



#### Flexential INFORMATION

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Legal Notices	8809 Lenox Pointe Drive, Suite G, Charlotte, NC 28273
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#### CUSTOMER INFORMATION – PRIMARY CONTACT AND BILLING INFORMATION

Primary Contact*		Billing Contact
Contact Name	Cristopher Todd	Technology Services   Finance Dept
Street Address	201 West Colfax Ave, Dept 301	201 West Colfax Ave, Dept 301
City, State, Zip	Denver, CO 80202	Denver, CO 80202
Phone	303-243-4113	720-913-5259
Email	<a href="mailto:Christopher.Todd@Denvergov.org">Christopher.Todd@Denvergov.org</a>	<a href="mailto:tsfinance@denvergov.org">tsfinance@denvergov.org</a>

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

#### AGREEMENT INFORMATION

Initial Term	As provided on the applicable Order Form, commencing upon mutual execution of this MSA as to the MSA Quote.
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This **Master Services Agreement** is made by and between Flexential Colorado Corp., formerly known as ViaWest, Inc., for itself and on behalf of its affiliated entities included within the definition of “Flexential” in the Standard Terms and Conditions, and the undersigned customer (“**Customer**” or “**City**”). Upon signature, this MSA (as defined below ) 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to Customer (the “**Prior MSA**”), then the parties hereby expressly agree that the Prior MSA is hereby terminated and superseded in its entirety by this MSA, and any Quotes previously issued under the Prior MSA that are in effect as of the Effective Date are hereby deemed to be issued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.



## 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.
  - b. **“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.
  - c. **“Customer Data”** means all information stored, maintained, received or transmitted by Customer using the Services.
  - d. **“Customer Equipment”** means any equipment provided by Customer in connection with the MSA, whether or not owned by Customer.
  - e. **“Dispute”** means any controversy or claim arising out of or relating to the interpretation of the terms, conditions or provisions of the MSA.
  - f. **“Effective Date”** means, with respect to the MSA or any Quote, the first date that the MSA or Quote has been signed by both Flexential and the Customer. The Effective Date of an MSA Quote is the Effective Date of the MSA.
  - g. **“Equipment Space”** means the designated area within the Facility that Customer may occupy and use.
  - h. **“Facility”** means the Flexential data center(s) where the Customer Equipment is located.
  - i. **“Flexential”** means the Flexential entity performing the Services as identified on a Quote based on the location or type of Services. Exhibit B attached hereto indicates the Flexential entity performing Services at the locations or with respect to the type of Services noted therein, as may be updated from time to time in Flexential’s discretion.
  - j. **“Flexential Equipment”** means any equipment used by Flexential to provide the Services. Such equipment may be located inside or outside the Equipment Space.
  - k. **“Flexential 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 Flexential delivers IP data packets to the Public Internet on the Customer’s behalf.
  - l. **“Managed Services”** means those additional information technology and network/data transport Services set forth in a Quote.
  - m. **“MSA”** means these Standard Terms and Conditions, together with the Cover Sheet or Quote to which these Standard Terms and Conditions are attached or incorporated by reference, and all exhibits and other documents incorporated by reference into the MSA pursuant to the terms hereof.
  - n. **“MSA Quote”** means a Quote that is included as an exhibit to the MSA at the time of the MSA’s execution that is not separately executed by Flexential or Customer.
  - o. **“Partner Reseller”** means a third party that is responsible for invoicing to, and collecting payments from, Customer for Services provided by Flexential to Customer hereunder pursuant to a Quote executed by both Customer and the Partner Reseller.
  - p. **“Policies and Procedures”** means any rules or regulations imposed by Flexential or the owner of the Facility, whether set forth in the customer guide located in the Customer Portal or in the Datacenter Rules or other rules or notices posted in the Facility, as they may be updated from time to time in Flexential’s discretion (with notice as required by Section 15 below).

- q. **“Public Internet”** means the gateway router interface between the Flexential Network and Flexential’s upstream providers’ networks.
- r. **“Quote”** means an order, change order, proposal, exhibit, statement of work or other document, executed by both parties, that identifies Services to be provided by Flexential to Customer, and includes an MSA Quote.
- s. **“R&R Matrix”** means a Roles and Responsibilities Matrix agreed to by Flexential and Customer. The R&R Matrix shall govern the responsibilities and obligations of the Parties for the various Services ordered by the Customer. The “Managed Services Addendum” is an Exhibit to the MSA and in tandem with the R&R Matrix governs responsibilities and obligations of the Parties for various Services that may be ordered by the Customer and hosted by Flexential.
- t. **“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.

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

- a. **Access and Use.** Starting on the applicable Billing Start Date for the Equipment Space, Flexential hereby grants the Customer a limited, revocable license to install and operate, maintain and access, as well as transmit and receive to and from, the Customer Equipment within the Equipment Space. Customer will be entitled to occupy and use the Equipment Space only for placement and maintenance of computer equipment, telecommunications or Internet access equipment. Flexential will have the right to access the Equipment Space for any business purpose at all times as reasonably required to provide the Service (including, without limitation, Facility maintenance). 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, in its sole discretion, may require that Customer and any of Customer’s agents be escorted when they are in the Facility, and may suspend Customer’s access as directed or required in an emergency situation.
- b. **Installation and Operation.** Flexential will not be responsible for the operation or maintenance of Customer Equipment unless otherwise agreed in writing.
- c. **Condition of Equipment Space.** Customer will maintain the Equipment Space in an orderly and safe condition. Failure to do so may result in Flexential cleaning the Equipment Space and passing the reasonable cost on to Customer.
- d. **Access to Equipment Space; Access Devices.** Customer will provide to Flexential a written authorization of those employees, agents, or contractors of Customer who may physically access the Equipment Space. Any changes to the listing must be provided to Flexential in writing or by use of the Customer Portal in accordance with Flexential’s then-in-effect Policies and Procedures. Flexential retains the right to deny physical access to the Equipment Space to any individual if Customer has not included such individual on the listing to be provided to Flexential pursuant to this Section. Flexential may also provide Customer with access cards, keys or other access devices (“**Devices**”) to permit Customer entry to the Equipment Space. In the event that unauthorized parties gain access to the Equipment Space solely through Customer Devices, Customer will be responsible for any damages incurred as a result thereof. Customer will be responsible for the cost of replacing any Devices lost or stolen after delivery thereof to Customer.
- e. **Ability to Change Equipment Space.** With Customer’s prior written consent (which may be given by email and will not be unreasonably withheld, conditioned or delayed), Flexential may change the location or configuration of the Equipment Space. Flexential and Customer will work in good faith to minimize any disruption in Customer’s Services that may be caused by such changes in location or configuration of the Equipment Space.
- f. **Effect of Termination of Colocation Services.** Upon termination or expiration of the MSA for any reason (or upon cessation of all or a portion of Colocation Services) (the “**Facility Exit Date**”): (i) Customer shall promptly remove all Customer Equipment from the Facility, and (ii) Flexential may remove all Flexential Equipment from the Equipment Space and repair any damage to the Equipment Space. The Equipment Space shall be in the same condition as when Customer occupied the space, normal wear and tear excepted. Customer shall reimburse Flexential promptly for the reasonable cost of any repairs required to restore the Equipment Space to its original condition (normal wear and tear excepted). To the extent Customer does not remove Customer Equipment from the Facility upon the Facility Exit Date, Customer shall continue to be billed for all

Services as set forth in the applicable Quotes until such Customer Equipment is removed. If Customer does not work in good faith with Flexential to coordinate the removal of Customer Equipment or other Customer property from the Facility within ninety (90) days of the Facility Exit Date, subject to any applicable laws, Flexential shall be entitled to remove all Customer Equipment from the Equipment Space to another location in the Facility and/or dispose of any Customer Equipment or other Customer property as Flexential sees fit, including, without limitation, destruction of the property in question, all at Customer's risk and expense. Flexential shall not be liable to Customer or any third party as a result of such disposal for any reason or under any legal theory whatsoever. Customer shall pay Flexential all reasonable costs incurred in connection with the removal, storage and/or disposal of any Customer Equipment or Customer property that remains ninety (90) days after the Facility Exit Date. At Customer's written request Flexential shall provide transition services to another provider at the standard rates of Flexential, plus expenses, payable in advance; provided that undisputed amounts due to Flexential are **paid** in full.

