric: Las Vegas - North Total:						\$0.00	\$240.00

Professional Services: Las Vegas - North	Change	Qty	Units	Setup Per Unit	Monthly Per Unit	Setup Total	Monthly Total
Cloud Fabric Design & Deploy - Single site to single site	Add	1.0	Each				
Consultation for cloud fabric between 1 Flexential and 1 public cloud environment. Includes a cloud fabric design and technical configuration of customer's Flexential edge network equipment and public cloud infrastructure.							
Professional Services: Las Vegas - North Total:						\$0.00	\$0.00

	Setup	Monthly
Totals:	\$ 0.00	\$ 480.00

Prices do not include applicable sales tax and are valid until 09/18/2024. The MSA includes automatic renewal and annual price escalation provisions unless otherwise agreed.

Per Unit prices are displayed as rounded to the nearest penny but may include up to four decimals. Total prices are calculated using actual Per Unit pricing and will govern in the event of any discrepancy with displayed Per Unit prices. This document is private and confidential.



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms shall have the meaning set forth below or elsewhere in the MSA.
- a. **“Colocation Services”** means Services related to the storage of Customer Equipment in the Equipment Space as set forth on the applicable Quote.
 - b. **“Cloud Services”** means Services related to an information technology system, operated, maintained, and housed by Flexential, which may consist of software and hardware including data storage, physical computing equipment (hosts), and networking components.
 - c. **“Cover Sheet”** means a cover sheet to which these Standard Terms and Conditions are attached, that identifies the parties and their notice addresses and includes signature blocks for Flexential and Customer to execute the MSA and the initial Quote for Services.
 - d. **“Customer Data”** means all information stored, maintained, received or transmitted by Customer using the Services.
 - e. **“Customer Equipment”** means any equipment provided by Customer in connection with the MSA, whether or not owned by Customer.
 - f. **“Customer Port”** means the egress port on Customer Equipment connecting to Flexential Equipment used to provide network Services.
 - g. **“Customer Portal”** mean the online platform designated by Flexential with respect to a particular Service through which Flexential customers may create service tickets and review reports and other information related to the Service
 - h. **“Data Protection Services”** means those additional information technology and network/data transport Services set forth in a Quote.
 - i. **“Dispute”** means any controversy or claim arising out of or relating to the conduct of the parties under, or the interpretation of the terms, conditions or provisions of, the MSA.
 - j. **“Eligible Customer”** means Customer: (i) does not have an undisputed balance more than sixty (60) days past due or (ii) is not in breach of this MSA at the time in which the service commitment was not met.
 - k. **“Equipment Space”** means the designated area within the Facility that Customer may access and use.
 - l. **“Facility”** means the Flexential data center(s) where the Customer Equipment is located, for Colocation Services, and where the Flexential Equipment containing Customer Data is located, for Cloud Services.
 - m. **“Flexential Equipment”** means any equipment provided and operated by Flexential to provide the Services. Such equipment may be located inside or outside the Equipment Space.
 - n. **“Flexential Network”** means that portion of the network Services beginning at the ingress port of Flexential Equipment used to provide network Services and ending at the egress port of Flexential Equipment used to provide network Services.
 - o. **“Installation Date”** means the date when all or a portion of Service is first made available to Customer.
 - p. **“MSA”** means these Standard Terms and Conditions together with the Cover Sheet to which these Standard Terms and Conditions are attached or incorporated by reference, and all Quotes, exhibits and other documents incorporated by reference into the MSA.
 - q. **“MSA Effective Date”** means the first date that the MSA has been signed by both parties.

- r. **“Pass Through Costs”** out of pocket costs or expenses actually incurred by Flexential with respect to the Services that may not be specifically included as a line item in a Quote, including fees related to services provided by or through a third-party. Such Pass Through Costs may include utilities (power), software licenses, hardware costs, maintenance, support providers, and property tax.
- s. **“Quote”** means an order executed by both parties that identifies Services to be provided by Flexential to Customer pursuant to this MSA. Each Quote will reference this MSA and will be incorporated into this MSA.
- t. **“Quote Effective Date”** means the first date that the applicable Quote has been signed by both parties.
- u. **“Regulated Customer Data”** means any Customer Data that is personally identifiable information (**“PII”**), protected health information (**“PHI”**) or otherwise subject to legal or regulatory requirements.
- v. **“Service(s)”** means the services to be provided by Flexential, as detailed in the applicable Quote(s). Additional terms related to specific Services are set forth in Attachment 1.

2. SCOPE OF SERVICES AND CONFLICT.

- a. **Services.** Flexential will provide Customer with the Services set forth on one or more Quote(s). In the event of a conflict between the terms of this MSA and the terms of a Quote, the terms of the MSA will govern except as explicitly stated otherwise in the applicable Quote. Services may be provided by employees or independent contractors of Flexential or its affiliated entities, and Flexential shall be responsible to Customer for the performance of all Services. The terms and conditions contained in any Customer-provided purchase order or other similar ordering document are not binding on Flexential.
- b. **Alteration of Services.** Flexential may, in its discretion, alter its provision of any Service to Customer, so long as Flexential does not materially and adversely impact the Services. No alteration shall modify Flexential's obligations, or Customer's remedies, pursuant to Section 11. If, within 60 days after the service alteration, Flexential fails to comply with an SLA in two separate instances and such failures are the direct result of the service alteration, Customer may terminate the affected Service without penalty so long as (i) Customer is an Eligible Customer and (ii) Customer delivers termination notice to Flexential within 15 days after Customer notifies Flexential of the second SLA failure that gives rise to the termination right.
- c. **CUSTOMER PORTAL.** Flexential will provide Customer with an account and password to access the Customer Portal. Customer is responsible for all activities that occur under Customer's account on the Customer Portal. Flexential may permit Customer to add or modify Services through the Customer Portal. In such event, modification of the services by way of the Customer Portal will be considered a valid Quote for such Services.

3. TERM AND RENEWAL.

- a. **MSA Term.** This MSA shall become effective on the MSA Effective Date and shall remain in effect until the termination of the last Quote, at which point it will terminate and be of no further force and effect except as set forth in Section 28(j).
- b. **Service Renewal.** The **“Service Term Start Date”** for Services on a Quote will be the first of the month following the Installation Date, unless the Installation Date is on the first of the month, in which case the Service Term Start Date will be the same date as the Installation Date. Each Quote will begin on the Billing Start Date for the applicable Quote and will terminate as specified in the Quote (the **“Initial Service Term”**). After the expiration of the Initial Service Term, the Services on the applicable Quote will automatically renew for successive one (1) year periods on the same terms and conditions (each, a **“Renewal Service Term”**) unless either party informs the other party in writing of its intent not to renew such Service in at least 90 days prior to the scheduled expiration of the then-current Service Term. The Service Term Start Date for Renewal Service Terms shall be the first day first day of the Renewal Service Term. The Initial Service Term and any Renewal Service Terms are collectively referred to as the **“Service Term”**. The Parties understand and agree that no Service Term shall extend beyond the term of the underlying lease in the applicable Facility unless the parties agree to relocate the Service to another Flexential-operated Facility.

4. PAYMENTS.

- a. **Billing Start Date.** Billing for Services will begin on the Installation Date unless otherwise set forth below:
- i. **Flexential Delay.** In the event Customer is not able to use the Service(s) on the Installation Date solely as a result of delays caused by Flexential, the Billing Start Date shall be extended for each day of delay caused by Flexential.
 - ii. **Customer Delay.** In the event Flexential is unable to complete the installation of all or a usable portion of the Service as a result of delays caused by the Customer, Flexential reserves the right to start billing 45 days from the Quote Effective Date.

In the event a portion of the Services are available and have been Installed, Flexential will invoice Customer for such portions which have been Installed and Customer will pay for such Services in accordance with this Section.

- b. **Payment Due Date.** Payments on all undisputed invoices are due within 30 days of the date the invoice is sent to the Customer and will be paid in U.S. Dollars.
- c. **Invoices.**
- i. **Recurring Charges.** All recurring charges for Services will be invoiced by Flexential on a monthly basis. Charges that are dependent upon the level of usage will be billed monthly in arrears and overages for these Services will be billed at the rate(s) set forth in the applicable Quote. Invoicing for partial months will be prorated based on a calendar month (and may be billed in arrears).
 - ii. **Non-recurring Charges.** Flexential reserves the right to invoice Customer for a percentage (not to exceed 50%) of the non-recurring charges related to the Services (the "NRCs") which payment shall be due upon on the invoice date. Customer shall pay Flexential the remaining percentage of the NRCs following the Installation Date and such amounts will be due upon the date the invoice is sent to the Customer.
 - iii. **Late Payments.** Any undisputed late payment will be subject to late charges of 1.5% per month, and Customer will be liable for any reasonable attorneys' fees or other costs associated with collecting late payments. In the event Customer fails to pay undisputed late invoices more than two times in a 12-month period, Flexential may require Customer to provide security deposit in the amount of one month of recurring fees and charges
- d. **Pass-Through Costs.** Upon 30 days prior notice, Flexential may increase the applicable rates and charges set forth in a Quote in a proportional amount to account for increases to Pass Through Costs.
- e. **Restricted Access for Non-Payment.** Flexential may limit or restrict Customer's access to the Services, Facility and Customer Equipment if past-due undisputed balances remain unpaid for more than 30 days after Flexential provides notice of initial delinquency to Customer.
- f. **Taxes.** Except for taxes based on Flexential's income, Customer will be responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise or other local, state and federal taxes, fees, charges or surcharges, however designated, imposed on or based upon the provision, sale or use of the Services provided hereunder.
- g. **Invoice Disagreements.** In the event of an invoice Dispute, Customer must notify Flexential via email to: billingdisputes@flexential.com within 60 days of the date the invoice is sent to the Customer and pay all undisputed portions by the applicable due date. In such notice, Customer must describe the nature of the Dispute with sufficient detail to reasonably permit Flexential to investigate the Dispute. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account and amounts payable to Flexential shall be paid within 10 days of Dispute resolution.

5. TERMINATION AND REDUCTION IN SERVICES.

- a. **Termination for Breach.** Either party may terminate the MSA without liability if the other party materially breaches the terms of this MSA and the breaching party fails to cure the breach within 30 days of receipt of notice from the non-breaching party. Customer may not terminate the MSA or any Quote pursuant to this Section as a result of Service-related issues that are subject

to the sole and exclusive remedies provided in Section 11. Either party shall have the right to immediately terminate the MSA without liability if (i) the material breach caused by the breaching party is not reasonably capable of a cure or (ii) the other party is the subject of an involuntary bankruptcy filing that is not withdrawn or dismissed within 60 days of filing or any voluntary bankruptcy filing, becomes insolvent, or is liquidated. In the event Flexential terminates all or portion of the Services in accordance with this Section 5(a), Customer shall pay Flexential the early termination fee set forth in Section 5(c).

b. Termination for Convenience. Customer may terminate any Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives Flexential at least 90 days prior notice. The date of termination shall be effective the last day of the month in which the 90 day notice period expires (the "Termination Effective Date"). For example, if Customer provides notice of termination to Flexential on June 15, 2023, the Termination Effective Date shall be September 30, 2023. In the event Customer exercises the early termination option, Customer shall pay Flexential an early termination fee as set forth in Section 5(c).

c. Early Termination Fee. Pursuant to Section 5(a) and (b), Customer shall pay Flexential an early termination fee, as liquidated damages, not as penalty, based on the applicable then-current Service Term, calculated as follows: (i) 100% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 1 through 12; plus (ii) 90% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 13 through 24, if any; plus (iii) 80% of the remaining monthly recurring charges for each terminated Service or portion thereof for months 25 through the end of the Service Term, if any; plus (iv) any installation or other fees identified on the Quote for the terminated Service or portion thereof as having been previously waived; plus (v) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer; plus (vi) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum. The parties agree that the above formula represents a reasonable estimate of Flexential's anticipated damages from an early termination, which are difficult to calculate with precision. Customer shall not be liable for the early termination fee if Customer terminates this MSA pursuant to Section 5(a) or any other Section that permits termination by Customer "without liability".

6. UTILIZATION OF FLEXENTIAL NETWORK; CONTENT OF TRANSMISSIONS. At Customer's request, Flexential shall use commercially reasonable efforts to assign Internet Protocol ("**IP**") address space specified on a Quote for Customer during a Service Term and to route those IP addresses on Flexential's network. Customer shall have no right to route such IP addresses outside of the Flexential Network and Flexential Facilities. Flexential shall retain ownership of all such IP addresses at all times, and Customer's access to such IP addresses shall cease immediately upon termination of the MSA or the applicable Service. Customer is solely responsible for the content of any transmissions utilizing the Services. The use of another organization's network or computing resources is subject to its respective permission and usage policies. Customer further agrees not to use the Services for illegal purposes. Flexential reserves the right to re-route IP data packets to any and all Internet carriers connected to the Flexential Network based upon current load and service issues at the time of re-routing. The removal of IP data packets and the re-routing to another Internet carrier shall not be calculated in the service level commitments set forth in Exhibit C.

