



Encryption as a Service Terms and Conditions

This **ENCRYPTION AS A SERVICE TERMS AND CONDITIONS** (this “**Agreement**”) is entered into by and between Flexential Corp., a Delaware corporation formerly known as Peak 10, Inc., or one of its affiliated entities including without limitation Flexential Colorado Corp., a Colorado corporation formerly known as ViaWest, Inc. (“**Flexential**”) and the entity receiving the Encryption as a Service (“**Customer**”). This Agreement is made a part of that certain Master Services Agreement, or other written agreement, pursuant to which Customer receives information technology services from Flexential (the “**MSA**”).

1. **Summary.** Encryption as a Service: a) allows Flexential customers to encrypt structured and unstructured data at rest; b) enables policy-based access control; and c) provides data access logs for auditing purposes. Encryption as a Service (which, for clarity, includes the Agent) may be provided by a third party. Customer’s use of Encryption as a Service is subject to the terms and conditions set forth in this Agreement.
2. **Definitions.** “**Admin Guide**” means the Administrative Guide which is accessible via the Flexential Customer Portal (fka the Pathfinder Portal). The Admin Guide contains, among other things, user set up policies, policy set up procedures, Agent installation instructions and audit log access procedures. The Admin Guide may be updated in Flexential’s discretion and will be posted on the Customer Portal.
3. **Statement of Work.** In addition to the terms and conditions set forth in this Agreement, each party’s rights and responsibilities with respect to Encryption as a Service will be set out in a Statement of Work or Service Definition, which (along with the Statement of Work or Service Definition for the Flexential Encryption as a Service implementation Services) will be set forth in the Customer Portal (fka the Pathfinder Portal). The parties agree to comply with each party’s rights and responsibilities related to the specific Services to be provided by Flexential as set forth in the applicable Encryption as a Service Statements of Work
4. **Process and Technical Considerations.** Once Customer has purchased the Encryption as a Service online or the parties have executed a Change Order adding Encryption as a Service, Flexential will create a Customer specific domain on the Flexential data security manager (“**DSM**”) which will allow Customer to manage Customer’s encryption keys, users and encryption policies. Customer will download a current encryption agent (the “**Agent**”) and install it on the physical or virtual server containing data to be encrypted. Customer must ensure connectivity between the server (physical or virtual) to be encrypted and the DSM. Customer will comply with the then-current Admin Guide (available in the Customer Portal).
5. **Encryption Keys.** CUSTOMER ACKNOWLEDGES AND AGREES THAT FLEXENTIAL DOES NOT MAINTAIN COPIES OF CUSTOMER ENCRYPTION KEYS. FLEXENTIAL HAS NO ABILITY TO REGENERATE OR RECOVER LOST ENCRYPTION KEYS NOR CAN FLEXENTIAL ACCESS ENCRYPTED DATA. FLEXENTIAL SHALL NOT BE LIABLE FOR LOSS OF DATA AS A RESULT OF OPERATIONAL ERRORS CAUSED BY THE SYSTEM OR SECURITY ADMINISTRATORS OF THE AGENT OTHER OPERATIONAL PERSONNEL OF CUSTOMER.
6. **Sublicense.** Flexential grants Customer a limited, non-exclusive, non-transferable license to utilize the Agent while the MSA and this Agreement remains in effect. Customer may only use the Agent for Customer’s own business operations. Customer may not make copies of the Agent and must download the Agent from the DSM in each instance. The Agent is licensed, not sold, to Customer. All right, title, and interest including, without limitation, all intellectual property rights, in and to the Agent and in part and all copies thereof, are, and shall remain, the sole and exclusive property of Flexential and/or its licensors.
7. **Reverse Engineering.** To the extent permitted by applicable law, Customer shall not, nor shall Customer assist any third party to, reverse engineer, decompile, disassemble or in any other manner attempt to derive the source code of any component of the Agent for any purpose. Customer shall notify Flexential if Customer becomes aware of any person or entity attempting to reverse engineer, reverse compile, or disassemble the Agent.
8. **Warranties; Disclaimers.** Flexential does not warrant that Encryption as a Service/the Agent will meet Customer’s requirements or that the operation of Encryption as a Service/the Agent will be uninterrupted or error-free, or that all software errors will be corrected. Furthermore, Encryption as a Service/the Agent is not intended as a comprehensive solution to information security and may not be effective against all intrusions, viruses, worms, or other malicious code. Neither Flexential, nor any licensor, shall be liable for loss of data caused by a third party or otherwise as a result of operational errors caused by the system or security administrators of the Agent or other operational personnel of Customer. EXCEPT AS OTHERWISE EXPLICITLY SET FORTH IN THIS AGREEMENT, FLEXENTIAL (AND ITS LICENSORS) DISCLAIMS ANY OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF CONDUCT OR INDUSTRY PRACTICE. FLEXENTIAL AND ITS LICENSORS DISCLAIM ANY LIABILITY, AND SHALL HAVE NO RESPONSIBILITY, ARISING OUT OF ANY FAILURE OF THE AGENT TO OPERATE AS A RESULT OF ANY HARDWARE OR TECHNOLOGY OTHER THAN THE AGENT INCLUDING, WITHOUT LIMITATION, ANY FAILURE OF DATA TO BE PROPERLY PROCESSED OR TRANSFERRED TO, IN OR THROUGH CUSTOMER’S COMPUTER ENVIRONMENT OR ANY FAILURE OF ANY TRANSMISSION

HARDWARE, TECHNOLOGY, OR SYSTEM USED BY CUSTOMER. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE CHOICE OF ANY HARDWARE OR TECHNOLOGY USED IN THE HOSTING ENVIRONMENT IN WHICH THE AGENT MAY BE ACCESSED.

9. **Indemnification.** Customer will indemnify, defend and hold Flexential and its licensors harmless from and against any and all costs, claims or liability, including, without limitation, reasonable attorney fees, resulting from Customer's breach of its obligations set forth in this Agreement.
10. **Government Restricted Rights Legends.** The Agent is a "commercial item" as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and DFARS 227.7202-1 through 227.7202-4, all United States government end users acquire the Software with only those rights set forth herein.
11. **Export.** Customer shall comply with all applicable state and federal laws and regulations (including local laws of the country where the Agent is being used) pertaining to the Agent including, without limitation, restrictions on use of products containing encryption, import or export laws and regulations, and domestic laws and regulations pertaining to privacy and the protection of financial, medical, or personally identifiable information. Without limiting the generality of the foregoing, Licensee shall not export or re-export the Agent, or allow access to the Agent to any third party including, without limitation, any customer of Customer, in violation of United States laws and regulations, including, without limitation, the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.
12. **Conflict.** Except as otherwise provided herein, in the event any term or condition of this Agreement 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 Agreement 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.