### 3. CLOUD, MANAGED AND OTHER SERVICES.

- a. **Location.** Unless otherwise set forth in the applicable Quote, the location of Flexential Equipment used to provide Cloud Services or Managed Services is at Flexential's sole discretion. Unless otherwise agreed in writing in a Quote, all Services performed by Flexential personnel are performed from the United States.
- b. **Additional Terms.** The following Services require that Customer abide by additional terms and conditions: Application Support Services, Encryption as a Service and Messaging Services (aka Managed Email); (collectively the **"Additional Services"**). To the extent Customer orders an Additional Service on a Quote, the parties agree to the then-in-effect Service-specific terms and conditions located on the "Legal Information" page of Flexential's website (the **"Additional Terms"**), and such Additional Terms are hereby incorporated by reference into the MSA, provided said terms are physically incorporated into an amendment to this Agreement. In the event of a conflict between these Standard Terms and Conditions and the Additional Terms incorporated by reference into the MSA, the Additional Terms will control, but only to the limited extent and for the purposes of the interpretation of the applicable Additional Terms.
- c. **Remote Hands.** To the extent Customer has not contracted to receive remote hands Services (eyes, ears and hands to provide feedback to Customer) on a Quote, Customer may request such Services via phone or via the Customer Portal and Flexential will provide such Services. Unless otherwise set forth in a Quote, 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.
- d. **Removal of Customer Data Upon Termination.** Upon termination or expiration of the MSA for any reason (or upon cessation of all or a portion of Cloud or Managed Services) Customer shall promptly remove all Customer Data from Flexential Equipment at Customer's sole risk and expense. To the extent Customer does not remove all Customer Data from Flexential Equipment within thirty (30) days of the date of termination or expiration of the MSA for any reason (or upon cessation of all or a portion of Cloud or Managed Services), Flexential shall be entitled to destroy any Customer Data remaining on Flexential Equipment at Customer's sole risk and expense. Flexential shall not be liable to Customer or any third party as a result of such destruction for any reason or under any legal theory whatsoever.

### 4. SCOPE OF SERVICES AND CONFLICT.

- a. **Services.** Flexential will provide Customer the specific services set forth on a Quote (each, a **"Service"**, and collectively, the **"Services"**), on the terms and conditions set forth in the MSA. The parties may add or modify Services by executing a Quote, which will become a part of the MSA on the Effective Date of the Quote. Any professional services purchased by Customer will be provided pursuant to the Professional Services Addendum attached hereto as Exhibit I, which is incorporated herein by this reference.
- b. **Incorporation; Conflict.** Except as otherwise explicitly provided herein or as otherwise agreed upon in writing (including in a subsequent Quote, but only as to the specific Services on, or explicitly referenced in, such Quote) in the event of any conflict between these Standard Terms and Conditions and the terms and conditions of any other Exhibit or referenced document, these Standard Terms and Conditions will control. Terms within a document not attached to this MSA or not within an amendment to this MSA, may not impose additional material legal obligations or liabilities on Customer. The terms and conditions contained in any Customer purchase order or other similar ordering document are not binding on Flexential.
- c. **Alteration of Services.** Flexential, in its discretion, may alter its provision of any Service to Customer to, for example and without limitation, install, modify or change: (a) HVAC, power or networking equipment in, or third party providers used to

operate and maintain, the Facility, or (b) Flexential Equipment or software, other technology, or third party providers used to provide Cloud or Managed Services; provided, that such alteration does not result in a material adverse change in the Service, as determined in accordance with industry standards, and provided further, that Flexential's ability to alter provision of any Service shall not in any way limit Flexential's obligations pursuant to the SLAs.

## 5. TERM AND RENEWAL.

- a. **Service Term.** The **"Service Term Start Date"** for a Service on a Quote means (i) the first day of the calendar month following the "Billing Start Date" for the first Service "Installed" (as such terms are defined in Section 6) on the Quote, or (ii) the Billing Start Date for the first Service Installed on the Quote, if such Billing Start Date is the first day of a calendar month. The **"Service Term"** for a Service on a Quote begins on the Service Term Start Date and continues for the number of months set forth on the Quote or, with respect to MSA Quotes, the number of months identified as the "Initial Term" on the Master Services Agreement Cover Sheet (the **"Initial Service Term"**), and includes any Renewal Service Terms, as defined below. If a Quote (other than an MSA Quote) does not provide for the number of months in a Service Term or provides that the Service Term for the Services on the Quote is "coterminous", then the Service Term for the Services on the Quote will be the same as the Service Term for Customer's other existing Services as of the Effective Date of the Quote; provided, that if multiple different Service Terms are then in existence, then the Service Term for the new Services will be the same as the Service Term for the existing Services identified on the Quote or, if none is identified, the same as the Service Term for the existing Services most closely related to the new Services.
- b. **Renewal.** Upon the scheduled expiration of the Initial Service Term or any Renewal Service Term for any Service, the Service Term may be renewed for successive five (5) year periods on the same terms and conditions (each, a **"Renewal Service Term"**) upon a written amendment of this MSA. If the parties have not finalized a written amendment on or before the expiration of the then-effective Service Term, but Customer does not remove Customer Equipment from the Facility on or before such expiration, then thereafter the Service Term shall be deemed to be month-to-month, terminable by either party upon 60 days' prior written notice. 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).
- c. **MSA Term.** The term of the MSA (the **"Term"**) will commence on the Effective Date of the MSA and will continue until termination of all Service Terms or, if earlier, termination by a party pursuant to the terms hereof.

## 6. PAYMENTS.

- a. **Billing Start Date.** Unless otherwise set forth on the Quote with respect to Services on the Quote, Billing for Services will begin as Services are Installed or on the forty-fifth (45<sup>th</sup>) day after the Effective Date of the applicable Quote, whichever is earlier (the **"Billing Start Date"**). **"Installed"** means the date a Service is first made available to Customer; provided, that if Customer is not able to use the 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. In the event a portion of the Services 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. **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. To the extent such added Services are Additional Services as described in Section 3(b), to the extent that the terms and conditions of this MSA are altered, an amendment to the MSA will be required for those Services.
- c. **Invoices.** All recurring charges for Services will be invoiced by Flexential on a monthly basis, except for charges that are dependent upon the level of usage which will be billed a month in arrears. With respect to Services dependent on the level of usage, overages will be billed at the standard 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) and setup and other non-recurring charges will be invoiced when incurred.

- d. **Due Date.** All undisputed invoices are due within thirty-five (35) days of invoice date. All payments for Services will be paid in US dollars. Any undisputed payment not made when due will be subject to payment of interest pursuant to §20-114(c) of the City's Prompt Payment Ordinance City's, §§ 20-107 to 20-118, D.R.M.C., which applies to invoicing and payment under this MSA.
- e. **Pass-Through Costs.** If Flexential experiences an increase in rates and charges for Services provided by or through a third-party, including but not limited to pass-through electrical rate increases and third-party software license, maintenance and support fees, Flexential may increase the applicable rates and charges to Customer in a proportional amount upon thirty (30) days prior written notice. For example, if pass-through electrical rates charged by the applicable utility increase 5% per kWh, the City's charged rate for such electricity will increase by 5% per kWh. Flexential shall supply at the City's request third-party verification defining pass through costs increased by such third-party supplier.
- f. **Restricted Access.** Flexential reserves the right to limit or restrict Customer's access to the Services, Facility and Customer Equipment if past-due undisputed balances remain unpaid for more than ten (10) days after Flexential provides written notice to Customer that such amounts are past due. Customer will be notified of any such restriction via e-mail.
- g. **Taxes.** The Customer is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the Customer's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Flexential shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against Customer property. Customer affirms that it is exempt from all of the above taxes under the provisions of D.R.M.C. §53-26(1).
- h. **Credits.** Except as otherwise set forth herein, Flexential shall work with Customer in good faith to apply credits in the timeframe(s) reasonably requested by Customer; provided, that Customer waives the right to credits if the credit is not applied within 120 days of issuance of such credit. Notwithstanding the foregoing, Flexential reserves the right to apply any credits to undisputed past due invoices in its discretion.
- i. **Invoice Disagreements.** Invoice disputes must be registered in writing to Flexential, via email to: [billingdisputes@peak10.com](mailto:billingdisputes@peak10.com) or by clicking the "Ask a Question" button next to the applicable invoice within the Customer Portal, or pursuant to the notice provision of the MSA or such other method as Flexential may reasonably determine and communicate. Customer waives the right to dispute any invoiced amount, including all rights to otherwise claim it does not owe such disputed amount or to seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such disputed amount, unless, by no later than sixty (60) days after the invoice due date, (i) Customer provides Flexential with written notice that it disputes such amount, describing the nature of the dispute with sufficient detail to reasonably permit Flexential to investigate the dispute, and (ii) Customer pays the undisputed portion of such invoice. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account, and amounts payable to Flexential shall be paid, within ten (10) days of dispute resolution.
- j. **Partner Reseller Quotes.** With respect to Services, if any, provided to Customer by Flexential hereunder that will be invoiced through a Partner Reseller: (i) the term "Quote" includes Quotes executed by both Customer and the Partner Reseller (each, a "**Partner Reseller Quote**"), (ii) the "Effective Date" of any Partner Reseller Quote will mean the first date that the Partner Reseller Quote has been signed by both Partner Reseller and Customer, (iii) invoices will be issued to Customer by Partner Reseller instead of Flexential and charges on those invoices will be due and payable by Customer to Partner Reseller instead of Flexential within the time period provided in the Partner Reseller Quote or the applicable invoice, and (iv) Customer must register any disputes regarding invoiced amounts with both Partner and Reseller pursuant to the applicable provisions of the Partner Reseller Quote or invoice from the Partner Reseller, and with Flexential pursuant to the provisions of this MSA. Except as set forth in the preceding sentence, in the event of any conflict between the terms of this MSA, on the one hand, and the terms of any Partner Reseller Quote or any other agreement between Customer and the Partner Reseller, on the other hand, the terms of this MSA shall control.
- k. **Maximum Agreement Liability:** Notwithstanding any other provision of this MSA, the City's maximum payment obligation will not exceed SIX MILLION DOLLARS (\$6,000,000.00) (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.