7. HAZARDS OR INTERFERENCE. Customer agrees not to interfere with or disrupt other network users, other Flexential customers, network services or network equipment. In the event that Customer Equipment poses a threat to Flexential's ability to provide service to other customers, Flexential may immediately disconnect all or a portion of the Service or, in the case of DDos attacks, blackhole the affected IP address, despite Flexential's scrubbing service. Customer will maintain the Equipment Space in an orderly and safe condition. If Customer or any Customer Equipment creates a hazard or interferes with Flexential's operation and/or maintenance of the Facility, Flexential will use reasonable efforts to notify Customer of such hazard or interference. Upon Flexential notification under this Section 7, Customer must promptly and as applicable: (a) remove the hazard or cease the interference within 5 days after Flexential's notice, or Flexential may clean the Equipment Space and pass the reasonable cost on to Customer, (b) provide a plan to remove the hazard or cease the interference that is reasonably acceptable to Flexential, or (c) authorize Flexential to take such necessary action (billed at applicable rates) to remediate the hazard or interference. Customer understands that a hazard or interference may cause imminent harm to Flexential, its customers or its Facilities, in which case notice to Customer may not be reasonable prior to Flexential taking necessary action.

8. SECURITY.

a. Flexential Responsibilities. Flexential shall take commercially reasonable measures to provide the security safeguards listed as a Flexential responsibility with respect to the specific Services set forth in Exhibit B. Unless otherwise specified in Exhibit B, Customer acknowledges and agrees that Flexential is not responsible for the integrity or security of any Customer Data.

Flexential agrees to notify Customer promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility, or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Flexential may update Exhibit B as Services are added or as new measures are implemented, provided in no event will such updates decrease existing responsibilities.

- b. **Customer Data Ownership.** As between Flexential and Customer, Customer Data is and will remain the exclusive property of Customer.
- c. **Customer Responsibilities.** Customer shall (i) use commercially reasonable security precautions in connection with the use of the Services, (ii) require its end users and customers to use commercially reasonable security precautions; and (iii) encrypt Regulated Customer Data. Unless otherwise stated in Exhibit B, Customer shall ensure logical security protection and backup and recovery of Customer Data. Customer agrees to notify Flexential promptly upon becoming aware of any unauthorized access to the Customer Equipment in the Facility or a Lost Device (as defined in Attachment 1), or any unauthorized access to, or unauthorized disclosure of, the Customer Data hosted on Flexential Equipment. Customer shall cooperate with Flexential in any investigation of the use or possible use of the Customer's Equipment, the Facilities or the Services for any purpose that is not intended by this MSA. Customer must apply, and with respect to Services managed by Flexential, consents to Flexential's application of all security patches or updates to Customer's software, firmware or operating system used in Flexential's provision of the Services.

9. EQUIPMENT AND SOFTWARE.

- a. **Rights To.** Customer represents, warrants and covenants that it owns or has the legal right and authority to use, as applicable Customer Equipment and any software provided or used by Customer in connection with use of the Services.
- b. **Flexential Equipment.** To the extent Flexential procures specific equipment for Customer's use, Flexential reserves the right to substitute such equipment with comparable equipment of the same make, model and performance specifications. Such substituted equipment shall not negatively impact Flexential's provision of the applicable Services. Customer does not have any right in or to the equipment. Flexential will coordinate any equipment substitutions with Customer.
- c. **Software Terms.** With respect to any third-party software provided by Flexential for Customer's use in connection with the Services (the "**Software**"), Customer represents, warrants and covenants that it will abide by the Additional Software Terms located on the "Legal Information" page on Flexential's website (the "**Additional Software Terms**") (currently available: https://www.flexential.com/system/files/file/2020-01/Additional-Software-Terms-Flexential-June-2018_1.pdf). The Additional Software Terms are hereby incorporated into the MSA. In the event of any conflict between this MSA and the Additional Software Terms, the Additional Software Terms will control, but only with respect to the Software. Flexential will provide Customer with prior notice (e-mail acceptable) of any material modifications to the Additional Software Terms.

10. ACCEPTABLE USE POLICY AND DATA CENTER RULES. Customer shall, and shall cause any parties permitted by Customer to enter the Facility or directly use the Services to, comply with: (a) Flexential's Acceptable Use Policy attached hereto as Exhibit D, (the "**AUP**"), and (b) Flexential's Data Center Rules attached hereto as Exhibit E, (the "**Data Center Rules**"). The AUP and Data Center Rules may be updated by Flexential from time to time and Flexential will provide Customer with reasonable prior notice of any substantive modifications. If Customer (a) notifies Flexential in writing within 15 days of Flexential's notice that Customer does not approve of such modification and (b) can reasonably demonstrate an adverse impact to its use of the Services is the direct result of such modification, then the parties will use commercially reasonable efforts to reach a mutually agreeable solution to address the issue. If the parties cannot reach a mutually agreeable solution within 30 days after Customer's notice (the "**Resolution Period**"), and so long as such modifications are not required to ensure Flexential's compliance with applicable law, then Customer shall have the right to terminate this MSA upon 30 days' notice without penalty. Customer's notice of termination must be delivered to Flexential within 30 days after expiration of the Resolution Period.

11. SERVICE LEVEL AGREEMENTS.

- a. **Credits.** If Flexential fails to meet the service level criteria outlined in Exhibit C (the "**SLA**"), Customer will be entitled to receive the Service Credits set forth on Exhibit C. "**Service Credits**" will be calculated as 1/30th of the monthly Service charge for the month in which Flexential fails to meet the applicable service level. Under no circumstance will the total maximum Service Credits for any month exceed one month's recurring charges for the affected Service. Customer must request Service Credits in a support ticket/case within 10 business days of a service interruption ("**SLA Disruption Notice**") and be an Eligible

Customer. Flexential will apply any Service Credits against future payments or will apply any credits to undisputed past due invoices. If Customer is eligible to receive multiple credits under this Section 11 from the same event, such credits shall not be cumulative and Customer shall be eligible to receive only the maximum credit available for such event as set forth in Exhibit C.

- b. **Satisfaction Guarantee.** If, within 10 days after receiving the SLA Disruption Notice from Customer and Flexential does not cure the issue causing noncompliance or provide documentation to Customer demonstrating that the Service was in compliance with the applicable SLA (the "**SLA Response**"), then Customer may terminate the affected Service without penalty, so long as such termination notice is delivered to Flexential within 15 days following the end of Flexential's 10-day cure period. If Customer provides an SLA Disruption Notice to Flexential four or more times over any consecutive 12-month period for the same event that results in noncompliance of the same SLA and Flexential does not provide Customer with an SLA Response, then Customer may terminate the affected Service without penalty upon notice to Flexential. Such termination notice under this Section must be delivered to Flexential within 15 days following delivery of the fourth such SLA Disruption Notice. Any Service termination pursuant to this Section 11(b) will be effective upon the earlier of: (i) the effective date stated in Customer's termination notice delivered to Flexential, or (ii) the last day of the third calendar month after the calendar month in which the termination notice is delivered to Flexential.
- c. **Sole and Exclusive Remedy.** Sections 2(b), 11(a) and 11(b) state the sole and exclusive remedy for any equipment and/or software failures, service interruptions, service response issues, and/or service deficiencies of any kind.

12. SUSPENSION OF SERVICES. Flexential reserves the right to suspend all Services in the event: (a) Flexential has the right to terminate the MSA as a result of undisputed invoices being past due; or (b) Flexential reasonably believes: (i) Customer is in violation of the MSA, provided, however, that Flexential will make reasonable efforts under the circumstances to provide Customer an opportunity to cure such breach; (ii) Customer is in violation of any applicable law; (iii) it is required to suspend Services under applicable law or government order; or (iv) continuing to provide the Services would result in significant damage to Flexential, the Flexential Network or other Flexential customers. Flexential will have no liability for any damages that Customer may incur as a result of any suspension of Services pursuant to this Section.

13. INSURANCE.

- a. **Customer Obligations.** Customer shall procure and maintain, at Customer's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence or, if Customer does not provide automobiles to its personnel, Customer must require each of its personnel driving to the Facility to maintain personal auto liability insurance in an amount not less than \$100,000; (v) "All Risk" Property insurance covering all of Customer's Equipment colocated in any Facility in an amount not less than its full replacement cost, as well as business interruption coverage; and (vi) Cyber Breach Liability Insurance in an amount not less than \$1,000,000. Customer's Commercial General Liability and Auto Liability policies shall be endorsed to show Flexential (and any underlying property owner, as requested by Flexential) as an additional insured, and must contain provisions providing that such insurance is primary insurance insofar as Flexential and Customer are concerned, with any other insurance maintained by Flexential being excess and noncontributing with the insurance required of Customer. Customer shall either require any contractor entering the Equipment Space on its behalf to procure and maintain the same types, amounts and coverage for Workers' Compensation, Employer's Liability, Commercial General Liability Insurance and Auto Liability as are required of Customer, or add such contractor as an additional insured on such policies of Customer.
- b. **Flexential Obligations.** Flexential shall procure and maintain, at Flexential's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) Auto Liability with a combined single limit of not less than \$1,000,000 per occurrence; (v) "All Risk" Property Insurance in an amount equal to the full replacement cost of any Flexential Equipment used to provide the Services and (v) Professional Liability (Errors and Omissions) Insurance Policy, including Cyber Breach Liability, in an amount not less than \$1,000,000. All Flexential insurance policies, with the exception of Workers Compensation and Employer's Liability, shall be secondary and in excess of Customer's insurance required to be maintained hereunder and non-contributory with Customer's policies.

- c. **General Obligations.** Each party shall: (i) provide the other party upon request with evidence of compliance with this Section 13, and (ii) notify the other party in writing at least 30 days in advance of cancellation or reduction in required coverage. None of the foregoing requirements in this Section 13 as to the type and limits of insurance to be maintained by either party are intended to and shall not in any manner limit or qualify the liabilities and obligations for which such party is responsible under any other section of the MSA or by law. All insurance shall be with reputable insurers having an AM Best rating of A- or better and may be under an umbrella, blanket or similar policy. No coverage required to be maintained by either party pursuant to this Section 13 may have a Self-Insured Retention (SIR) in an amount greater than \$500,000.
14. **NOTICES.** All notices required under this MSA will be in writing, unless otherwise specified herein, and may be delivered by a nationally recognized courier or e-mail to the addresses set forth on the Cover Sheet. Notices delivered by courier will be deemed delivered upon actual receipt by recipient and notice delivered by email in will be deemed delivered upon the date the notice is sent. Unless otherwise provided herein, notices will be delivered to the addresses most recently provided by a party in a Quote. All notices by Customer to Flexential to terminate, cancel or avoid auto-renewal of this MSA or any Quote must be provided by way of email to cancel@flexential.com and legal@flexential.com.
15. **CASUALTY OR EMINENT DOMAIN.** Solely with respect to Colocation Services, in the event of a taking by eminent domain or damage by fire or other casualty to the Facility, Flexential will notify Customer in writing. In the event the taking or casualty event materially negatively impacts the provision of Colocation Services, either party may terminate the affected Services without penalty upon 30 days prior notice.
16. **SERVICE AGREEMENT.** The parties acknowledge and agree that this MSA is a service agreement and is not intended to, and will not constitute, a lease, sublease or easement. and that Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.
17. **INDEMNITY.**
- a. **Flexential Indemnification Obligations.**
- i. Flexential shall indemnify and defend Customer, Customer's affiliated entities and its employees, officers, contractors and agents (collectively, **"Customer Indemnified Parties"**) from and against any claim, brought against Customer Indemnified Parties by a third party, and all liability, judgment, or cost, including reasonable attorney fees arising out of such claim, to the extent such claims arises from or relates to the following: (i) tangible personal property damage to Customer's Equipment located in the Facility resulting from Flexential's negligence or willful misconduct, up to the full replacement cost of the damaged equipment, (ii) actual personal injury damage in the Facility resulting from Flexential's negligence or willful misconduct, provided, however that indemnification relating to personal injury shall not apply to any claims made by employees of Customer or any Customer Indemnified Party that are covered under applicable workers' compensation law, or (iii) infringement by the Services of a third party intellectual property rights recognized in the United States of America.
- ii. In addition, if any portion of the Service becomes, or in Flexential's opinion is likely to become, the subject of a claim of infringement of any third party intellectual property rights recognized in the United States of America, then Flexential, at its option and expense, may: (I) procure for Customer the right to continue using such portion of the Service, or (II) replace or modify such portion of the Service so that it becomes non-infringing, or (III) terminate the MSA and refund Customer a pro-rated portion of any pre-paid and unused Service fees. The obligation of Flexential set forth in the preceding sentence does not apply (x) with respect to portions or components of the Service that are not supplied directly by Flexential, that are made or modified in whole or in part in accordance with Customer's specifications, that are modified by Customer to the extent the alleged infringement relates to such modification, or that are combined with other products, processes or materials other than by Flexential to the extent the infringement relates to such combination; or (y) where Customer's use of the Service is not strictly in accordance with the terms of this MSA including any applicable Additional Software Terms. Notwithstanding anything to the contrary set forth elsewhere in the MSA, Customer's sole and exclusive remedies against Flexential and the Flexential Indemnified Parties for intellectual property infringement are as set forth in this paragraph.
- b. **Customer Indemnification Obligations.** Customer shall indemnify and defend Flexential, Flexential's affiliated entities and its employees, officers, contractors and agents (collectively, **"Flexential Indemnified Parties"**) from and against any claims brought against Flexential Indemnified Parties by a third party and all liability, judgment, or cost, including reasonable attorney's

fees arising from such claim, to the extent that such claims arise from or relates to the following (i) any breach of this MSA (including, without limitation, the AUP and the Data Center Rules); (ii) any use of the Service, (iii) or any negligence or willful misconduct, by Customer, any Customer Indemnified Party or any of its or their invitees, assignees or customers, or (iv) the removal, storage and/or disposal by Flexential of Abandoned Customer Equipment or destruction by Flexential of Abandoned Customer Data pursuant Attachment 1.

