

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **FLEXENTIAL LLC** (as successor in interest to **FLEXENTIAL COLORADO LLC**), a Delaware limited liability company, whose address is 600 Forest Point Cir Ste 100, Charlotte, NC 28273 (the “Contractor” or “Flexential”), individually a “Party” and collectively the “Parties.”

WHEREAS, the Parties entered into an Agreement dated July 16, 2019, for the continual use of offsite datacenter services (the “Agreement”); and

WHEREAS, the Parties now wish to modify the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Subsection 5(c) of the Agreement, titled “**MSA Term**,” is amended to read as follows:

“c. **MSA Term**. The term of the MSA (the “Term”) will commence on the Effective Date of the MSA and will continue until July 16, 2029, or the termination of all Service Terms or, if earlier, termination by a party pursuant to the terms hereof.”

2. Subsection 6(k) of the Agreement, titled “**Maximum Contract Liability**,” is amended to read as follows:

“k. **Maximum Agreement Liability**: Notwithstanding any other provision of this MSA, the City’s maximum payment obligation will not exceed SIXTEEN MILLION DOLLARS (\$16,000,000.00) (the “Maximum Agreement Amount”). The City is not obligated to execute an agreement or any amendments for any further services, including any services performed by Flexential beyond that specifically described in the attached Exhibit. Any services performed beyond those in the Exhibits are performed at Flexential’s risk and without authorization under this MSA. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this MSA. The City does not by this MSA irrevocably pledge present cash reserves for payment or performance in future fiscal years. This MSA does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City hereby agrees to make best efforts to timely and properly budget for, request of and seek and pursue appropriation of funds that will permit the City to make all payments required under this MSA during the period to which such appropriation shall apply. With such limitations in mind, the City contracts to receive the Services and otherwise comply with the terms of this MSA. Where the City’s funding entity does not allocate funds for any fiscal period beyond the one in which this MSA is entered into, or does not allocate funds to continue this MSA from the then-current fiscal period, the City will not then be obligated to make the payments remaining beyond the City’s then current fiscal period. In such event, the City shall notify Flexential of such non allocation of funds by sending written notice thereof to Flexential forty-five (45) days prior to the effective date of termination.”

3. Subsection 33(l) of the Agreement, titled “**EXAMINATION OF RECORDS**,” is amended to read as follows:

“**1. EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Flexential’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Flexential shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Flexential to make disclosures in violation of state or federal privacy laws, or disclose any information related to other Flexential customers. As applicable, Flexential shall at all times comply with D.R.M.C. § 20-276.”

4. Subsection 33(n) of the Agreement, titled “**NO DISCRIMINATION IN EMPLOYMENT**,” is amended to read as follows:

“**n. NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

5. Effective upon execution, a new Subsection 33(s), titled “**COMPLIANCE WITH DENVER WAGE LAWS**,” is hereby added to the Agreement and shall read as follows:

“**s. COMPLIANCE WITH DENVER WAGE LAWS**: To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

6. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

7. This Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: TECHS-202472217-01 (201947808-01)
Contractor Name: FLEXENTIAL LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

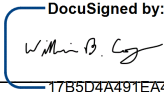
By:

By:

By:

Contract Control Number:
Contractor Name:

TECHS-202472217-01 (201947808-01)
FLEXENTIAL LLC

By:  _____
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Name: Bill Cory
(please print)

Title: Regional Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)