- I. **Taxes, Charges and Penalties:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115

- 7. **ANNUAL ESCALATOR.** The monthly recurring charges for all Services will increase 2% per year beginning on each anniversary of the applicable Service Term Start Date.

**8. PRICING.**

- a. **Colocation Services.** See attached Quote.
- b. **Non-Colocation Services.** Flexential shall provide a discount of not less than 45% off of the current (as of the Effective Date) list price, as provided to Customer prior to the Effective Date, for all non-colocation services with these limited exceptions: (i) Cross Connects; (ii) IP Addresses; (iii) Remote Hands/Warm Hands; (iv) Cage Electronic Security; (v) Software Subscription Services (e.g., Microsoft, Red Hat, Double-Take); (vi) Third-party-delivered Managed Services provided by Versiant, VirtusaPolaris (Apparatus), SQL Sentry, or BAE; (vii) Managed Services priced below \$50; and (viii) Object Based Storage. Services not existing as of the Effective Date will be negotiated at a competitive price. Flexential reserves the right to correct errors or omissions contained in the price list provided to Customer.
- c. **Order Form Pricing.** When the City requests a Service, an Order Form shall be completed utilizing the pricing as defined above. Each Order Form shall have its own term. Should the term exceed one year, the pricing within that Order Form may be increased no more than 2% per annum.

**9. TERMINATION AND REDUCTION IN SERVICES.**

- a. **Termination for Breach.** Either party may terminate the MSA without liability if the other party materially breaches any representation, warranty or obligation in the MSA 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 MSA provision(s) that have been breached; provided, that the cure period with respect to Customer's failure to pay an undisputed invoice in the time and manner described in Section 6 shall be ten (10) days (instead of thirty (30) days) from receipt of such notice; provided, further, that Customer may not terminate the MSA pursuant to this Section as a result of Service-related issues that are subject to the sole and exclusive remedies provided in Section 16. There is no cure period for breach of Sections 2(a) ("Access and Use"), 14 ("Equipment and Software"), 15 ("Acceptable Use Policy and Policies and Procedures"), 23(b)(x)-(y) (certain of Customer's "Representations, Warranties and Agreements"), or any other material breach which is not reasonably capable of cure and the non-breaching party may immediately terminate the MSA upon written notice in the event of a breach by the other party of these Sections. Either party shall have the right to immediately terminate the MSA 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.
- b. **Further Assurances.** If Flexential reasonably believes that Customer will not be able to perform its payment obligations hereunder, and Customer is unable to provide reasonable written assurances of due performance within ten (10) days after written demand from Flexential, Flexential may suspend Services until such reasonable written assurances are provided, or terminate the MSA without penalty to Flexential by written notice to Customer.
- c. **Service Modifications.** Customer may request in writing a modification of the Services provided the total fees for Services provided remain the same or increase. Upon receipt of such notice, the parties will work together in good faith to discuss the

modifications and a reasonable implementation timetable. Any modifications are subject to the availability of Flexential resources and comparability of applicable product margins. By way of example and not limitation, if Customer receives Service X for \$1,000 per month, Customer may request that it instead receive Service Y and Z totaling \$1,000 per month.

- d. **Termination for Convenience.** Customer may terminate any Service for its convenience prior to the end of the applicable Service Term, provided that Customer gives Flexential at least 60 days prior written notice of such termination and pays Flexential an early termination fee in an amount equal to: (i) 100% of the remaining monthly recurring charges for each terminated Service for months one through 12 of the City's then-current budget year; plus (ii) any installation or other fees identified on the Quote for the terminated Service as having been previously waived; plus (iii) the unamortized portion of any commissions paid by Flexential to any broker, agent or other authorized representative of Customer. 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 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 MSA pursuant to Section 9(a). Customer shall be liable for the early termination fee if Flexential terminates this MSA pursuant to Sections 9(a) or 9(b). Notwithstanding the preceding sentence, the City may terminate the Agreement if Flexential or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Flexential's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

10. **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. 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. In the event that Customer Equipment poses a threat to Flexential's ability to provide service to other customers (e.g., malfunctioning or overheating equipment, spam or DDoS attack on Customer's IP address, etc.), Flexential may immediately disconnect all or a portion of the Service or, in the case of DDoS attacks that impact infrastructure services for other Flexential customers despite Flexential's automated scrubbing service, blackhole the affected IP address, with prompt notice to Customer by email and phone. 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. 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, or to interfere with or disrupt other network users, other Flexential customers, network services or network equipment.

11. **HAZARDS OR INTERFERENCE.** Upon notice from Flexential, Customer will promptly eliminate any hazard, interference or service obstruction that any hardware or software used by Customer, whether or not provided by Flexential, is causing, or is likely to cause. If Customer requests Flexential's assistance in removing any such hazard, interference or service, Flexential may, but is not required to assist in such removal.

12. **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 on the R&R Matrix attached as Exhibit D to the MSA. Other than with respect to such responsibilities identified as a Flexential responsibility on any such R&R matrix and as set out in the Managed Services Addendum (Exhibit E) regarding Managed Services by Flexential, Customer acknowledges and agrees that Flexential is not responsible for the integrity or security of any Customer Data. Although Flexential may offer various security-related Services, Flexential agrees to perform only the specific security Services set forth in the Quote and as may be described in more detail in the applicable R&R Matrix and as applicable, the Managed Services Addendum.
- b. **Customer Data.** Subject to the provisions of Sections 2(f) and 3(d) regarding Flexential's ability to dispose of Customer Data as stated therein, as between Flexential and Customer, Customer Data is, and at all times will remain, the exclusive property of Customer.



- c. **Customer Responsibilities.** Customer shall use commercially reasonable security precautions in connection with the use of the Services (including encrypting Regulated Customer Data) and shall require its end users and customers to use commercially reasonable security precautions. It is Customer's responsibility to ensure logical security protection and backup and recovery of Customer Data, except to the extent Flexential has specifically agreed to provide such Services in a Quote. Customer agrees to notify Flexential promptly upon becoming aware of a security incident affecting, or the misuse or unauthorized disclosure of, the Customer Equipment in the Facility or 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 illegal purpose. Customer must apply and, with respect to Services managed by Flexential, hereby consents to Flexential's application of, all security patches or updates to Customer's software, firmware or operating system in order to mitigate the possibility of system compromise. Unpatched systems that cause a security risk to other Flexential customers or the Flexential Network may be shut down or blocked in Flexential's sole discretion.

13. **CUSTOMER PORTAL.** Flexential will provide Customer with an account and password to access the Customer Portal. The "**Customer Portal**" is 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. Customer is responsible for all activities that occur under Customer's account on the Customer Portal.

14. **EQUIPMENT AND SOFTWARE.**

- a. **Rights To.** Customer represents, warrants and covenants that it owns or has the legal right and authority, and will continue to own or secure the legal right and authority, during the Term, to use Customer Equipment (if any) collocated in the Facility and any software provided by Customer in connection with use of the Services.
- b. **Software Terms.** With respect to any third-party software provided by Flexential for Customer's use in connection with the Services, including, without limitation, any Microsoft, Anti-Virus, Double-Take, Red Hat or NetApp software (collectively "**Software**") except as otherwise set out herein, Customer represents, warrants and covenants that it will abide by the Additional Software Terms attached hereto as Exhibit F (the "**Additional Software Terms**"), which Flexential may amend at its discretion. The Additional Software Terms are hereby incorporated into the MSA. In the event of any conflict between these Standard Terms and Conditions 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.

15. **ACCEPTABLE USE POLICY AND POLICIES AND PROCEDURES.** Customer shall, and shall cause its customers and other third-party users (including contractors, subcontractors or invitees) of the Services to, comply with: (a) Flexential's Acceptable Use Policy ("**AUP**") posted on Flexential's website, as it may be updated from time to time by Flexential in its discretion, and (b) the Policies and Procedures. The AUP and the Policies and Procedures are incorporated by reference into the MSA. Flexential will provide Customer with at least 30 days prior written notice (e-mail acceptable) of any material modifications to the AUP or the Policies and Procedures.