- c. **Indemnification Procedures.** The indemnified party will promptly notify the indemnifying party in writing of any losses for which the indemnified party seeks indemnification. Lack of notice will not invalidate the indemnifying party's obligation except to the extent that lack of notice prejudiced the outcome of the claim. The indemnified party will cooperate with the indemnifying party in the defense and permit the indemnifying party full control over the defense and settlement of any matter subject to indemnification. The indemnifying party will not enter into any settlement that affects the indemnified party's right or interests without the indemnified party's prior written consent which will not be unreasonably withheld. The indemnified party will have the right to participate in the defense at its expense.

18. REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

- a. **Flexential.** Flexential represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Flexential is a party. Flexential shall comply with all applicable federal, state and local laws in the performance of the Services.
- b. **Customer.** Customer represents and warrants that: (i) it has full power and authority to enter into this MSA, and (ii) the execution of the MSA does not violate any agreement to which Customer is a party. Customer shall comply with all applicable federal, state and local laws in using the Services, including, without limitation, applicable laws related to the storage, transmission and use of Customer Data, information and content. To the extent Customer receives Colocation Services, Customer also agrees that it shall not make any material alterations to the Equipment Space without first obtaining the written consent of Flexential and that Customer shall not allow personnel or contractors to enter the Equipment Space who have not been approved by Flexential in advance in accordance with Attachment 1.

19. **DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES, INCLUDING THE EQUIPMENT SPACE, ARE DELIVERED BY FLEXENTIAL AND ACCEPTED BY CUSTOMER "AS IS" AND "AS AVAILABLE" AND FLEXENTIAL DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER ACKNOWLEDGES THAT THERE ARE INHERENT RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY AND PROPERTY, INCLUDING CONFIDENTIAL INFORMATION. FLEXENTIAL ASSUMES NO LIABILITY FOR ANY DAMAGE, THEFT OR LOSS TO CUSTOMER'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CUSTOMER EQUIPMENT AND CUSTOMER DATA) RESULTING FROM THE ACTS OR OMISSIONS OF ANY THIRD PARTY OTHER THAN FLEXENTIAL'S CONTRACTORS, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING), EXCEPT TO THE EXTENT SUCH DAMAGE, THEFT OR LOSS RESULTS FROM FLEXENTIAL'S FAILURE TO PROVIDE THE SECURITY SAFEGUARDS WITH RESPECT TO THE APPLICABLE SERVICES LISTED AS FLEXENTIAL'S RESPONSIBILITY IN EXHIBIT B. FLEXENTIAL EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES ANY CLAIM AGAINST FLEXENTIAL WITH RESPECT TO, ANY LIABILITY FOR LOSS OF CUSTOMER DATA OR DAMAGE TO CUSTOMER EQUIPMENT WHERE CUSTOMER HAS REQUESTED THAT FLEXENTIAL PACK, SHIP, RECEIVE AND/OR STORE SUCH CUSTOMER EQUIPMENT OR WHERE CUSTOMER HAS FAILED TO REMOVE SUCH CUSTOMER DATA FOLLOWING THE END OF A SERVICE TERM.

20. **LIMITATION ON LIABILITY.** THE ENTIRE CUMULATIVE LIABILITY OF FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES OF WHATEVER NATURE ARISING OUT OF THE MSA AND THE FURNISHING OF, OR THE FAILURE TO FURNISH, THE SERVICES DESCRIBED IN THE MSA, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, NEGLIGENCE, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE LESSER OF (I) \$500,000 OR (II) THE RECURRING CHARGES FOR SERVICES PAID OR PAYABLE BY CUSTOMER TO FLEXENTIAL OVER THE 12-MONTH PERIOD PRECEDING THE EVENT ON WHICH THE CLAIM OF LIABILITY IS BASED. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY LOST OR IMPUTED

PROFITS OR REVENUES OR BUSINESS, CUSTOMER DATA OR USE, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF FLEXENTIAL OR ANY OF THE FLEXENTIAL INDEMNIFIED PARTIES, AND REGARDLESS OF WHETHER FLEXENTIAL OR CUSTOMER HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THIS LIMITATION ON LIABILITY SURVIVES ANY REMEDY'S FAILURE OF ESSENTIAL PURPOSE.

21. **LIMITATION ON LAWSUITS.** As a condition for recovery of any liability, a party must provide notice of a claim with a description of the basis of the claim under the MSA and provide the other party such notice within three months after discovery or sixty days after the termination or expiration of this MSA, whichever is earlier.
22. **PROPRIETARY RIGHTS.** The MSA will not be construed to grant to Customer any ownership right, title or interest in any intellectual property rights embodied in or associated with the Services, other than to the limited extent that any licenses are included in the Services as specified on any Quote or the Additional Software Terms. All intellectual property rights, title and interest in the methodology, technology and know-how that Flexential uses to provide the Services will remain exclusively with Flexential and its licensors, as applicable.
23. **ASSIGNMENT OR TRANSFER.** Both parties may assign their respective rights and obligations under the MSA (a) to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, and upon such assignment, the assigning party will be released of all its obligations under the MSA arising from and after the date of such assignment, provided that any such assignee entity delivers to the other party a signed writing evidencing its agreement to be bound by the terms and conditions of the MSA, or (b) by operation of law. Flexential may assign the MSA to an affiliate or division so long as Flexential exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate, Flexential may continue to collect and receive all or any portion of the amounts payable hereunder by the Customer as agent for and on behalf of such affiliate-transferee/assignee and notify the Customer thereof in writing this MSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Customer may permit its affiliated entities to use the Services, provided Customer shall be directly responsible and liable to Flexential for any breach of this MSA by affiliated entities. Customer shall not resell any of the Services provided by Flexential to an unaffiliated third party without first obtaining the written consent of Flexential. Unless otherwise set forth herein, neither party may assign the MSA in whole or in part without the prior written consent of the other party, which consent will not be unreasonably withheld.
24. **ENTIRE UNDERSTANDING.** The MSA, together with any attachments or exhibits hereto and all referenced documents constitutes the entire understanding of the parties related to the subject matter hereof and expressly supersedes all prior or contemporaneous oral or written agreements, including any prior non-disclosure or confidentiality agreements.
25. **GOVERNING LAW AND VENUE.** The parties will attempt in good faith to resolve any Dispute within the timeframes set forth herein, or, if no timeframe is set, within 30 days. The MSA will be governed and construed in accordance with the laws of the state of Colorado without regard to any conflict of law principles. Any Dispute arising from this MSA, shall be subject to the exclusive jurisdiction of the state and federal courts of Denver, Colorado. The parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS MSA, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.
26. **CONFIDENTIALITY.**
 - a. In connection with the MSA, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**"). Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary, including pricing information, data center designs and Flexential audit and security reports. Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information disclosed to Recipient by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any Services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The obligations of confidentiality of each party under this Section

shall survive for two years from the termination of the MSA or, if longer with respect to any particular item of Confidential Information, for so long as such item of Confidential Information meets the definition of a "trade secret" under applicable law. Flexential may share the MSA as well as information relating to the Services received by Customer and the fees paid by Customer (but not any Customer Data) to Flexential alliance partner(s) who are associated with Customer's account for the purposes of allowing the partner(s) to verify commissions payable by Flexential, so long as such partner(s) are bound to a confidentiality provision substantially similar to this Section. Unless set forth herein, the terms of this MSA and all Quotes are Confidential Information. Except as otherwise provided in this Section 26, at all times during the term of this MSA and for two years thereafter, Recipient shall not disclose Discloser's Confidential Information to a third party without the Discloser's prior written consent or use the Confidential Information for purposes other than the performance of this MSA. Where disclosure is required by law, such disclosure shall not constitute a breach of this MSA provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

- b. **Exceptions.** Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) was provided to Recipient by a third party not subject to an obligation of confidentiality to Disclosing Party with respect to the Disclosing Party's Confidential Information. Notwithstanding Section 26(a) above, Recipient may disclose the Disclosing Party's Confidential Information as required by a legal, judicial or governmental entity, or as otherwise required by law or regulation (including disclosures required in filings with the Securities and Exchange Commission or other governmental body and via subpoena, search warrant or other similar demand for production of information or materials).

27. COMPLIANCE.

- a. **Customer Responsibility.** Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of Customer Data or information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information, including Regulated Customer Data. If any international, state or federal law requires any specific agreement about such information, Customer will notify Flexential and the parties will work together in good faith to modify the MSA as may be required by applicable law.
- b. **Risk Assessment.** Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer's purposes and Customer's compliance with applicable law; and (iii) Flexential is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.
- c. **CCPA.** If and to the extent the California Consumer Privacy Act of 2018, (as amended "**CCPA**"), applies to the provision and use of the Services, Flexential hereby agrees as follows: (i) Flexential is a Service Provider, and Flexential shall not: (x) Sell Personal Information or (y) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Services including retaining, using, or disclosing Personal Information for a Commercial Purpose; and (ii) Flexential shall promptly take such actions and provide such information as Customer may reasonably request to help Customer fulfill requests of individuals to exercise their rights under the CCPA, including, without limitation, requests to access, delete, opt out of the sale of, or receive information about Personal Information. Flexential shall inform Customer of Flexential's receipt of any requests under clause (ii) of the preceding sentence, and Flexential may direct individuals making such to Customer. Customer and Flexential acknowledge and agree that Flexential's access to Personal Information is not part of the consideration exchanged by the parties in respect of the MSA. For the purposes of this Section 27(d), the terms "Commercial Purpose," "Sell," and "Service Provider," shall have the meanings given in the CCPA, and the term "Personal Information" means any information that Flexential has at any time, whether before or after the date hereof, collected, accessed, received, used, disclosed, or otherwise processed on behalf of Customer in relation to Flexential's provision of Services to Customer under the MSA and that constitutes "personal information" under the CCPA.

28. MISCELLANEOUS.

- a. **Counterparts.** The MSA and any Quote may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. An electronically scanned signature shall be deemed an original.

- b. **Tariffs.** Customer understands that Internet use, and related products and services provided under the MSA, may require registration and related administrative reports which are public in nature. Flexential may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by Flexential to Customer. In the event that such tariffs are filed related to Services ordered by Customer, then the terms set forth in the applicable tariff will govern Flexential's delivery of, and Customer's consumption or use of, such Services.
- c. **Publicity.** Neither party will use the other party's name, trademarks or logos without the prior written consent of the other party unless otherwise required by applicable law; provided, however, Flexential may include Customer's name and logo in a list of customers in its marketing materials, including on the Flexential website.
- d. **Severability, Modifications and Waiver.** If any provision of the MSA is invalid or unenforceable, such provision will be severed from this MSA so that the remaining provisions are unaffected. Except to the extent specifically set forth herein the MSA may not be modified except by a writing signed by an authorized signatory of each party. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.
- e. **Independent Contractors.** Flexential and Customer are independent contractors and nothing in the MSA will be deemed to create a partnership, joint venture, association, employment relationship between the parties.
- f. **No Brokers.** Customer covenants and represents that it has negotiated the MSA directly with Flexential, and has not authorized any broker, salesperson or finder to act for it in the negotiation and execution of the MSA. Customer agrees to indemnify and hold harmless Flexential from any and all claims by any such broker, salesperson or finder for a commission or finder's fee as a result of Customer having entered into the MSA.
- g. **Third Party Beneficiaries.** Except as otherwise explicitly agreed, there will be no third party beneficiaries to the MSA.
- h. **Force Majeure.** Notwithstanding Section 11, Flexential will not be liable for any failure of performance or equipment due to causes beyond its reasonable control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, terrorist attack or wars.
- i. **Non-Solicitation.** Unless otherwise approved in writing, during the Term and for one (1) year thereafter, Customer will not hire any person who is or was an employee of Flexential during the Term, provided, however, that this provision will not apply to general advertising solicitations or similar efforts not targeted towards current or former Flexential employees.
- j. **Survival.** All provisions which by their nature are intended to survive, will survive the expiration or termination of the MSA.

Attachment 1
Service Specific Terms and Conditions

Flexential may provide Customer with one or more of the Services further described below

1. Colocation Services. The following terms and conditions apply only to the extent that Customer receives Colocation Services.