16. **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 one credit of 1/30th of the monthly recurring charges per day associated with the related Service. 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 within ten (10) business days of a service interruption and will be reflected as a credit on the next month's invoice. No credits will be issued, nor shall the Satisfaction Guarantee provided for in Section 16(b) 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 16 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 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 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 within 15 days following delivery of the fourth such SLA Disruption Notice. Any Service termination by Customer pursuant to this Section 16(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 16(a) and 16(b) 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.
- d. **New SLAs.** From time to time, Flexential may elect to add new services to its general suite of service offerings; to the extent Customer receives such new Services, the applicable SLA posted in the Customer Portal (if any) will govern.

**17. SUSPENSION OF SERVICES.** Flexential reserves the right to suspend all Services in the event: (a) Flexential has the right to terminate the MSA pursuant to Section 9(a) 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 (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 (including any SLA violations) that Customer may incur as a result of any suspension of Services pursuant to this Section.

## **18. INSURANCE.**

- a. **Customer Obligations.** With respect to general liability, Flexential recognizes that Customer is self-insured for general liability in accordance with the provisions of the Colorado Governmental Immunity Act, 24-10-101 et seq. In addition, Customer shall require each of its contractors who perform work in or on the Facility to meet the following insurance requirements: (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 with combined single limits of 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; and (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 and electronic data processing media insurance in amounts not less than \$1,000,000 per occurrence. Customer shall maintain insurance covering all Customer Equipment, unless the cause of loss is gross negligence on the part of Flexential. Customer will provide a self-insurance letter outlining Customer's self-insurance. In the event a contractor or agent of Customer causes damage to the Facility or any of Flexential's equipment or improvements in such Facility or causes other damage to Flexential in the performance of such contractor's work in the Facility, and the City is not named as an additional insured under such contractor's insurance coverage, the City agrees diligently to pursue a claim for reimbursement for such damage from such contractor's insurance carriers and to pay to Flexential any and all amounts received by the City in connection with such claim.

- b. **Flexential Obligations.**

General Conditions: Flexential agrees to secure, at or before the time of execution of this MSA, the following insurance covering all operations, goods or services provided pursuant to this MSA. Flexential shall keep the required insurance coverage in force at all times during the term of this MSA, or any extension thereof, during any warranty period, and for three (3) years after termination of this MSA. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this MSA. Such notice shall reference the City contract number listed on the signature page of this MSA. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Flexential shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in

excess of a deductible or self-insured retention, the City must be notified by Flexential. Flexential shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this MSA are the minimum requirements, and these requirements do not lessen or limit the liability of Flexential. Flexential shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this MSA.

**Proof of Insurance:** Flexential shall provide a copy of this MSA to its insurance agent or broker. Flexential may not commence services or work relating to this MSA prior to placement of coverages required under this Agreement. Flexential certifies that the certificate of insurance attached as Exhibit G, preferably an ACORD certificate, complies with all insurance requirements of this MSA. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this MSA shall not act as a waiver of Flexential's breach of this Agreement or of any of the City's rights or remedies under this MSA. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Flexential and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**Waiver of Subrogation:** For all coverages required under this Agreement, Flexential's insurer shall waive subrogation rights against the City.

**Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this MSA) shall procure and maintain similar coverages required of Flexential. Flexential shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages.

**Workers' Compensation/Employer's Liability Insurance:** Flexential shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**Commercial General Liability:** Flexential shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**Business Automobile Liability:** Flexential shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing Services under this MSA.

**Property Insurance:** All Risk property insurance covering loss or damage to the Flexential Equipment for the full replacement value thereof, unless the cause of loss is gross negligence on the part of Customer. Flexential shall not obtain insurance for Customer Equipment.

**Technology Errors & Omissions:** Flexential shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

**Additional Provisions:**

- (A) For Commercial General Liability, the policy must provide the following:
  - (i) That this MSA is an Insured Contract under the policy;
  - (ii) Defense costs are outside the limits of liability;
  - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (B) For claims-made coverage:
  - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

- 19. NOTICES.** Notices hereunder will be given in writing: (a) in person, (b) via express courier (e.g. FedEx), (c) via U.S Postal Service, return receipt requested, or (d) via e-mail. Notices delivered in person or via express courier will be deemed properly given when delivered. Notices delivered via the U.S. Postal Service will be deemed properly given three (3) business days after being deposited with the U.S. Postal Service, return receipt requested. Notices delivered via e-mail will be deemed properly given when sent. Notices to City will be delivered to:

Chief Information Officer or Designee  
201 West Colfax Avenue, Dept. 301  
Denver, Colorado 80202

With a copy to:

Technology Services | Office of the CTO  
201 W Colfax Ave Dept 301  
Denver, Colorado 80202

Legal Notices to Customer shall be delivered to: Denver City Attorney's Office, 1437 Bannock St., Room 353, Denver, Colorado 80202. Unless otherwise provided herein, notices will be delivered to the addresses most recently provided by a party for notice purposes, until such time as either party informs the other of a change in accordance with this Section.

- 20. 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 thirty (30) days prior written notice.
- 21. 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. With respect to Colocation Services, Customer is hereby granted only a revocable license to occupy the Equipment Space and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances. Except as set forth in Section 27 ("Assignment or Transfer"), Customer further agrees that none of the MSA or any interest created herein may be assigned, subleased, mortgaged, encumbered, or otherwise transferred by any act or omission on the part of Customer, directly or indirectly, to any third party.
- 22. INDEMNITY.**
- a. Flexential agrees to defend, indemnify, reimburse and hold harmless Customer, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property from third parties arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the Customer. This indemnity shall be interpreted in the broadest possible manner to indemnify Customer for any acts or omissions of Flexential or its subcontractors either passive or active, irrespective of fault, including Customer's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of Customer.
  - b. Flexential's duty to defend and indemnify Customer shall arise at the time written notice of the Claim is first provided to Customer regardless of whether Claimant has filed suit on the Claim. Flexential's duty to defend and indemnify Customer shall arise even if Customer is the only party sued by claimant and/or claimant alleges that Customer's negligence or willful misconduct was the sole cause of claimant's damages.
  - c. Flexential shall defend any and all Claims which may be brought or threatened against Customer and shall pay on behalf of Customer any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of Customer will be in addition to any other legal remedies available to Customer and will not be the Customer's exclusive remedy.
  - d. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Flexential under the terms of this indemnification obligation. Flexential is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the Customer's protection.

- e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

### 23. REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

- a. **Flexential.** Flexential represents and warrants as follows: (i) it has full power and authority to enter into this MSA, (ii) the execution of the MSA does not violate any agreement to which Flexential is a party; and (iii) Flexential shall comply with all applicable federal, state and local laws in the performance of the Services.
- b. **Customer.** Customer represents and warrants as follows: (i) it has full power and authority to enter into this MSA, (ii) the execution of the MSA does not violate any agreement to which Customer is a party; and (iii) 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 with Flexential that: (x) Customer shall not make any material alterations to the Equipment Space without first obtaining the written consent of Flexential; and (y) Customer shall not allow personnel or contractors to enter the Equipment Space who have not been approved by Flexential in advance.

24. **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, NON-INFRINGEMENT 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. EXCEPT TO THE EXTENT FLEXENTIAL FAILS TO COMPLY WITH ITS OBLIGATIONS IN THE R&R MATRIX, AND AS APPLICABLE, THE MANAGED SERVICES ADDENDUM, 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, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING). ANY SUCH DAMAGE OR LOSS WILL BE THE EXCLUSIVE RESPONSIBILITY OF THE THIRD PARTY WHO CAUSED SUCH LOSS OR DAMAGE. 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.

25. **LIMITATION ON LIABILITY.** EXCEPT FOR (A) FLEXENTIAL'S INDEMNIFICATION OBLIGATIONS, (B) BREACH OF FLEXENTIAL'S OBLIGATIONS REGARDING REGULATED CUSTOMER DATA RESULTING IN AN UNAUTHORIZED DISCLOSURE OF REGULATED CUSTOMER DATA, (C) THIRD PARTY CLAIMS ARISING FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AND (D) PERSONAL INJURY AND/OR DEATH, 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 GREATER OF: (Y) \$2.0 MILLION, OR (Z) THREE TIMES THE AMOUNTS PAID OR PAYABLE IN RESPECT OF ALL SERVICES PURCHASED BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT WHICH CAUSED THE DAMAGES OR INJURY. THE ENTIRE CUMULATIVE LIABILITY OF FLEXENTIAL AND THE FLEXENTIAL INDEMNIFIED PARTIES AS TO (1) FLEXENTIAL'S INDEMNIFICATION OBLIGATIONS (2) UNAUTHORIZED DISCLOSURE OF REGULATED CUSTOMER DATA, AND (3) THIRD PARTY CLAIMS ARISING FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, 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 \$5,000,000; PROVIDED, HOWEVER, THAT FLEXENTIAL SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED DISCLOSURE OF REGULATED CUSTOMER DATA IF CUSTOMER FAILS TO ENCRYPT REGULATED CUSTOMER DATA AS REQUIRED BY SECTION 12(C). NOTWITHSTANDING THE CAP ON UNAUTHORIZED DISCLOSURE OF REGULATED CUSTOMER DATA IN THIS SECTION 25, AT SUCH TIME AS CUSTOMER BEGINS PURCHASING MANAGED SERVICES, FLEXENTIAL AND CUSTOMER AGREE TO NEGOTIATE AN INCREASE IN SUCH CAP.

FLEXENTIAL'S LIABILITY FOR PERSONAL INJURY OR DEATH AT A FACILITY WILL BE UNCAPPED. 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, 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.

- 26. 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.
- 27. ASSIGNMENT OR TRANSFER.** 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 conditioned, delayed or withheld. Notwithstanding the foregoing, 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. In addition, 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. Subject to the foregoing, the MSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns only. Customer may permit its affiliated entities to use the Services, provided that (i) Customer shall inform such affiliated entities of the terms and conditions of this MSA, and (ii) Customer shall be directly responsible and liable to Flexential for any breach of this MSA resulting from such use of the Services by Customer's 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.
- 28. ENTIRE UNDERSTANDING.** The MSA, together with any exhibits hereto and all referenced documents (including all Quotes executed pursuant to this MSA, the Additional Software Terms, AUP, Additional Terms and Policies and Procedures), 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, or other communications between the parties with respect to the subject matter hereof.
- 29. GOVERNING LAW AND VENUE.** This MSA will be construed and enforced in accordance with applicable federal law and the laws of the State of Colorado. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District. Flexential shall perform or cause to be performed all services, and Customer shall perform its obligations in this MSA, in full compliance with all applicable laws, rules, regulations and applicable codes of the United States, the State of Colorado; and, as to Customer, with applicable provisions in the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
- 30. Disputes:** The parties will attempt in good faith to resolve any Dispute within thirty (30) days of notice of a Dispute through discussions between themselves at the operational level. 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.
- 31. CONFIDENTIALITY.**
- a. Confidential Information.** The parties acknowledge that each party (the **"Disclosing Party"**) may disclose to the other party (the **"Recipient"**), in connection with the MSA, confidential information relating to the Disclosing Party's business, including without limitation, information regarding the Disclosing Party's products, services or offerings; audit and security reports; the

Disclosing Party's business strategies, policies or practices; information received from others that Disclosing Party is obligated to treat as confidential; the Services described in the Quote and, in the case of Flexential, data center designs (collectively, "**Confidential Information**"). Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information 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, provided such partner(s) are bound to a confidentiality provision substantially similar to paragraph (a) of this Section.

- 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 31(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).
- c. **Breach.** Each party acknowledges that all of the Disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the Disclosing Party, the degree of which would be difficult to ascertain. Accordingly, each party agrees that the Disclosing Party will have the right to seek an immediate injunction enjoining any breach or alleged breach of this Section, wherever it deems appropriate, as well as the right to pursue any and all other rights and remedies available at law or in equity in the event of such a breach or alleged breach.
- d. **Colorado Open Records Act.** The parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Flexential of such request in order to give Flexential the opportunity to object to the disclosure of any of its documents which it marked or deems as proprietary or confidential material. In the event that Flexential objects to the disclosure of any materials to a requestor Flexential assumes all responsibilities for the defense of such disclosure and in the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and, if Flexential objects to such disclosure, Flexential shall, at its sole cost and expense, intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same.

## 32. COMPLIANCE.

- a. **Business Associate Agreement.** Customer agrees to notify Flexential before using the Services to create, receive, transmit, use or disclose "Protected Health Information" as defined in regulations established in accordance with the Health Insurance Portability and Accountability Act ("**HIPAA**"), including by maintaining any Protected Health Information on Customer Equipment colocated in the Facility, or on Flexential Equipment, governed by the Business Associate Agreement ("**BAA**"), attached as Exhibit H.
- b. **Data Protection Addendum.** Customer agrees to notify Flexential before using the Services in a manner that may involve the processing by Flexential of any personal data subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("**GDPR**"), including without limitation before disclosing any such personal data to Flexential, or storing any such personal data on Customer Equipment colocated in the Facility or on Flexential Equipment. As mutually agreed following such notification by Customer, the parties shall cooperate in good faith to prepare and enter into a mutually agreeable Data Protection Addendum ("**DPA**") based on Flexential's form DPA. If the

parties are unable to execute a DPA within a reasonable period of time, either party may terminate without penalty the applicable Services that involve Flexential's processing of personal data subject to GDPR, upon thirty (30) days prior written notice.

- c. **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.
- d. **Responsibility.** Customer acknowledges and agrees that Flexential is neither responsible for knowing what type of 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. 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 MSA as may be required.
- e. **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.

### 33. MISCELLANEOUS.

- a. **Counterparts.** The MSA and any Quote may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. The MSA may be executed through incorporation by reference into a Quote executed by Customer and Flexential (including, for the sake of clarity, any entity included within the definition of "Flexential" in this MSA). In the event any signature is delivered by facsimile or by electronic signature, such signature will create a valid and binding obligation on the executing party with the same force and effect as if such facsimile or electronic signature were an original thereof.
- 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 respecting 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. **Severability.** If any provision of the MSA is found by a court of competent jurisdiction to be invalid or unenforceable, such provision will be severed and will be inoperable, and, provided that the fundamental terms and conditions of the MSA remain legal and enforceable, such finding will not affect the validity or enforceability of the MSA as a whole or of any other provision of the MSA.
- d. **Modifications.** Except to the extent specifically set forth herein: (i) the MSA may not be modified except by a writing signed by an authorized signatory of each party, and (ii) no waiver, modification or amendment of the MSA will be effective unless made in a writing signed by the party to be bound.
- e. **Waiver.** 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.
- f. **Independent Contractors.** Nothing in the MSA or in the course of dealing between Flexential and Customer pursuant hereto will be deemed to create between Flexential and Customer (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship other than that of independent contractors with respect to each other.
- g. **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.
- h. **Third Party Beneficiaries.** Except as otherwise explicitly agreed, there will be no third party beneficiaries to the MSA.



- i. **Force Majeure.** Notwithstanding Section 16, 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.
- j. **Non-Solicitation.** Intentionally omitted.
- k. **Survival.** The provisions of Sections 4(b), 6, 9(d), 16, 19, 22, 23-26, 31 and 33(k) along with all other provisions which by their nature are intended to survive, will survive the expiration or termination of the MSA.
- l. **Examination of Records:** 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 any pertinent books, documents, papers and records of Flexential, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.
- m. **No Authority to Bind City to Contracts:** Flexential lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
- n. **No Discrimination in Employment:** In connection with the performance of work under this contract, Flexential may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Flexential shall insert the foregoing provision in all subcontracts.
- o. **City Execution of Agreement:** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
- p. **Electronic Signatures and Records:** Flexential consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- q. **Advertising and Disclosure:** Neither party shall include any reference to this MSA or to services performed pursuant to this MSA in any of such party's advertising or public relations materials without first obtaining the written approval of (i) as to the City, the CIO; and (ii) as to Flexential, any officer or director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Flexential shall notify the CIO in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
- r. **Prohibited Terms.** Any term included in this Agreement that requires the City to indemnify or hold Flexential or others harmless; requires the City to agree to binding arbitration; limits Flexential's liability for damages resulting from death or bodily injury caused by the negligence or willful misconduct of Flexential or Flexential's employees or agents; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

**Contract Control Number:**

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:

By\_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_



Contract Control Number: TECHS-201947808-00

Contractor Name: FLEXENTIAL COLORADO CORP

By: Gunnar Stinnett

Name: GUNNAR STINNETT  
(please print)

Title: REGIONAL VICE PRESIDENT  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)





Flexential | 8809 Lenox Pointe Dr, Suite G | Charlotte, NC 28273 | [www.flexential.com](http://www.flexential.com)

Final Proposal

Quote Q-35666

June 25, 2019

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**Presented To**

City and County of Denver  
Technology Services

**Prepared By**

Flexential

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## Cover Sheet

### FLEXENTIAL

Address	8809 Lenox Pointe Drive, Suite G, Charlotte, NC 28273
State of Incorporation	Delaware
Name	Gunnar Stinnett
Phone	(720) 354-3790
Email	gunnar.stinnett@flexential.com
Legal Notices	8809 Lenox Pointe Drive, Suite G, Charlotte, NC 28273
Legal Notice Email	legal@flexential.com

### CITY AND COUNTY OF DENVER INFORMATION – PRIMARY CONTACT

	<b>Primary Contact*</b>
Contact Name	Denver City Attorney's Office
Street Address	1437 Bannock St.
City, State, Zip	Denver, Colorado, 80202
Phone	
Email	