- a. **Access to Facility and Use.** Starting on the applicable Quote Effective Date, Flexential hereby grants Customer a limited, revocable license to install, operate, maintain and access the Customer Equipment within the Equipment Space. Customer will be entitled to access and use the Equipment Space during the Service Term and in accordance with Section 1(c) only for placement, operation and maintenance of computer or telecommunications equipment. Flexential may require that Customer and any of Customer's agents be escorted when they are in the Facility. Flexential will have the right to access the Equipment Space as reasonably required to provide the Service and may suspend Customer's access to the Facility as directed by government order or emergency responders or, in Flexential's reasonable discretion, as may be reasonably required to prevent injury or illness to persons or damage to property.
- b. **Remote Hands.** Customer may request Flexential perform routine service and monitoring services by phone or through the Customer Portal. Customer will be billed the then-current non-contracted hourly rate with a minimum of 1 hour per event; additional time used on the event will be billed in 15-minute increments.
- c. **Installation and Operation.** Customer will install and maintain the Customer Equipment in a reasonable and professional manner that does not adversely impact the operations of Flexential or other Flexential customers. Flexential will not be responsible for the operation or maintenance of Customer Equipment.
- d. **Access to Equipment Space; Access Devices.** Customer will provide to Flexential a written authorization of employees, agents, or contractors who may physically access the Equipment Space (the "Approved Access List"). Any changes to the Approved Access List must be provided to Flexential in writing or loaded in the Customer Portal. Flexential shall provide Customer with access cards, keys or other access devices ("**Devices**") unless Customer has elected to manage its own access devices for the Equipment Space. Customer is responsible for notifying Flexential in writing if a Device is lost or stolen ("**Lost Device**") and Customer will be responsible for the cost of replacing any Lost Devices. In the event unauthorized parties gain access to the Facility through use of a Lost Device, Customer will be responsible for any damages incurred as a result of the unauthorized access that occur prior to Customer notifying Flexential of the Lost Device.
- e. **Effect of Termination of Colocation Services.** Upon termination or expiration of the MSA or all or a portion of the Colocation Services (the "**Facility Exit Date**") Customer shall promptly remove all or the applicable portion of Customer Equipment from the Equipment Space and the Facility and shall leave the Equipment Space in the same condition as when Customer first occupied the space, normal wear and tear excepted. Flexential may remove all Flexential Equipment from the applicable Equipment Space and repair any damage to the applicable Equipment Space on or after the Facility Exit Date. Customer shall reimburse Flexential promptly for the reasonable cost of such repairs. If Customer fails to remove Customer Equipment from the Facility or Equipment Space by the Facility Exit Date, Customer shall continue to be billed for all Services at a rate equal to 150% of the rates set forth in the applicable Quote(s) until all such Customer Equipment is removed. In the event Customer Equipment is not removed within 90 days of the Facility Exit Date, Flexential shall be entitled to remove all Customer Equipment (the "**Abandoned Customer Equipment**") from the Equipment Space. Flexential may, in its sole discretion and in accordance with applicable law, remove and dispose of any such Abandoned Customer Equipment. Customer is responsible for all costs associated with the removal of Abandoned Customer Equipment and Flexential shall not be liable to Customer or any third party as a result of such removal or disposal.
- f. **ANNUAL ESCALATOR.** The monthly recurring charges for all Services will increase 6% per year beginning on the first anniversary of the Service Term Start Date.
- g. **Power Hedging.** Customer acknowledges and agrees that in deregulated power markets, Flexential may enter into energy hedging and/or forward purchasing agreements with applicable energy companies [and may charge based on the fees set forth in those agreements, as may be modified from time to time.

2. CLOUD, DATA PROTECTION AND OTHER SERVICES.

- a. **Location.** Unless otherwise set forth in the applicable Quote, the location of Flexential Equipment used to provide Cloud Services or Data Protection Services is at Flexential's sole discretion. All Services performed by Flexential personnel are performed in the United States unless expressly stated otherwise.
- b. **Removal of Customer Data from Flexential Equipment Upon Termination.** Upon termination or expiration of the MSA or all or a portion of the Cloud or Data Protection Services, Customer shall promptly remove and delete all Customer Data from applicable Flexential Equipment. Customer may request Flexential to provide professional services as defined in a Professional Services Agreement to assist Customer with such removal and deletion and all deletion of Customer Data shall be at Customer's sole expense. To the extent Customer does not remove and delete all Customer as set above for any reason (the **"Abandoned Customer Data"**), Flexential shall have no responsibility to Customer or any third party with respect to such Abandoned Customer Data and shall be entitled to destroy such Abandoned Customer Data at Customer's sole risk and expense, in accordance with applicable law.

Exhibit B
Security and Compliance Roles & Responsibilities Matrix

Legend:

1. F = Flexential's responsibility
2. C = Customer's responsibility
3. C* = Responsibility dependent on whether the applicable Service has been purchased ("F" if purchased; "C" if not purchased)
4. "Colocation Services" as used in this Exhibit includes colocation space and power, and associated network and Data Protection Services purchased by Customer.
5. "Cloud Services" as used in this Exhibit includes the applicable Cloud Service environment (Multi-tenant Cloud, Hosted Private (Single-tenant) Cloud, DRaaS/Recovery Cloud Services, Backup as a Service (Baas) and/or Object Storage), and associated network and Data Protection Services purchased by Customer. The responsibilities for Dedicated Servers are set forth under "Additional Data Protection Services" in the table below.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Audits & Information Security Program			
Flexential Compliance Assessments and Certifications	Obtain and maintain during the Term the following assessments and certifications: ISO 27001, PCI-DSS, HITRUST, FISMA, SOC-1, SOC-2 and SOC-3 or successor standards, covering U.S. Facility operations and Cloud Service infrastructure up to and including the hypervisor level, and, as applicable, Flexential corporate (i.e. non-Service) environments, as described in each case in such assessment reports and certifications ("Flexential Audits"). Copies of the most recent Flexential Audits are available to Customer on the Customer Portal.	F	F
Other Compliance Assessments and Certifications	Obtain and maintain, to the extent desired by Customer, assessments and certifications with respect to the Customer information environment not covered in the scope of the Flexential Audits, including any dedicated/private infrastructure and Customer's private network, servers, applications, data, personnel and operational practices.	C	C
Flexential Information Security Program and Background Checks	Implement and maintain Information Security Program governing Flexential's operation of the Services and corporate environments during the Term in compliance with the Flexential Audits and Flexential's contractual responsibilities including this Matrix. Obtain and review a pre-hire background screen from a third-party vendor for all Flexential employees with a look-back period of at least seven (7) years, to include: arrest record, sex offender registry, driver record, education verification, excluded parties list, federal criminal record, multi-state/jurisdiction (non-sex offender) record, Social Security Number trace, state criminal repository record and county criminal record.	F	F
Customer Information Security Program	Implement and maintain Information Security Program governing Customer operations as desired by the Customer.	C	C
Flexential Infrastructure Management			
Flexential Facility - Physical & Environmental			
Environmental	Facility with redundant power and communications to reduce risk of system damage and destruction, including emergency shut-off, emergency power, emergency lighting, fire protection, water damage protection, and temperature/humidity controls.	F	F
Video	Video surveillance of entry and exit points to white floor and operations monitoring.	F	F
Video Retention	Video logs stored 90 days.	F	F
Access	Limit access to raised floor through role-based access, isolated phases, and validation procedures through identification, detection and alerting.	F	F
Access reports	Visitor and authorized Facility access logs, monthly review of activity reports.	F	F
Customer Colocation Cage, Cabinet or Suite - Physical			
Video	Video surveillance and operations monitoring of Customer Equipment Space.	C*	n/a
Video Retention	Video logs stored 90 days (only available if Video Service is purchased).	C*	n/a
Access	Limit access to scoped environment through role-based access, isolated phases, locked cages and cabinets, validation procedures and customer-authorized list through identification, detection and alerting.	C	n/a

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Access Control Device	Electronic access control device on scoped environment.	C*	n/a
Access reports	Customer Equipment Space access logs (only available if Access Control Device is purchased).	C*	n/a
Flexential Cloud Services Infrastructure			
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Flexential Equipment used to provide Cloud Services (the "Cloud Node") is located (excluding Amsterdam).	n/a	F
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to Cloud Node through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on Cloud Node.	n/a	F
Cloud Services Infrastructure Firewall	Redundant firewalls with IDPS deployed in the Cloud Services infrastructure with respect to all connections outside the Flexential Network to provide proper segmentation and isolation, built to industry hardening standards in conjunction with authorized traffic requirements and build approval. Firewall resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Compute Environment	Physical hardware platform designed with a segmented network controlled and managed by authorized staff. Compute resource monitoring and integrity changes with alerting, and log collection, retention and reporting.	n/a	F
Vulnerability Management	Continuous infrastructure device hardening, vulnerability and configuration management, including installation of recommended security patches and updates.	n/a	F
Storage Environment	Storage environment utilizing a segmented network controlled and managed by authorized staff. Encryption-at-rest is enabled on multi-tenant Cloud Service (including Recovery Cloud, DRaaS, BaaS and Object Storage) storage arrays. ¹	n/a	F
Logical Access Control	Unique logical (system) 2-factor authentication access control to Flexential Cloud Services Infrastructure based on Flexential role-based requirements, IP restriction and business need.	n/a	F
Scanning, pen testing	Quarterly internal network vulnerability scanning and annual network external and internal penetration testing, up to and including the Hypervisor level.	n/a	F
Additional Data Protection Services			
Managed Firewall Service	Applicable only to the extent Customer purchases Managed Firewall Service		
Virtual Firewall	Virtual firewall restricting network access to Customer's cloud environment.	n/a	F
Physical Firewall	Physical firewall restricting network access to Customer's hardware including VLAN configuration.	F	n/a
Networking Access	Enforcement of authorized access controls.	F	F
Firewall – Vulnerability Management	Vulnerability and configuration management, including installation of recommended security updates.	F	F
IDPS/IDS – Advanced Firewall Service only	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
2 factor/ VPN	SSL and IPSEC with soft tokens.	C*	C*
Managed Operating System (OS) and Managed Database Services	Applicable only to the extent Customer purchases Managed OS Service and, if applicable, Managed Database Service		
Setup, patching and maintenance	Provision, patch, and maintain the OS and, if Managed Database Service is purchased, the Database server.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client at the OS level with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key OS files and directories.	n/a	C*
Dedicated Servers	Applicable only to the extent Customer purchases Dedicated Servers with Managed OS Service		
Physical Security - Video	Video surveillance and operations monitoring of entry and exit to cage or cabinet where Dedicated Servers are located.	n/a	F

¹ Note: Encryption-at-rest is not enabled for renewals of previously installed Capacity Storage legacy Service.

Security and Compliance Layers	Delivery Description	Colocation Services	Cloud Services
Physical Security - Video Retention	Video logs stored 90 days.	n/a	F
Physical Security – Cage Access	Limit physical access to cage or cabinet through role-based access, isolated phases, locked cages and cabinets, validation procedures and authorized list through identification, detection and alerting.	n/a	F
Physical Security - Authorization reports	Authorized access logs, monthly review of activity reports.	n/a	F
Physical Security - Access Control Device	Electronic access control device on cage or cabinet.	n/a	F
Setup, patching and maintenance	Provision, patch, and maintain the Operating System.	n/a	F
Anti-malware	Installation and maintenance of anti-malware client with updates as released.	n/a	F
Logical access control	Enforce authorized access controls by Flexential personnel through Flexential managed directory services.	n/a	F
File Integrity/ Configuration Management	Configuration management and enforcement of key O/S files and directories.	n/a	C*
Other Data Protection Services	Applicable only to the extent Customer purchases the applicable Data Protection Service		
Log Management Service	Log collection, retention, reporting and alerting.	C*	C*
Vulnerability Scanning	Quarterly internal and external network vulnerability scanning.	C*	C*
IDPS/IDS	As directed by Customer, either: (i) IDPS including detection, protection, and alerting or (ii) IDS detection and alerting only (no protection).	C*	C*
Encryption as a Service	Provisioning, setup and infrastructure maintenance for encryption service.	C*	C*
Encryption as a Service	Determination of which Customer Data to encrypt, and encryption key management custodian responsibilities.	C	C
Active Directory as a Service (ADaaS)	Provisioning, setup and infrastructure maintenance for ADaaS service.	C*	C*
Active Directory as a Service (ADaaS)	Management and configuration of active directory instance.	C	C
Flexential Professional Services	Applicable only to the extent Customer purchases the applicable Professional Service		
Penetration Testing	Network external and internal penetration testing of Customer environments as specified in applicable SOW.	C*	C*
Migration Services	Migration of Customer virtual servers and data as specified in applicable SOW.	C*	C*
Disaster Recovery Design, Planning and Testing Services	Disaster Recovery consulting, planning, documentation, and testing as specified in applicable SOW.	C*	C*
Security and Compliance Assessment Services	Assessment of Customer environment security controls and compliance status as specified in applicable SOW.	C*	C*
Managed DevOps Services	24x7 Full Stack management of DevOps environments as specified in applicable SOW.	C*	C*
Security Remediation	Remediation of technical vulnerabilities and implementation of security controls as specified in applicable SOW.	C*	C*
Security Forensics & Incident Response	Acquisition of forensic evidence and investigation of compromise as specified in applicable SOW.	C*	C*

Exhibit C

Service Level Agreement

The Service Level Agreement ("SLA") does not cover Service unavailability caused either directly or indirectly by:

- 1) Acts or omissions of Customer or its employees, contractors, agents or end-users, including software or hardware configuration changes not made or approved by Flexential;
- 2) Regular scheduled or emergency system maintenance;
- 3) Failure, malfunction or limitation of throughput of any equipment, network, software, applications, systems, components or services not managed by Flexential, including but not limited to third party vendor support; or
- 4) Circumstances or causes beyond the control of Flexential, including third-party attacks (such as ping or denial of service attacks) on the Flexential Network.