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

### AGREEMENT INFORMATION

Initial Term	60.0 months
Service Credits	Waived Service Charges - Subject to the terms of this paragraph, during the first 4 billing months during the initial Service Term of this Quote (starting from the date of first billing of the first Service and continuing for a 4 month period thereafter), Customer will receive a one-time credit equal to the invoiced recurring monthly charges for the Services on this Quote for such month (excluding any overage charges and one-time charges, such as installation and set-up charges). If any Service on this Quote is terminated prior to the conclusion of the initial Service Term of this Quote (except by Customer for cause pursuant to the MSA or in accordance with the satisfaction guarantee set forth in the SLA), Customer will be responsible for repayment to Flexential of 100% of the credit received by Customer as set forth above with respect to such Service, along with the early termination fee set forth in the MSA.
Promotion Terms	Waived Service Physical Migration Charges - Subject to the terms of this paragraph, Customer will receive credit for invoiced charges for Physical Migration Services (CLPW-MIGRATE) shown on this Quote. Such credits will be applied to each invoice on which the applicable charges for Physical Migration Services appear. If any Service on this Quote is terminated prior to the conclusion of the initial Service Term (except by Customer for cause pursuant to the MSA or in accordance with the satisfaction guarantee set forth in the SLA), Customer will be responsible for repayment to Flexential of 100% of the credit received by Customer as set forth above, along with the early termination fee set forth in the MSA.
Special Terms	Termination of <b>CORA EXEMPT</b> Services; Notwithstanding anything to the contrary in the MSA, Customer shall terminate, without payment of an early termination fee, any/all Services located in the <b>CORA EXEMPT</b> data center on or before November 30, 2019, by giving Flexential at least 30 days prior written notice of such termination. Customer acknowledges that the <b>CORA EXEMPT</b> data center is closing and that in no event shall Services be provided in the <b>CORA EXEMPT</b> data center after November 30, 2019. Upon such notice from Customer, the parties shall execute a Change Order reflecting the reduction in Services.

This **Master Services Agreement** 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" in the Standard Terms and Conditions, and City and County of Denver ("**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.

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 Exhibits identified in the Terms and Conditions

**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 and County of Denver**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_



**Document Date:** June 25, 2019

**City and County of Denver**

**Account Executive:** Brian LaComb

**Exhibit A**

**Attention:** Denver City Attorney's Office  
1437 Bannock St.  
Denver, Colorado 80202

**Billing ID:**

**Quote #:** Q-35666

<b>Data Center Interconnect:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>Data Center Interconnect Bandwidth</b>	Add	10000.0	Mbps			
Private Layer 2 connection between points on the Flexential backbone. Available in 50 Mb increments up to 500 Mbps, and 1Gb options up to 10 Gbps. BW in excess of 1Gb is dependent on location.						
<b>Data Center Interconnect:</b> CORA EXEMPT <b>Total:</b>					<b>\$850.00</b>	<b>\$825.00</b>

<b>Colocation:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
<b>20A 120V AC Power - Single Phase</b>	Add	1.0	Each			
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs.						
<b>Secure Cage Space (excluding power) - ROFR</b>	Add	433.0	SQFT			
Cage hold fee for a secure cage co-location space.						
<b>Secure Cage Space - kW based pricing models</b>	Add	541.0	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.						
<b>kW commit - all in power pricing</b>	Add	99.0	kW			
kW power threshold available for customer usage. All in kW power pricing with no additional metered power pass through.						
<b>Cage Electronic Security - Badge+BIO</b>	Add	1.0	EA			
This service provides a proximity badge reader with biometric scanner, access reporting, and associated management as an add-on to a Flexential data center cage space subscription.						
<b>30A 208V AC Power - Single Phase</b>	Add	11.0	Each			
Primary and redundant power whip including L6-30 twist-lock receptacle. Includes two rack mount PDUs.						
<b>Colocation:</b> CORA EXEMPT <b>Total:</b>					<b>\$11,793.75</b>	<b>\$20,243.75</b>

<b>IP Bandwidth:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
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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 July 25, 2019.  
Prices do not include applicable sales tax.  
This document is private and confidential.





**Document Date:** June 25, 2019

**City and County of Denver**

**Account Executive:** Brian LaComb

**Exhibit A**

**Attention:** Denver City Attorney's Office  
1437 Bannock St.  
Denver, Colorado 80202

**Billing ID:**

**Quote #:** Q-35666

**Burstable Internet Bandwidth with 95th Percentile Billing of the Higher of In or Out Usage**

Add 2000.0 Mbps

Internet bandwidth billed on the 95th percentile of monthly usage. Billing calculation is based on the higher of inbound or outbound traffic from the Flexential network. Public IP addresses and one or more port subscriptions are required. Subscriptions under 100 Mbps are burstable to 100 Mbps. Larger subscriptions are burstable to twice the committed quantity without special dispensation.

**IPv4 Allocation and VLAN: /28 or 16 IP Addresses**

Add 1.0 EA

Public IPv4 address allocation of 16 IP addresses, known as a /28, delivered via a dedicated VLAN. Flexential reserves 5 addresses of a primary allocation for core network interfaces. Customer will receive 11 usable addresses. If this is a secondary, routed block Customer will receive 14 usable addresses.

**Transport Service 10 Gbps Network Port and Cross Connect**

Add 2.0 Port

Fiber cross connect and 10 gigabit per second network access switch port used to deliver Flexential Internet access, Virtual Private Line (VPL), or Ethernet Private Line (EPL) services. Port will logically be configured to limit bandwidth to twice the associated Internet or VPL/EPL commitment level unless special dispensation is warranted. Setup fees include running fiber optic media to Customer demarcation. Bandwidth, IP addresses require separate subscriptions. Multiple connections are needed if redundancy is required.

**BGP Peering With Flexential Core Network**

Add 1.0 EA

Border Gateway Protocol (BGP) peering session with multihomed Customer within a Flexential data center. Service requires a /56 of IPv6 space or /29 of IPv4 space, which is used to establish the peering session. Customer will peer with two Core routers at the Flexential data center for redundancy. BGP peering in multiple centers requires multiple instances of BWMS-BGP-PEERING-V1 on contract (one per center).

**IP Bandwidth:** CORA EXEMPT **Total:** \$1,500.00 \$3,255.00

<b>Data Center Interconnect:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
<b>Data Center Interconnect Bandwidth</b>	Add	10000.0	Mbps			
Private Layer 2 connection between points on the Flexential backbone. Available in 50 Mb increments up to 500 Mbps, and 1Gb options up to 10 Gbps. BW in excess of 1Gb is dependent on location.						
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>Data Center Interconnect:</b> CORA EXEMPT <b>Total:</b>					<b>\$850.00</b>	<b>\$825.00</b>

<b>Cross Connect Service:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
<b>Carrier Cross Connect - Fiber</b>	Add	1.0	EA			
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.						
<b>Cross Connect Service:</b> CORA EXEMPT <b>Total:</b>					<b>\$225.00</b>	<b>\$225.00</b>

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.

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**Document Date:** June 25, 2019

**Account Executive:** Brian LaComb

**Attention:** Denver City Attorney's Office  
1437 Bannock St.  
Denver, Colorado 80202

**City and County of Denver**

**Exhibit A**

**Billing ID:**

**Quote #:** Q-35666

Colocation: CORA EXEMPT	Change	Qty	Units		Setup Total	Monthly Total
<b>20A 120V AC Power - Single Phase</b>	Add	1.0	Each			
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs.						
<b>1/2 Cabinet Co-location (20 rack units of useable space)</b>	Add	1.0	EA			
Steel frame cabinet with adjustable mounting rails. Front and rear locking doors. (power sold separately)						
<b>Colocation: CORA EXEMPT Total:</b>					<b>\$775.00</b>	<b>\$625.00</b>

Cross Connect Service: CORA EXEMPT	Change	Qty	Units		Setup Total	Monthly Total
<b>Carrier Cross Connect - Fiber</b>	Add	5.0	EA			
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.						
<b>Cross Connect Service: CORA EXEMPT Total:</b>					<b>\$1,125.00</b>	<b>\$1,125.00</b>

Colocation: CORA EXEMPT	Change	Qty	Units		Setup Total	Monthly Total
<b>Physical Migration</b>	Add	1.0	EA			
Physical Relocation and Data Center Migration.						
<b>Colocation: CORA EXEMPT Total:</b>					<b>\$75,012.00</b>	<b>\$0.00</b>

Cross Connect Service: CORA EXEMPT	Change	Qty	Units		Setup Total	Monthly Total
<b>Carrier Cross Connect - Fiber</b>	Add	1.0	EA			
Connection between carrier demarcation point and Customer cabinet or cage using single mode or multi-mode fiber.						
<b>Cross Connect Service: CORA EXEMPT Total:</b>					<b>\$225.00</b>	<b>\$225.00</b>

Colocation: CORA EXEMPT	Change	Qty	Units		Setup Total	Monthly Total
<b>20A 120V AC Power - Single Phase</b>	Add	1.0	Each			
Primary and redundant power whip including L5-20 twist-lock receptacle. Includes two rack mount PDUs.						

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 July 25, 2019.  
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**Document Date:** June 25, 2019

**City and County of Denver**

**Account Executive:** Brian LaComb

**Exhibit A**

**Attention:** Denver City Attorney's Office  
1437 Bannock St.  
Denver, Colorado 80202

**Billing ID:**  
**Quote #:** Q-35666

<b>1/2 Cabinet Co-location (20 rack units of useable space)</b>	Add	1.0	EA	
Steel frame cabinet with adjustable mounting rails. Front and rear locking doors. (power sold separately)				
<b>Colocation:</b> CORA EXEMPT				<b>Total:</b>
				<b>\$775.00</b>
				<b>\$625.00</b>

<b>Local Carrier Connect:</b> CORA EXEMPT	<b>Change</b>	<b>Qty</b>	<b>Units</b>		<b>Setup Total</b>	<b>Monthly Total</b>
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>DCI Cross Connect and Port, 10Gb SMF</b>	Add	1.0	EA			
Cross connect and network access switch port for Data Center Interconnect (DCI) service. The service includes one 10 Gb switch port and single mode fiber (SMF) interface per subscription. Bandwidth is not included and requires a separate subscription. Multiple connections are needed if redundancy is required. The service is fixed-rate and the switch port will logically be configured to limit bandwidth to the purchased amount.						
<b>Local Carrier Hotel Connect Bandwidth, 10Gb</b>	Add	1.0	Each			
Provides 10Gb of fixed dedicated bandwidth to local carrier hotel.						
<b>Local Carrier Connect:</b> CORA EXEMPT					<b>Total:</b>	
					<b>\$850.00</b>	<b>\$1,825.00</b>

	<b>Setup</b>	<b>Monthly</b>
<b>Totals:</b>	<b>\$ 93,980.75</b>	<b>\$ 29,798.75</b>



**Notice Required by Applicable State Laws:  
This MSA Includes an Auto-Renewal Provision**

**Exhibit B**

**Flexential Entities**

- A. For Services provided from the Facilities below, Flexential shall mean Flexential Corp., a Delaware corporation, formerly known as Peak 10, Inc.

ATL1	Atlanta - Norcross
ATL2 & ATL2.5	
ATL3	Atlanta - Alpharetta
ATL4	
CIN1 & CIN1.5	Cincinnati
CIN2	
CLT1	Charlotte - South
CLT2	
CLT3	
CLT4 & CLT4.5	Charlotte - North
FLL1	Fort Lauderdale
FLL2	
JAX1	Jacksonville
JAX2	
LOU2	Louisville - Downtown
LOU3	
LOU4	
LOU5	Louisville - East
NAS1	Nashville - Brentwood
NAS4	
NAS2 & NAS2.5	Nashville - Cool Springs
NAS3	
NAS5	Nashville - Franklin
RAL1	Raleigh
RAL2 & RAL2.5	
RAL3	
RIC1	Richmond
RIC2	
TPA1	Tampa - West
TPA2	
TPA3	Tampa - East
Allentown	Philadelphia - Allentown
GSK	Philadelphia - Collegeville
Amsterdam	Amsterdam

- B. For Services provided from the Facilities below, Flexential shall mean Flexential Colorado Corp., a Colorado corporation, formerly known as ViaWest, Inc.

Austin	Austin
InfoMart 1	Dallas - Downtown
InfoMart 2	
InfoMart 3	
InfoMart 4	
InfoMart 4	
Synergy Park	Dallas - Richardson
Plano	Dallas - Plano
Lindon	Salt Lake - Lindon
DeLong	Salt Lake - Downtown
Cottonwood	Salt Lake - Cottonwood
Campus View	Salt Lake - South Valley
West	Salt Lake - Fair Park
Presidents	Salt Lake - Stonebridge
East	Salt Lake- East
Deer Valley	Phoenix - Deer Valley
Cornell	Denver - Aurora
Arapahoe	Denver - Centennial
SOC	
Compark	Denver - Englewood
Wazee	Denver - LoDo
Champa	Denver - Downtown
Chaska	Minneapolis - Chaska
Carson 1	Las Vegas - Downtown
Carson 2	
Lone Mountain	Las Vegas - North
Aloclek C	Portland - Hillsboro
Aloclek D	
Brookwood	Portland - Brookwood
Calgary	Calgary

- C. Flexential Corp. and Flexential Colorado Corp. are authorized agents for each of the above-referenced entities for purposes of entering into the MSA, Quotes, any other agreements incorporated into the MSA, and any amendments thereto with respect to Services to be provided by such entity. Services may be provided by employees or independent contractors of Flexential Corp., Flexential Colorado Corp. or any of their respective subsidiaries.

## 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
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

#### Data Center Network Services

Service Level	Non-compliance
Network availability. Network unavailability shall exist when a particular Customer Port is unable to transmit IP data packets from such Customer Port to the gateway router interface between the Flexential Network and Public Internet via 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
Network cross-connect availability. Customer's network cross-connects begin at the initial piece of Flexential 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 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 connection(s). This SLA does not apply unless Customer subscribes to redundant cross-connects. Downtime during the process of routine failover to the redundant resource is excluded from this SLA.	< 100%
Packet loss between Flexential data centers	>1%
Latency between Flexential data centers	>90 ms

## Redundant Hardware Availability Commitment

Service Level	Non-compliance
Flexential-owned and operated hardware. Unavailability of Flexential owned and operated hardware, consisting of communications, controller, routers, switches, firewalls, other network infrastructure, storage and CPU and/or processing platform for which city has ordered a Redudant unit. Redudant hardware unavailability shall exist when (1) both the primary and the Redudant units that are in production for provision of the Service are unable to operate in accordance with industry standards and cause of unavailability of the Service and (2) such failure is recorded in Flexential's trouble ticket system.	<100% (measured per calendar month and it based on total outage time incurred by the City measured from the time the trouble ticket is opened to the time Flexential confirms that one of the affected units is operational again)

## Cloud Services

Service Level	Non-compliance
Cloud Service availability. Availability for Cloud Service is access to compute, network and storage resources, provided Customer subscribes to 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 IP data packets from such Customer Port to the gateway router interface between the Flexential Network and Public Internet via 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)
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. Recovery time SLA varies per product tier. 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.	Essentials* > 8 hours Prime* > 4 hours Premium* > 2 hours

*\*Essentials, Prime and Premium refer to service names. If no service name is specified on the Quote, the time commitment for "Essentials" shall apply.*

## Data Protection Services

Service Level	Non-compliance
Backup jobs will start within 4 hours of scheduled start time slot*	3 failures in a month
Restores initiated within 30 minutes of receiving the request	Any failure
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure

*\*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.*

## Support Response Commitment

Service Level	Non-compliance
Flexential's Service support for Colocation and Cloud Services is available 24x7x365. Flexential's commitment is to respond to any Critical Incident within 15 minutes of creation of the applicable ticket, and to respond to any non-Critical Incident within two (2) hours of creation of applicable trouble ticket. A "Critical Incident" means that the City's Service (whether Colocation or Cloud) is unavailable or has been materially impacted. "Response" means that a trouble ticket has been created/submitted, the City has been notified of the issue and Flexential representatives are working to resolve the issue.	24x7x365

Exhibit D

R&R Matrix

## Roles & Responsibilities Matrix

Layers	Delivery Description	Standard Colocation	<u>Compliant Colocation</u>	<u>Multi-Tenant Flexential Cloud</u>
<b>Policies, Procedures &amp; Operational Controls</b>				
Policies & Contracts	Information Security Policies supporting operational procedures. Clear definition of SLA's and roles and responsibilities between parties per contractual obligations.	S	S	S