Co-location Services

Service Level	Non-compliance	Applicable Service Credits
Power will be available to Customer computer infrastructure in the Flexential data center 100% of the time provided Customer subscribes to redundant power circuits. Customer is responsible for proper connectivity and cabling of circuits to support redundancy within the Customer Equipment Space. This SLA does not cover outages caused, either directly or indirectly, by overloaded power strips or circuits. The availability of power through only one power circuit where such power is supplied through a primary and redundant circuit does not entitle Customer to a credit under this SLA.	Any failure of both primary and redundant circuits	One Service Credit for each day in which there is non-compliance during any month

Data Center Network Services

Service Level	Non-compliance	Applicable Service Credits
Network availability. Network unavailability shall exist when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. For Customers subscribing to redundant network connections, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network connection < 100% for Customers subscribing to redundant network connections	One Service Credit for each day in which there is non-compliance during any month
Network cross-connect availability. Customer's network cross-connects begin at the initial piece of Flexential Equipment or third-party carrier equipment, as applicable, to which the applicable circuit connects, and end at the demarcation point installed in Customer's cabinet and/or cage. Network cross-connect unavailability exists when due to a failure of Customer's network cross-connect(s), a particular Customer Port is unable to transmit data from the Flexential Network or third-party carrier connection(s), as applicable. For Customers subscribing to redundant network cross-connects, downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.9% (43 minutes per month) for Customers subscribing to a single, non-redundant network cross-connect < 100% for Customers subscribing to redundant network cross-connects	One Service Credit for each day in which there is non-compliance during any month
Packet loss between any two points on the Flexential Network	>1%	One Service Credit for each day in which there is non-compliance during any month
Round-trip Latency between any two points in the U.S. on the Flexential Network	>90 ms	One Service Credit for each day in which there is non-compliance during any month

Cloud Services

Service Level	Non-compliance	Applicable Service Credits
Cloud Service availability. Availability for Cloud Service is access to compute, network and storage resources, provided Customer subscribes to and configures redundant resources. Unavailability of the Cloud Service is measured when a running virtual machine stops functioning due to cloud infrastructure failure below the applicable commitment level, or, with respect to the network component of Cloud Services, when a particular Customer Port is unable to transmit data packets from such Customer Port across the Flexential Network. Failure of Customer to maintain compliance with Flexential sizing recommendations may render this SLA void. Downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 99.999% (26 seconds per month)	One Service Credit for each day in which there is non-compliance during any month
Flexential DRaaS/Recovery Cloud – Recovery time. Recovery time is defined as the duration of time from customer service request to instantiation (power-on ready) of the disaster recovery virtual machine instance, not including instance boot time and boot priority controlled by Customer. The instance must be in a valid virtual protection group and in a Protected state as reported by Flexential Portal. This SLA is not valid with respect to any particular disaster recovery event unless a successful failover test was completed within the preceding 12 months or, if a material change in the Customer's protected environment occurred at any point during the preceding 12 months, after the most recent such material change.	Standard DRaaS/Essentials* > 8 hours RTO 4-hour Package/Prime* > 4 hours RTO 2-hour Package/Premium* > 2 hours	One Service Credit for each day in which there is non-compliance during any month

* RTO 4-hour and RTO 2-hour Packages are additional Services that can be purchased as separate line items on a Quote, and "Essentials", "Prime" and "Premium" refer to Service names. If no RTO 4-hour or 2-hour hour Package has been purchased for Flexential DRaaS, the time commitment for "Standard DRaaS" shall apply.

Data Protection Services

Service Level	Non-compliance	Applicable Service Credits
Backup jobs will start within 4 hours of scheduled start time slot*	>3 failures in a month	One Service Credit for the fourth and each successive failure during any month
Restores initiated within 4 hours of receiving the request	Any failure	One Service Credit for each day in which there is non-compliance during any month
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure	One Service Credit for each day in which there is non-compliance during any month

*Reporting on job start performance will be by Customer request. Flexential is not responsible for jobs failing to start due to previous job still running where Customer server/configuration is the cause of the job completion delay.

Incident Response Time

Service Level	Non-compliance	Applicable Service Credits
Flexential shall Respond to any request for incident resolution from an authorized Customer representative with respect to any Service within 1 hour of creation of the applicable ticket for a "high priority" incident, and within 2 hours of creation of the applicable ticket for any non-high priority incident. A "high priority" incident means that the Service is unavailable or has been materially impacted. "Respond" means that a ticket has been created/submitted and the incident has been assigned to the Flexential team responsible for resolving the incident.	Any failure to Respond within the required timeframe	One Service Credit for each day in which there is a non-compliance during any month

Exhibit D

AUP

Acceptable Use Policy

Flexential Corp., formerly known as Peak 10, Inc., and its affiliated entities ("Flexential") has published this acceptable use policy ("AUP") in an effort to provide reliable, high-quality service to our clients. By using Flexential's services or network, you agree to the latest version of this AUP. We may modify this policy at any time by posting a revised version on the Flexential website.

Illegal, Harmful, or Offensive Conduct

You may not use Flexential's services or network for illegal purposes or to take actions that are infringing, offensive, fraudulent or harmful to the Flexential network or others. Examples of prohibited activities include any use of the Flexential services or network:

- in violation of any applicable local, state, or federal law or regulation;
- in a manner that infringes or may infringe upon any copyrights, trademarks, patents, trade secrets, or other types of intellectual property;
- to transmit offensive or threatening materials, including materials that are obscene, pornographic, defamatory, libelous, abusive, hateful, excessively violent, or otherwise inappropriate;
- to export software to points outside the United States in violation of applicable export control laws;
- to transmit fraudulent, deceptive, or misleading materials or to advance any type of financial scam;
- to transmit any materials that harass another person or entity;
- to transmit viruses, Trojan horses, or other materials or components harmful to any network or equipment or other users or third parties; or
- in a manner that exposes or may expose Flexential, its clients, partners, or vendors, or any other person or entity using the Flexential network to abuse, complaints, retaliation, connectivity issues, or other negative impact.

Network, Application and System Security

You may not use Flexential's services or network to violate, monitor or interfere with, or to attempt to violate, monitor or interfere with, the security or reliability of any network, service, data, or other system without proper authorization. Examples of prohibited activities include any attempt to:

- access any network, service, data, or other system that you are not authorized to access;
- probe, scan, or test the vulnerability of any network, service, or system without proper authorization;
- breach any security or authentication measures;
- monitor data or traffic on any network or system without proper authorization or in a manner that disrupts or impairs the network or system;
- interfere with service to any user, host, or network, including, without limitation, by means of overloading, mailbombing, flooding, crushing, or any denial of service attacks;
- forge any TCP/IP packet header or any part of the header information in an e-mail message or a newsgroup posting;
- attempt any action designed to circumvent or alter any method of measuring or billing for services; or
- use the account name of another person without proper authorization.

Flexential reserves the right to investigate any actual or suspected security violation or incident. In the event of an actual or suspected security violation or incident, Flexential may take any actions that Flexential deems reasonably necessary to prevent harm to Flexential and/or Flexential clients, including the network, systems and data of Flexential and/or Flexential clients. Such actions may include, but are not limited to, the following:

- removing, disabling access to, or suspending Services;
- disconnecting a host from the network and preparing for investigative services;
- reporting to appropriate law enforcement officials, regulators, or other appropriate third parties any activity that Flexential believes may violate any applicable law or regulation; and
- cooperating with law enforcement agencies and regulators to assist with any investigation and/or prosecution.

In order to maintain network, application and system reliability and security for you and other Flexential clients, you must use commercially reasonable efforts to keep your network, applications and systems secure and current by applying, or consenting to Flexential applying, if applicable, the most recent patches, updates and upgrades as they are made available by the applicable providers, and appropriately configuring your firewalls and other components of your network, application and system security.

If Flexential notifies you in writing, including by sending an email or notification through Flexential's ticketing system to any of the persons identified by you as administrators with respect to your Services, of particular patches, updates, upgrades or configuration settings that Flexential identifies as "critical", then you must apply those critical patches, updates, upgrades or configurations, or consent to Flexential applying those critical patches, updates, upgrades or configurations, as applicable, within thirty calendar days of the notification. If you fail to timely comply with your obligations in the previous sentence, then (1) you shall reimburse Flexential, at Flexential's standard rates, for all labor, administrative time, or other activity of Flexential's personnel expended in an effort to cure, mitigate or otherwise resolve any problems attributable to such failure and, (2) Flexential shall not be obligated to provide any credits to you with respect to any failure by Flexential to meet its service level commitments that is attributable to such failure.

You are prohibited from taking any action, intentional or unintentional with respect to the Services, which will negatively impact the Flexential business operations, the operations of our clients including shared infrastructure, such as cloud or network services, as a whole.

You are responsible for the use of the Services by any of your employees, any person to whom you have given access or any person who gains access to your data.

Abuse Violations

No spam. You may not use Flexential's services or network to transmit any unsolicited commercial or unsolicited bulk e-mail messages (commonly known as "spam"). In addition, you may not use the services or network of another provider to send spam or to promote a site hosted on or associated with Flexential's services or network.

Newsgroups and Online Forums. All postings to newsgroups and online forums must comply with the written charters, rules, or FAQs for that group. You are responsible for determining the policies of a newsgroup or online forum before posting to it. In addition, you may not attempt to flood or disrupt the newsgroups.

Web Pages. As part of the services, Flexential may provide web hosting services. You are solely responsible for any content that you publish or display on your web pages or web site, including ensuring that the content complies with the terms of this AUP.

Content. Flexential is not responsible for any material created, stored, distributed or accessible on or through the services. Flexential is not obligated to monitor or exercise any editorial control over such material but reserves the right to do so. Flexential reserves the right to block access to such material and suspend or terminate services in the event Flexential determines, in its sole discretion, that any materials may expose Flexential to civil or criminal liability. To the extent you use cloud-related services, all Microsoft® licenses must be provided by Flexential unless specifically approved by Flexential. In all events, you will provide Flexential with a count of all Microsoft licenses used by you in connection with the services.

Attacks

If you are using Flexential network services and:

- you are the subject of a network attack, such as a DDoS attack, that is large enough to affect network traffic, or

- your server and/or application is compromised;

Flexential has the right, immediately and without prior notice, to terminate routing, block ports and IP address space, and/or suspend services in order to protect the integrity of the Flexential network and preserve the services provided to other users.

IP Addressing

Flexential endeavors to utilize its ARIN (American Registry of Internet Numbers) IP space allocations as efficiently as possible, as IP address space is a finite resource that is shrinking quickly and going up in cost. ARIN requires Flexential to justify current and future allocations when additional IP space is requested for customer and or Flexential network use, which requires that 80% of all past allocations are in legitimate use and that the use of said space is within ARIN's allocation guidelines. Therefore your IP space assignments are required to meet the same ARIN guidelines, which can be found at: www.arin.net. In the event you violate the ARIN guidelines or this AUP with respect to IP Addressing, Flexential may revoke your IP addresses without liability to you.

You may not advertise your Flexential-assigned IP space or use it outside of the Flexential ASN (13649) or outside of Flexential owned facilities without prior express written approval from Flexential. This includes utilizing Flexential IP space and 3rd party services such as DDOS or DNS.

You have no right to route IP addresses assigned by Flexential. Flexential shall retain ownership of all such IP addresses at all times, and your access to such IP addresses shall cease immediately upon termination of your Agreement for services with Flexential.

Flexential assigns IP space based off individual customer datacenter assignment/installation. IP blocks may not be transportable between datacenters below a /24. If you desire to move an IP block with /24 or larger IP assignments to a different datacenter, you must request approval for the move, and Flexential shall have no liability to you if Flexential is unable to accommodate such request.

INetU Terms of Use and Acceptable Use Policy

If you are using services pursuant to an agreement with INetU, Inc. ("INetU") then:

(1) This AUP supersedes, replaces, amends and restates in its entirety the Schedule B Terms of Service and Acceptable Use Policy of INetU applicable to you through your agreement with INetU, effective as of the date this AUP is first published online and provided to you in writing;

(2) you must provide INetU with accurate information to help INetU determine if any tax is due with respect to the provision of the services;

(3) you are responsible for keeping your billing and other account information with INetU up to date; and

(4) you must pay when due the fees for the services stated in your agreement with INetU and any additional services order(s) or other agreements between you and INetU.

Consequences

If Flexential determines that you have violated any of the terms of this AUP, Flexential has the right to (i) demand immediate removal of the violating material and/or (ii) restrict, suspend or terminate all or a portion of your services. Flexential may involve and will cooperate with law enforcement authorities. In addition, if you violate this AUP, you may be subject to civil or criminal liability. Flexential shall not be liable for any damages suffered by any user or third party resulting directly or indirectly from any actions taken by Flexential pursuant to this AUP. All determinations by Flexential as to whether abuse or violations of the AUP have occurred shall be conclusive and binding.

Violation Reporting

Violations or potential violations of this AUP may be reported to Flexential at abuse@Flexential.com.

Exhibit E

Data Center Rules

Welcome to Flexential

These rules and procedures are designed to provide for the safety of the individuals visiting and working at our facilities, to protect the confidentiality of our customers, and to support the safe operation of our facilities. All individuals accessing a Flexential facility must strictly comply with these rules. **Any individual found to be in violation of these rules while in the Flexential facility will have their access rights immediately terminated.**

General Rules

- Access badges must be worn and clearly visible at all times in all areas of the facility.
- Customers and vendors are responsible for requiring their employees, agents, vendors and contractors to comply with these Data Center rules.
- No one under 16 years of age may enter the raised floor.
- Drinking, eating, or smoking is not allowed except in designated areas, and is never allowed on the raised floor.
- Weapons, explosives, hazardous materials, electro-magnetic devices which could interfere with computer and telecommunications equipment, radioactive materials, mace, alcohol, or illegal drugs are never allowed in the facility.
- Doors may not be left partially open or blocked under any circumstances.
- No photographing or filming any areas in the data center or the entrances to the facility without Flexential's consent (see "Data Center Security" section below for rules governing security cameras in the customer space).
- Customer-owned or operated wireless access points are not permitted in Flexential facilities without consent.
- Combustible materials, such as paper or cardboard, may not be stored in customer space/equipment space.
- Customer space must be kept clean of debris and spare equipment at all times.
- No boxes or equipment may be stored in the facility unless arrangements for storage have been approved by Flexential.
- Customers must maintain their space in compliance with all applicable legal requirements (including OSHA).
- Customers are not allowed to remove floor or ceiling tiles and are not allowed to access under the floor tiles or above the ceiling tiles.
- Customer must install equipment in accordance with hot and cold aisle arrangement as directed by Flexential. Flexential reserves the right immediately to disconnect power to any Customer equipment installed contrary to the prescribed hot and cold aisle arrangement.

Access Procedures

- Each individual with data center access must pass through access control systems and use his or her own access badge to enter the data center, even when entering as a group. No tailgating is allowed.
- Access badges may not be transferred or loaned to other individuals, including other employees, subcontractors or vendors.
- Access badges are linked to a central monitoring system that identifies individuals and records access activities.
- Each customer must identify the individuals (employees or third-party vendors) who are authorized to access colocation facilities on their behalf through the customer's Customer Portal account by customer-designated User Administrators.

- Customer representatives without a permanently issued access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge (day pass) if their contact record designates them as authorized for Day Pass or Permanent Badge distribution or a customer's designated User Administrator has approved, in writing, the specific visit.
- Vendor permanent access badges must be approved by Flexential data center operations.
- Vendor representatives without a permanent access badge may exchange a valid government-issued photo ID (or approved substitute) for a temporary badge if Flexential data center operations approve the specific visit.
- Each properly badged customer or vendor representative is allowed up to three (3) visitors to accompany him/her into the facility for the purpose of installation or support assistance only. The customer or vendor representative must check-in and obtain the necessary temporary badges for their guests. Each customer or vendor has full responsibility for their guests and must accompany them at all times.
- Flexential, in its sole discretion, may require that Customer and any Customer agents be escorted in the Flexential data center, and may suspend Customer's access as directed or required in an emergency situation.
- **Notify Flexential immediately if an access badge is lost or stolen.**

Data Center Security

- Closed-circuit television security cameras monitor entrances and are strategically located throughout the facilities.
- Customer-provided video monitoring must exclusively capture customer space. Camera placement is subject to Flexential review and approval. Customer must provide camera screenshots to Flexential upon request.
- Customer spaces are secured individually; it is each customer's responsibility to ensure that their space is locked after use.
- Lost or stolen keys and access cards are subject to replacement fees at then-current rates.

Equipment Delivery & Storage

- Customers must provide Flexential with advance notice of all equipment deliveries.
- All shipping charges must be pre-paid by the customer.
- If any equipment is delivered for a customer by a third party, Flexential will receive the equipment on behalf of the customer provided that the customer has pre-scheduled the delivery with Flexential. ***The customer must arrange for shipping crate or pallet removal.***
 - The following information must be included with all equipment delivered to the facility. Failure to follow these instructions may result in delays locating stored packages: Flexential ticket number; customer's name and/or customer billing ID, if possible; and number of pieces shipped.
 - Upon receipt of any equipment delivered by a third party on a customer's behalf, Flexential will notify the customer of receipt and store the equipment
- Customers must claim their equipment within 7 calendar days of notification of receipt by Flexential or storage charges will be charged to the customer at the then-current rates.
 - All equipment left in storage for more than 30 calendar days may be shipped back to the customer at the customer's expense.
 - Flexential is not responsible for loss or damage to customer equipment stored in the common areas of a Flexential facility or in transit or packaged and shipped by Flexential at Customer's request.
 - Flexential cannot guarantee storage space availability and will provide this service on a "reasonable efforts" basis.
 - Flexential package acceptance services do not include verifying the contents of a box or boxes.

Power

- All individual power whips/power under the floor must be installed and maintained by Flexential.
- All equipment installed in the facility must meet the standards of Underwriters Laboratories (UL) listing or a similarly recognized governing board.
- No soldering or open flames are allowed.
- Customer's primary/redundant, or A/B circuit pair total power utilization across the circuit pair must not exceed 80% of the rated power of the primary circuit, and customer's power utilization must not exceed 80% of the circuit breaker's rated current. If customer exceeds either of these thresholds, then one of the following must occur: (1) customer shall purchase additional power circuits in order to reduce the overall power load on the circuit pair below the threshold; or (2) customer shall reduce its power load on the applicable circuit pair below the threshold. If customer does not



Data Center Rules

implement one of the two foregoing options within 7 business days of written notification from Flexential, then Flexential shall have the right to charge a power overage fee and/or limit power consumption or disconnect power circuits in order to reduce customer's power load across the circuit pair below the thresholds.

- Only data center rated electrical equipment allowed. Examples of equipment not allowed are: In cabinet UPS modules; lead acid batteries; home type 120V power strips; small step-down transformers for 208V to 120V. We reserve the right to deny installation or request removal of electrical equipment that does not meet our standards
- **None of customer's equipment, connections, or wiring is permitted to enter any space outside of the customer's cabinet and/or rack.**

Telecommunication Facilities

All interconnects (telecom cross-connect) must be approved by Flexential and are subject to fees and charges.

Professional Services Agreement

The customer ("**Customer**") agreeing to this Professional Services Agreement (the "**PSA**") is purchasing "Professional Services" (as defined below) to be performed by Applied Trust Engineering, Inc., a Colorado corporation doing business as Flexential Professional Services ("**FPS**"). FPS is a subsidiary of Flexential Colorado LLC., a Colorado limited liability company (together with Flexential Corp., a Delaware corporation and each of their respective subsidiaries, including FPS, "**Flexential**"). "**Quote**" means a statement of work, order, quote, change order, proposal, exhibit or other document, executed by Customer and Flexential, that identifies services to be provided by Flexential to Customer. For the sake of clarity, the "Quote" may include multiple documents, including one or more documents titled "Quote" listing Professional Services line items (and which may also list non-Professional Services line items) as well as separate Statement of Work document(s) defining the Professional Services.

1. Payment Terms for Professional Services

- a. **Billing Start Date.** Unless otherwise set forth on the Quote with respect to Professional Services on the Quote: (i) the "**Billing Start Date**" for any Professional Service invoiced as a monthly recurring charge ("**Recurring Professional Service**") will be the date such Services are Installed; and (ii) the "**Billing Start Date**" for any Professional Services that are not invoiced as monthly recurring charges ("**Project-Based Professional Services**") will be the execution date of the Quote. "**Installed**" means the date a Service is first made available to Customer; provided, that if Customer is not able to use the Recurring Professional Service beginning on the date the Service is first made available to Customer solely as a result of delays caused by Flexential, then the Billing Start Date shall be extended for each day of delay caused by Flexential.
- b. **Invoicing.** All recurring charges for Professional Services, including committed monthly amounts of hourly Professional Services, will be invoiced by Flexential in advance on a monthly basis beginning on the applicable Billing Start Date. Invoicing for partial months will be prorated based on a calendar month (and may be billed in arrears). Charges for Professional Services that are dependent upon the level of actual usage or billable hours during a month, including overages above a committed monthly amount of hourly Professional Services, will be billed a month in arrears at the standard rate(s) set forth in the applicable Quote. Unless otherwise set forth on the applicable Quote, non-recurring fixed or one-time project charges, which may be identified as "setup" charges on the Quote, will be invoiced 50% upon execution of the Quote, and 50% upon project completion or delivery of the written or "as built" work product.
- c. **Payment Terms.** All undisputed invoices are due within thirty (30) days of the date the invoice is sent to Customer by email, and any overdue balances are subject to a 1.5% per month finance charge.
- d. **Expense Reimbursement.** Customer will reimburse FPS for reasonable, actual costs of out-of-state transportation (economy airfare only for domestic travel) and lodging incurred as a direct result of providing the Professional Services. Customer will also reimburse FPS for actual costs for non-travel related expenses that are incurred by FPS in order to perform the Professional Services and that are identified and approved in writing by Customer in advance. Upon request, FPS will provide additional supporting documentation to substantiate invoiced expenses.

2. Term and Termination

- a. **Term of PSA:** The term of the PSA will commence on the first date the PSA has been executed by both Customer and Flexential (the "**Effective Date**"), and will continue until the later of the 12-month anniversary of the Effective Date or the termination of all Service Terms, unless earlier terminated by a party pursuant to the terms hereof.
- b. **Service Term for Recurring Professional Services.** The "**Service Term Start Date**" for a Recurring Professional Service means the first day of the calendar month following the applicable "Billing Start Date", unless the Billing Start Date is the first day of a calendar month, in which case the Service Term Start Date is the same as the Billing Start Date. The "**Service Term**" for a Recurring Professional Service begins on the Billing Start Date for that Service and continues thereafter until the number of months set forth on the Quote for the initial Service Term has elapsed since the Service Term Start Date (the "**Initial Service Term**"), and includes any Renewal Service Terms, as defined below. Upon the scheduled expiration of the Initial Service Term or any Renewal Service Term for any Recurring Professional Service, the Service Term shall automatically renew for successive one (1) year periods on the same terms and conditions (each, a "**Renewal Service Term**") unless either party informs the other party in writing of its intent not to renew such Service at least sixty (60) days prior to the scheduled expiration of the then-current Service Term; provided that notice of non-renewal from Customer to Flexential is made via email to: cancel@flexential.com.
- i. **Termination for Breach.** Either party may terminate the Professional Services and the PSA without liability if the other party materially breaches any representation, warranty or obligation in the PSA and the breaching party fails to cure the breach within thirty (30) days of receipt of written notice from the non-breaching party describing the breach and citing the specific provision(s) that have been breached. There is no cure period for any material breach which is not reasonably capable of cure and the non-breaching party may immediately terminate the Professional Services and the PSA upon written notice in

accordance with this paragraph in the event of such a breach by the other party. Either party shall have the right to immediately terminate the PSA without liability if the other party is the subject of an involuntary bankruptcy filing that is not withdrawn or dismissed within sixty (60) days of filing or any voluntary bankruptcy filing, becomes insolvent, or is liquidated. For clarification purposes, "insolvent" means a party's admission in writing of its inability to pay its debts as they become due.

- ii. **Termination of Recurring Professional Service for Convenience.** Customer may terminate any Recurring Professional Service or portion thereof for its convenience prior to the end of the applicable Service Term, provided that Customer gives FPS at least ninety (90) days prior written notice of such termination via email to: cancel@flexential.com, and pays FPS an early termination fee in an amount equal to: (A) 50% of the remaining monthly recurring charges for each terminated Recurring Professional Service or portion thereof through the end of the then-effective Service Term, plus (B) any monthly recurring charges for each terminated Recurring Professional Service identified on the Quote as having been previously waived or credited to Customer, plus (C) the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer, plus (D) all reasonable costs and expenses incurred by Flexential as a result of collecting such early termination fee. Such amount will be billed to Customer in one lump sum, together with any unpaid expenses due pursuant to Section 1(d) above. The parties agree that in the event Customer terminates a particular Recurring Professional Service or portion thereof for its convenience, actual damages would be difficult to determine and that these liquidated damages are a reasonable and fair estimate of the damages which may be caused by such early termination and are not a penalty. Customer shall not be liable for the early termination fee if Customer terminates this PSA pursuant to any provision that permits termination by Customer "without penalty" or "without liability".
- e. **Termination of Project-Based Professional Services.** Customer may terminate Project-Based Professional Services at any time without penalty by providing written termination notice to FPS, in which case: (i) FPS will perform no further work for Customer with respect to such Project-Based Professional Services, (ii) all previously paid amounts with respect to such Project-Based Professional Services will not be refundable, (iii) all previously invoiced amounts with respect to such Project-Based Professional Services will remain due and payable in accordance with this PSA, (iv) all outstanding balances for work already completed with respect to such Project-Based Professional Services will be invoiced by Flexential together with any unpaid expenses due pursuant to Section 1(d) above, and will be due and payable in accordance with this PSA, (v) any agreement by Flexential to waive any portion of, or credit to Customer any amount of the Project-Based Professional Services, shall be null and void when calculating amounts due upon termination pursuant to this Section 2(c), and (vi) Customer shall pay Flexential an amount equal to the unamortized portion of any applicable commissions paid by Flexential to any broker, agent or other authorized representative of Customer. Customer may also request rescheduling of Project-Based Professional Services, and FPS will use reasonable commercial efforts to accommodate such rescheduling request, provided that Customer will reimburse Flexential for any change fees or associated costs incurred in rescheduling any travel and lodging expenses to be reimbursed by Customer hereunder. If FPS becomes concerned that Customer has abandoned any Project-Based Professional Services, Flexential will send notice to Customer by email that the Project-Based Professional Services will be deemed terminated by Customer pursuant to this paragraph unless Customer responds to such email within ten business days of the third such notice sent by Flexential to Customer, and the Customer will be deemed to have terminated the Project-Based Professional Services in the event that Customer fails to respond to Flexential within ten business days of the third such notice sent by Flexential.

3. **Flexential Personnel; Non-Solicitation**

- a. **Flexential Employees.** Certain Professional Services may involve the assignment of a specific point of contact or technical resources. FPS may terminate, reassign or replace any FPS employees in its sole discretion without prior notification to Customer, and such reassignment may be permanent or temporary.
 - b. **Nonsolicitation.** The parties agree that while FPS is providing Professional Services to Customer and for a period of six (6) months thereafter, Customer shall not solicit, negotiate with or offer employment to (whether as an employee, consultant, contractor, or otherwise), directly or indirectly, FPS employees involved in providing the Professional Services to Customer; provided, however, that this provision will not apply to general advertising solicitations or similar efforts not targeted toward current or former FPS employees. In the event Customer violates the immediately preceding sentence, the parties agree damages would be difficult to ascertain and Customer will pay to FPS an amount equal to the employee's annual salary. This paragraph will survive termination of this PSA.
4. **Venue.** The PSA will be governed and construed in accordance with the laws of the state of Colorado without regard to any conflict of law provisions; (b) should a dispute arise under or in relation to the PSA, jurisdiction over and venue of any such suit shall be exclusively in the state and federal courts of Denver, Colorado, and the parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts; and (c) EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY ACTION ARISING OUT OF THIS PSA, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER CLAIMS.
5. **Limited Warranty.** FPS will perform the Professional Services in a good, workmanlike and professional manner in accordance with accepted industry standards and practices and all material requirements set forth in the applicable Quote(s). Customer shall notify FPS in writing of any breach within thirty (30) days after performance of the non-conforming Professional Services. Upon

receipt of such notice, FPS, at its option, shall either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or shall terminate the affected Professional Services and refund to Customer any amounts paid for the nonconforming Professional Services. THIS SECTION SETS FORTH CUSTOMER'S EXCLUSIVE RIGHTS AND REMEDIES (AND FLEXENTIAL'S SOLE LIABILITY) IN CONNECTION WITH THIS WARRANTY, AND ALL OTHER WARRANTIES OTHER THAN THE LIMITED WARRANTY SET FORTH HEREIN ARE DISCLAIMED TO THE EXTENT PROVIDED IN THE PSA. FPS DOES NOT GUARANTEE, AND HEREBY DISCLAIMS, ANY PARTICULAR RESULTS FROM THE PROFESSIONAL SERVICES. CUSTOMER SHALL BE RESPONSIBLE FOR MAKING ANY FINAL DECISIONS REGARDING THE SUITABILITY OR THE IMPLEMENTATION OF ANY RECOMMENDATIONS OR POTENTIAL SOLUTIONS PROVIDED BY FPS AS PART OF THE PROFESSIONAL SERVICES, INCLUDING WHETHER OR NOT TO ACT ON THE RECOMMENDATIONS OR ANY PART THEREOF, AND SHALL TAKE RESPONSIBILITY FOR THE RESULTING OUTCOMES

6. Indemnity

- a. Flexential Indemnification Obligations. Flexential shall indemnify and defend Customer, Customer's affiliated entities and its employees, officers, contractors and agents (collectively, "*Customer Indemnified Parties*") from and against any claim, brought against Customer Indemnified Parties by a third party, and all liability, judgment, or cost, including reasonable attorney fees arising out of such claim, to the extent such claims arises from or relates to the following: (i) tangible personal property damage to Customer's Equipment resulting from Flexential's negligence or willful misconduct, up to the full replacement cost of the damaged equipment, (ii) actual personal injury damage resulting from Flexential's negligence or willful misconduct, provided, however that indemnification relating to personal injury shall not apply to any claims made by employees of Customer or any Customer Indemnified Party that are covered under applicable workers' compensation law, or (iii) infringement by the Services of a third party intellectual property rights recognized in the United States of America.
- b. Customer Indemnification Obligations. Customer shall indemnify and defend Flexential, Flexential's affiliated entities and its employees, officers, contractors and agents (collectively, "*Flexential Indemnified Parties*") from and against any claims brought against Flexential Indemnified Parties by a third party and all liability, judgment, or cost, including reasonable attorney's fees arising from such claim, where the claim arises from or relates to the following (i) any breach of this PSA; (ii) any use of the Service, or (iii) any negligence or willful misconduct, by Customer, any Customer Indemnified Party or any of its or their invitees, assignees or customers.

7. Insurance

- a. Customer Obligations. Customer shall procure and maintain, at Customer's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; and (ii) "All Risk" Property insurance covering all of Customer's Equipment colocated in any Facility in an amount not less than its full replacement cost, as well as business interruption coverage.
- b. Flexential Obligations. Flexential shall procure and maintain, at Flexential's sole cost and expense, the following minimum insurance coverage during the Term and, with respect to any claims-made policies, continuing until one (1) year after the end of the Term: (i) Workers' Compensation in an amount not less than that prescribed by statutory limits; (ii) Employer's Liability with limits of not less than \$1,000,000 per occurrence; (iii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (iv) "All Risk" Property Insurance in an amount equal to the full replacement cost of any Flexential Equipment used to provide the Services and (v) Professional Liability (Errors and Omissions) Insurance Policy, including Cyber Breach Liability, in an amount not less than \$1,000,000. All Flexential insurance policies, with the exception of Workers Compensation and Employer's Liability, shall be secondary and in excess of Customer's insurance required to be maintained hereunder and non-contributory with Customer's policies.

8. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS PSA, THE PARTIES AGREE THAT FLEXENTIAL'S ENTIRE CUMULATIVE LIABILITY ARISING OUT OF THE PROFESSIONAL SERVICES (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFICATION OBLIGATION) WILL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES IN THE 12 MONTH PERIOD PRECEDING THE EVENT WHICH CAUSED THE DAMAGES, LOST PROFITS, OR INJURY. IN NO EVENT SHALL FLEXENTIAL BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THE PROFESSIONAL SERVICES OR THIS PSA OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF FLEXENTIAL HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. ANY CLAIM ARISING OUT OF OR RELATED TO THE PROFESSIONAL SERVICES MUST BE BROUGHT NO LATER THAN ONE YEAR AFTER THE SAME HAS ACCRUED.

9. **Confidentiality** In connection with the PSA, either party (the "Recipient") may obtain confidential and proprietary information ("Confidential Information") from the other (the "Discloser"). Confidential Information includes information designated in writing as

confidential, and any information a reasonable person would understand to be confidential or proprietary, including pricing information, data center designs and Flexential audit and security reports. Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information disclosed to Recipient by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any Services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The obligations of confidentiality of each party under this Section shall survive for two years from the termination of the PSA or, if longer with respect to any particular item of Confidential Information, for so long as such item of Confidential Information meets the definition of a "trade secret" under applicable law. Flexential may share the PSA as well as information relating to the Services received by Customer and the fees paid by Customer (but not any Customer Data) to Flexential alliance partner(s) who are associated with Customer's account for the purposes of allowing the partner(s) to verify commissions payable by Flexential, so long as such partner(s) are bound to a confidentiality provision substantially similar to this Section. Unless set forth herein, the term of this PSA and all Quotes are Confidential Information. Except as otherwise provided in this Section 9, at all times during the term of this PSA and for two years thereafter, Recipient shall not disclose Discloser's Confidential Information to a third party without the Discloser's prior written consent or use the Confidential Information for purposes other than the performance of this PSA. Where disclosure is required by law, such disclosure shall not constitute a breach of this PSA provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information. Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) was provided to Recipient by a third party not subject to an obligation of confidentiality to Disclosing Party with respect to the Disclosing Party's Confidential Information. Recipient may disclose the Disclosing Party's Confidential Information as required by a legal, judicial or governmental entity, or as otherwise required by law or regulation (including disclosures required in filings with the Securities and Exchange Commission or other governmental body and via subpoena, search warrant or other similar demand for production of information or materials).

10. **Assignment or Transfer.** Both parties may assign their respective rights and obligations under the PSA (a) to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, or (b) by operation of law. Flexential may assign the PSA to an affiliate or division so long as Flexential exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate, Flexential may continue to collect and receive all or any portion of the amounts payable hereunder by the Customer as agent for and on behalf of such affiliate-transferee/assignee and notify the Customer thereof in writing this PSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns. Customer may permit its affiliated entities to use the Services, provided Customer shall be directly responsible and liable to Flexential for any breach of this PSA by affiliated entities. Customer shall not resell any of the Services provided by Flexential to an unaffiliated third party without first obtaining the written consent of Flexential. Unless otherwise set forth herein, neither party may assign the PSA in whole or in part without the prior written consent of the other party, which consent will not be unreasonably withheld.
11. **Customer Data Ownership.** As between Flexential and Customer, Customer Data is and will remain the exclusive property of Customer.
12. **Data Privacy Compliance.** Customer Responsibility. Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of Customer Data or information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information, including Regulated Customer Data. If any international, state or federal law requires any specific agreement about such information, it is Customer's responsibility to notify Flexential and, in such event, the parties will work together in good faith to modify the PSA as may be required by entering into an ancillary document, which may include a Business Associate Agreement or a Data Protection Addendum.
 - a. PCI DSS. Flexential acknowledges it will maintain all applicable published PCI DSS requirements to the extent Flexential handles, has access to, or otherwise stores, processes, or transmits cardholder data or sensitive authentication data, or manages Customer's cardholder data environment on behalf of Customer.
 - b. Risk Assessment. Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer's purposes and Customer's compliance with applicable law; and (iii) Flexential is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.

- c. CCPA. If and to the extent the California Consumer Privacy Act of 2018, (as amended "**CCPA**"), applies to the provision and use of the Services, Flexential hereby agrees as follows: (i) Flexential is a Service Provider, and Flexential shall not: (x) Sell Personal Information or (y) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Services including retaining, using, or disclosing Personal Information for a Commercial Purpose; and (ii) Flexential shall promptly take such actions and provide such information as Customer may reasonably request to help Customer fulfill requests of individuals to exercise their rights under the CCPA, including, without limitation, requests to access, delete, opt out of the sale of, or receive information about Personal Information. Flexential shall inform Customer of Flexential's receipt of any requests under clause (ii) of the preceding sentence, and Flexential may direct individuals making such to Customer. Customer and Flexential acknowledge and agree that Flexential's access to Personal Information is not part of the consideration exchanged by the parties in respect of the PSA. For the purposes of this Section 28(d), the terms "Commercial Purpose," "Sell," and "Service Provider," shall have the meanings given in the CCPA, and the term "Personal Information" means any information that Flexential has at any time, whether before or after the date hereof, collected, accessed, received, used, disclosed, or otherwise processed on behalf of Customer in relation to Flexential's provision of Services to Customer under the PSA and that constitutes "personal information" under the CCPA.

13. Entire Agreement

This PSA, if any, and any non-disclosure or confidentiality agreement in force between the parties, constitutes the entire agreement between Flexential and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous understandings, letters, agreements or representations, whether oral or written. No modification or waiver of any provision of this PSA shall be binding unless executed in writing by both Flexential and Customer.

BUSINESS LICENSE

City of North Las Vegas
2250 Las Vegas Blvd. North, Suite 110
North Las Vegas, NV 89030

Mailing Address:

**FLEXENTIAL COLORADO CORP.
600 FOREST POINT CRES STE 100
CHARLOTTE, NC 28273**

In conformity with and subject to the provisions of the Ordinances of the City of North Las Vegas and the laws of the State of Nevada, license is hereby granted to operate the business described hereon:

License Number: **BL102145** Expiration Date: **01/31/2025**

License Type: **GROSS SALES**

Classification: **MISCELLANEOUS SALE / SERVICE**

Business Location: **FLEXENTIAL COLORADO CORP.
3330 E LONE MOUNTAIN RD
NORTH LAS VEGAS, NV 89081**

Owner/Principal(s): **FLEXENTIAL COLORADO CORP.**

**CITY OF
NORTH LAS VEGAS**



Alfredo Mefesio
Director of Land Development &
Community Services

**This license is not transferable
POST IN A CONSPICUOUS PLACE**



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/15/2025

9/23/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OF15767 Three Embarcadero Center, Suite 600 San Francisco CA 94111	CONTACT NAME:	FAX (A/C, No):	
	PHONE (A/C, No, Ext):	E-MAIL ADDRESS:	
INSURED 1498619 Flexential Parent Corporation 11900 E Cornell Ave Aurora CO 80014	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Valley Forge Insurance Company		20508
	INSURER B: The Continental Insurance Company		35289
	INSURER C: National Fire Insurance Co of Hartford		20478
	INSURER D: Columbia Casualty Company		31127
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 19709567**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	7036684719	3/15/2024	3/15/2025	EACH OCCURRENCE \$ \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$1,000,000 MED EXP (Any one person) \$ \$10,000 PERSONAL & ADV INJURY \$ \$1,000,000 GENERAL AGGREGATE \$ \$2,000,000 PRODUCTS - COMP/OP AGG \$ \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	7036684722	3/15/2024	3/15/2025	COMBINED SINGLE LIMIT (Ea accident) \$ \$1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	7036684705	3/15/2024	3/15/2025	EACH OCCURRENCE \$ \$25,000,000 AGGREGATE \$ \$25,000,000 \$ XXXXXXXX
B B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	Y N/A	7036684736 (AOS) 7036684753 (CA)	3/15/2024 3/15/2024	3/15/2025 3/15/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$ \$1,000,000 E.L. DISEASE - POLICY LIMIT \$ \$1,000,000
D	E&O/Cyber	N	N	652290731	3/15/2024	3/15/2025	\$10M

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.

RE: City of North Las Vegas is an Additional Insured with respect to liability arising out of the operations of the insured and to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement(s) or policy language. Insurance provided to Additional Insured(s) is primary and non-contributory as per the attached endorsements or policy language.

CERTIFICATE HOLDER**CANCELLATION** See Attachments**19709567**City of North Las Vegas
2250 Las Vegas Blvd, North
North Las Vegas NV 89030

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CNA**CNA PARAMOUNT****Technology General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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Nat'l Fire Ins Co of Hartford

Insured Name: FLEXENTIAL PARENT CORPORATION

Policy No: 7036684719

Endorsement No: 1

Effective Date: 03/15/2024

CNA

CNA PARAMOUNT

Technology General Liability Extension Endorsement

1. ADDITIONAL INSUREDS

a. WHO IS AN INSURED is amended to include as an **Insured** any person or organization described in paragraphs **A. through K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

- (1) is currently in effect or becomes effective during the term of this **Coverage Part**; and
- (2) was executed prior to:
 - (a) the **bodily injury or property damage**; or
 - (b) the offense that caused the **personal and advertising injury**, for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

- (1) a higher limit of insurance than required by such contract or agreement; or
- (2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A. through K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or
2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury, property damage or personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

CNA

CNA PARAMOUNT

Technology General Liability Extension Endorsement**E. Lessor of Land**

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury, property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions — Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage** or **personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf. The coverage granted by this paragraph does not apply to:
 - a. **Bodily injury, property damage** or **personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
 - b. **Bodily injury** or **property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

CNA

CNA PARAMOUNT

Technology General Liability Extension Endorsement

I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
 in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury or property damage** included within the **products-completed operations hazard**.

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury or property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury or property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury or property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) the exceptions contained in Subparagraphs **d.** or **f.** above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph **J.** does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.

CNA

CNA PARAMOUNT

Technology General Liability Extension Endorsement

3. This Paragraph J. also does not apply:

- a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
- b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
- c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs **A.** through **J.** above. Such additional insured is an **Insured** solely for **bodily injury, property damage** or **personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

- 1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor
- 2. for **bodily injury** or **property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:
 - a. this **Coverage Part** provides such coverage;
 - b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and
 - c. the **bodily injury** or **property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

- A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and noncontributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured.

- B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph **1.K.** of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY — EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

CNA74872)O((1-15)

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Nat'l Fire Ins Co of Hartford

Insured Name: FLEXENTIAL PARENT CORPORATION

Policy No: 7036684719

Endorsement No: 1

Effective Date: 03/15/2024

CNA

CNA PARAMOUNT

Technology General Liability Extension Endorsement

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:

- a. on the effective date of this **Coverage Part**; or
- b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or
- B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:

- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
- b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose

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Technology General Liability Extension Endorsement**6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES**

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY - EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A — Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A — Bodily Injury And Property Damage Liability**, the **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES, Coverage A — Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following: This insurance does not apply to:

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CNA PARAMOUNT

Technology General Liability Extension Endorsement**Contractual Liability**

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

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Technology General Liability Extension Endorsement

- ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. amend the definition of **Insured** to:

- a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:
 - (1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

- (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs **(a), (b), (c) and (d)** of Paragraph **2.a.(1)** of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to:

the conduct of any current or past partnership or joint venture that is not shown as a **Named Insured** in the Declarations; nor

the conduct of a current or past limited liability company in which a **Named Insured's** interest does/did not rise to the level of management control;

except that if the **Named Insured** was a joint venturer, partner, or member of such a limited liability company, and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, then such

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Technology General Liability Extension Endorsement

Named Insured is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense, first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY - DAMAGE TO PREMISES

- A. Under COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

- B. Under COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is \$500,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

- D. The Other Insurance** Condition is amended to delete Paragraph **b.(1)(a)(ii)**, and replace it with the following:

(ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

- E.** This Provision 11. does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

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Technology General Liability Extension Endorsement**12. MEDICAL PAYMENTS**

A. LIMITS OF INSURANCE is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C — Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: ; or
- (2) the amount shown in the Declarations for Medical Expense Limit.

B. Under COVERAGES, the Insuring Agreement of Coverage C — Medical Payments is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

- 1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- 2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
- 3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:
 - (a) less than 75 feet long; and
 - (b) not being used to carry persons or property for a charge.

15. PERSONAL AND ADVERTISING INJURY -DISCRIMINATION OR HUMILIATION

A. Under DEFINITIONS, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under COVERAGES, Coverage B — Personal and Advertising Injury Liability, the paragraph entitled **Exclusions** is amended to:

- 1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following: This insurance does not apply to:

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Technology General Liability Extension Endorsement**Knowing Violation of Rights of Another**

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY -DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

16. PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B —Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the **Insured** has assumed liability in a contract or agreement.

This exclusion does not apply to liability for **damages**:

- (1) that the **Insured** would have in the absence of the contract or agreement; or
- (2) assumed in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:
 - (a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
 - (b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.

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Technology General Liability Extension Endorsement

- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the suit and the information the Insurer knows about the offense alleged in such suit are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph **e.(2)** of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B —Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

17. PROPERTY DAMAGE - ELEVATORS

- A. Under **COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3), (4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.
- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE - ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is amended as follows:

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES, Coverage A — Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs **(3)** and **(4)** of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per **policy period** applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:

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Nat'l Fire Ins Co of Hartford

Insured Name: FLEXENTIAL PARENT CORPORATION

Policy No: 7036684719

Endorsement No: 1

Effective Date: 03/15/2024

CNA**CNA PARAMOUNT****Technology General Liability Extension Endorsement**

- A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and
- B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

21. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



EXTENDED COVERAGE - BA PLUS - FOR HIRED AND NON-OWNED AUTOS

It is understood and agreed that this endorsement amends the BUSINESS AUTO COVERAGE FORM as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement to such provision do not apply.

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I. AMENDMENTS TO LIABILITY COVERAGE

A. Amendments to Who Is An Insured

Under SECTION II - COVERED AUTOS LIABILITY COVERAGE, the paragraph entitled Who Is An Insured is amended to add the following:

1. Majority Owned Corporations

Any incorporated entity in which you own a majority of the voting stock on the inception date of this Coverage Form is an insured, but only if such entity is not an insured under any other liability "policy" that provides auto coverage.

2. Newly Acquired Organizations



Any organization you newly acquire or form during the policy period, other than a limited liability company, partnership or joint venture, and in which you maintain majority ownership interest is an insured, but only if such organization is not an insured under any other liability "policy" that provides auto coverage. The insurance afforded by this provision:

a. Is effective on the date of acquisition or formation of the organization, and applies until:

- (1) The end of the policy period of this Coverage Form; or
 - (2) The next anniversary of this Coverage Form's inception date,
- whichever is earlier; and

b. Does not apply to bodily injury or property damage caused by an accident that occurred before you acquired or formed the organization.

3. Additional Insureds Required By Written Contract

Any person or organization that you are required by written contract to make an additional insured under this insurance is an insured, but only with respect to that person or organization's legal liability for acts or omissions of a person who qualifies as an insured for Liability Coverage under SECTION II - WHO IS AN INSURED of this Coverage Form.

4. Employee-Hired Autos

Any employee of yours is an insured while operating with your permission an auto hired or rented under a contract in that employee's name, while performing duties related to the conduct of your business.

With respect to provisions A.1. and A.2. above, "policy" includes those policies that were in force on the inception date of this Coverage Form, but:

- i. Which are no longer in force; or
- ii. Whose limits have been exhausted.

B. Increased Loss of Earnings Allowance

Under SECTION II - COVERED AUTOS LIABILITY COVERAGE, the paragraph entitled Coverage Extensions is amended under Supplementary Payment subparagraph (4) to delete the \$250. a day limit for loss of earnings and replace it with a \$500. a day limit.

C. Fellow Employee Coverage

Under SECTION II - COVERED AUTOS LIABILITY COVERAGE, the paragraph entitled Exclusions is amended to delete the exclusion entitled Fellow Employee.

II. AMENDMENTS TO PHYSICAL DAMAGE COVERAGE

A. Increased Loss of Use Expense

Under SECTION III - PHYSICAL DAMAGE COVERAGE, the paragraph entitled Coverage Extensions is amended under Loss of Use Expenses to delete the maximum of \$600., and replace it with a maximum of \$800.

B. Broadened Electronic Equipment Coverage

Under SECTION III - PHYSICAL DAMAGE COVERAGE, the paragraph entitled Exclusions is amended to delete paragraphs 5.a through 5.d. in their entirety, and replace them with the following:

5. Exclusions 4.c. and 4.d. above do not apply to loss to any electronic equipment that at the time of loss is:



- a. Permanently installed in or upon a covered auto, nor to such equipment's antennas or other accessories used with such equipment. A \$100 deductible applies to this provision, and supersedes any otherwise applicable deductible; or
- b. Designed to be operated solely by use of the power from the auto's electrical system and is:
 - (1) Removable from a housing unit which is permanently installed in or upon the covered auto;
 - (2) An integral part of the same unit housing any electronic equipment described in paragraphs a. or b.(1) above; or
 - (3) Necessary for the normal operation of the covered auto or the monitoring of the covered auto's operating system.

III. AMENDMENTS TO BUSINESS AUTO CONDITIONS

A. Knowledge of Accident or Loss

Under BUSINESS AUTO CONDITIONS, the Loss Condition entitled Duties In the Event of Accident, Claims, Suit, or Loss is amended to add the following subparagraph a.(4):

- (4) If your employees know of an accident or loss, this will not mean that you have such knowledge until such accident or loss is known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an employee designated by any of the above to be your insurance manager.

B. Knowledge of Documents

Under BUSINESS AUTO CONDITIONS, the Loss Condition entitled Duties In the Event of Accident, Claims, Suit, or Loss is amended to add the following subparagraph b.(6):

- (6) If your employees know of documents concerning a claim or suit, this will not mean that you have such knowledge until such documents are known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an employee designated by any of the above to be your insurance manager.

C. Waiver of Subrogation

Under BUSINESS AUTO CONDITIONS, the Loss Condition entitled Transfer Of Rights Of Recovery Against Others To Us is amended to add the following:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an accident or loss.

D. Unintentional Failure To Disclose Hazards

Under BUSINESS AUTO CONDITIONS, the General Condition entitled Concealment, Misrepresentation or Fraud is amended to add the following:

Your failure to disclose all hazards existing on the inception date of this Coverage Form shall not prejudice you with respect to the coverage provided by this insurance, provided such failure or omission is not intentional.

E. Primary and Non-Contributory When Required By Contract

Under BUSINESS AUTO CONDITIONS, the General Condition entitled Other Insurance is amended to add the following:



Notwithstanding provisions 5.a. through 5.d. above, the coverage provided by this Coverage Form shall be on a primary and non-contributory basis when required to be so by a written contract entered into prior to accident or loss.

IV. AMENDMENTS TO DEFINITIONS

A. Broadened Bodily Injury

Under DEFINITIONS, the definition of bodily injury is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, mental anguish or mental injury sustained by that person which results as a consequence of the physical injury, sickness or disease.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.



WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

Schedule

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.