Operational Procedures	Operational procedures specifying management, maintenance, communication, change control, risk management, vulnerability management, incident response, separation of duties, reports and audit.	S	S	S
<b>Infrastructure Management</b>				
<b>Flexential Facility- Physical &amp; Environmental</b>				
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	F
Video	Video surveillance of entry and exit points to raised floor and operations monitoring.	F	F	F
Video Retention	Video logs stored up to 90 days.	F	F	F
Access	Limit access to raised floor through role-based access, isolated phases, and validation procedures through identification, detection and alerting.	F	F	F
Authorization reports	Visitor and authorized access logs, monthly review of activity reports.	F	F	F
<b>Customer Environment-Physical</b>				
Video	Video surveillance and operations monitoring.	C*	F	n/a
Video Retention	Video logs stored up to 90 days.	C*	F	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	F	n/a
Authorization reports	Visitor and authorized access logs, monthly review of activity reports.	C *	F	n/a
Access Control Device	Electronic access control device on scoped environment.	C *	F	n/a
<b>Flexential Perimeter Infrastructure</b>				
Firewall configuration, segmentation, architecture	Redundant firewalls on the network perimeter. Multi-layer network architecture providing segmentation and isolated traffic functionality. Six-month firewall configuration review in conjunction with customer approval.	n/a	n/a	F
Access Control	Unique firewall access control based on role-based requirements, IP restriction and business need.	n/a	n/a	F
Hardening, updates, change alerts (integrity)	Firewall build to industry hardening standard in conjunction with authorized traffic requirements and build approval. Vulnerability management in conjunction with change control practices.	n/a	n/a	F
Monitoring, alerting, IDPS	IDPS, integrity changes, log collection, retention, reporting and alerting.	n/a	n/a	F
Scanning, pen testing	Annual external network penetration testing, monthly external network vulnerability scanning.	n/a	n/a	F
2 factor/ VPN	Firewall native 2 factor soft-token authentication.	n/a	n/a	F
Reports	Firewall activity reports with integrity changes, admin activity, vulnerability scans and IDS.	n/a	n/a	F

<b>Flexential Cloud Infrastructure</b>				
Hardware Platform	Physical hardware platform	n/a	n/a	F
Switches/Routers/UCS/-Secured Architecture	Physical hardware platform designed to protect the virtual stack within a segmented compliant network controlled and managed by Security Operations staff.	n/a	n/a	F
Hardening, updates, change alerts (integrity)	Continuous device hardening, vulnerability and integrity management.	n/a	n/a	F
Monitoring, alerting, IDPS	Device IDPS, integrity changes, log collection, retention, reporting and alerting.	n/a	n/a	F
Scanning, pen testing	Quarterly internal network vulnerability scanning and annual network external and internal penetration testing.	n/a	n/a	F
Access Control	Unique access control based on role-based requirements, IP restriction, vLAN and business need.	n/a	n/a	F
Reports	Security health reports available for audit purposes.	n/a	n/a	F
<b>Flexential Virtualization &amp; Storage</b>				
Switches/FC/SAN/NAS/Compute	SAN platform	n/a	n/a	F
Switches/FC/SAN/NAS/Compute	SAN with dedicated LUNs protecting data within a segmented compliant network fully controlled and managed by authorized staff.	n/a	n/a	F
Backup	Backup solution for Flexential infrastructure management critical files.	n/a	n/a	F
Hardening, updates, change alerts (integrity)	Continuous device hardening, vulnerability and integrity management.	n/a	n/a	F
Monitoring, alerting, IDPS	IDPS, integrity changes, log collection, retention, reporting and alerting.	n/a	n/a	F
Scanning, pen testing	Quarterly internal network vulnerability scanning and annual network external and internal penetration testing.	n/a	n/a	F

Access Control	Unique access control based on role-based requirements, IP restriction, vLAN and business need.	n/a	n/a	F
Reports	Security health reports available for audit purposes.	n/a	n/a	F
Virtualization management	Access administration and ongoing virtualization management and maintenance.	n/a	n/a	F
<b>Customer Storage</b>				
Storage Provisioning, data path and dedication	Creation of dedicated storage volumes or shares.	C	C	F
<b>Customer Cloud</b>				
Provisioning	Blade and resource provisioning in an existing multi-tenant UCS infrastructure; configuration of dedicated profiles.	C	C	F
Administrative Access	Provision administrator access to UCS hardware profile, maintenance and monitoring.	C	C	F
Installation	Installation of management domain.	C	C	F
Management	Operation, initial on-boarding, access control within vCloud/vCenter.	C	C	F
Access	Access to vCloud for customer VM administration.	C	C	F
Patching, updates	Continuous OS patching.	C	C	C*
Application patching, updates	Continuous application patching.	C	C	C
OS-Generated Encryption	Encryption generated by the OS	C	C	C*
<b>Customer Firewall*</b>				
Firewall configuration, segmentation, architecture	Virtual firewall enforcing segmentation and isolated traffic functionality.	C	C	C*
Networking Access	Enforcement of authorized access controls.	C	C	C*
Hardening, updates, change alerts (integrity)	Continuous device hardening, vulnerability and integrity management.	C	C	C*
IDPS Monitoring	IDPS, log collection, reporting and alerting.	C	C	C*
IDS Monitoring	IDS only detection, monitoring and alerting w/portal view	C	C	C*
2 factor/ VPN managed by Flexential	SSL and IPSEC with RSA soft tokens.	C	C	C*

<b>Customer Managed Services*</b>				
Setup, patching and maintenance	Provision, patch and maintain	C	C	C
Configuration Management	Configuration Management enforcement of VMs	C	C	C
VM Access	Enforce authorized access controls through Flexential managed directory services.	C	C	C
<b>Customer Security Services*</b>				
Log Management	VM Log collection, retention, reporting and alerting.	C*	C*	C*
File Integrity Management	VM file integrity change collection and monitoring.	C	C	C*
Vulnerability Scanning	Quarterly internal and external network vulnerability scanning.	C*	C*	C*
Antivirus	Management and monitoring of customer VMs.	C	C	C
Penetration Testing	Annual network external and internal penetration testing.	C*	C*	C
Encryption	Encryption setup and management.	C	C	C
Encryption Key Management	Encryption key management custodian responsibilities.	C	C	C
Backup	Backup console setup and management.	C	C	C*
Reports	Security health reports available for audit purposes.	C	C	C
Security Remediation	Triage and remediation of compromised hosts	C	C	C*
Security Forensics	Acquisition of forensic evidence and investigation of compromise	C*	C*	C*
<b>Customer Database Services*</b>				
SQL Access	Access control lists and active directory.	C	C	C
SQL Data Encryption	Supports SQL native encryption.	C	C	C
SQL Encryption Key Management	Encryption key management custodian responsibilities.	C	C	C
SQL DB Management	Database implementation, management, native logging and support.	C	C	C
<b>Customer DR Services*</b>				
DR Recovery Architecture	Deploy the Cloud Recovery environment, Zerto Cloud Connector and vShield Edge.	n/a	n/a	C

DR Configuration Setup	Configure and install Virtualization Manager and Virtual Replication Appliance.	n/a	n/a	C
DR Application Protection Configuration	Application configuration and management of protection groups for virtual machines.	n/a	n/a	C
DR Test Management	Plan, execute, and document test findings after DR Test exercise. Plan for what to expect during a DR Event, who initiates failover, validates VMs, etc. Documentation on what to do in a DR Event.	n/a	n/a	C
<b>Tape Media Rotation Services*</b>				
Tape Management	Manage frequency of tape rotation, log management, reviewing and reporting of failures and client requests.	C*	C*	C*
Tape Collection & Transportation	Custodian of tape collection, tracking, labeling and transportation to recovery site.	C*	C*	C*
<b>Customer Applications</b>				
Application Security & Maintenance	Application-dependent.	C	C	C
Application Access	Application-dependent.	C	C	C

**\* Responsibility dependent on applicable services purchased by Customer.**

**\*\*PCI and HIPAA Reports are only available for Managed Compliance, Compliant Colo+Managed FW +Security Services & Compliant Colocation (Grandfathered Compliance Enabled Clients are case-by-case)**

**Cloud Recovery Services must include the associated platform**

**The responsibilities for Compliant Colocation arise only when Customer has purchased card reader access to its environment, camera and reporting packages**

**Legend:**

F=Flexential

C=Customer

C\*= Dependant on SOW/Quote

(F if purchased)

S= Shared with each party responsible for environments within their control



**Exhibit E**  
**MANAGED SERVICES ADDENDUM**

This Managed Services Addendum will apply only to Managed Services provided by Flexential to the City pursuant to the MSA; it shall not apply to Colocation Services.

1. **DEFINITIONS.** Whenever used herein, any schedules, exhibits, order forms, or addenda to this MSA, the following terms shall have the meanings assigned below unless otherwise defined therein. Capitalized terms used but not defined herein shall have the meanings given them in the MSA.
  - 1.1. **“CORA”** means the Colorado Open Records Act, §24-72-200.1, et. seq., C.R.S.
  - 1.2. **“Customer Data”** is defined in the MSA.
  - 1.3. **“Data Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized logical access, theft, disclosure, modification, disruption, or destruction of any Customer Data. Data Incidents include, without limitation (i) successful attempts to gain unauthorized logical access to Customer Data; (ii) unwanted disruption or denial of service; or (iii) the unauthorized use of the Flexential Network for the processing or storage of Customer Data. It shall also include any actual or reasonably suspected unauthorized logical access to or acquisition of computerized Customer Data that compromises the security, confidentiality, or integrity of the Customer Data, or the ability of City to access the Customer Data.
  - 1.4. **“MSA”** means the Master Services Agreement to which this Addendum is attached.
  - 1.5. **“Managed Service”** means a Flexential Service that: (i) is provided to City pursuant to this MSA, and (ii) for which Flexential fully manages and assumes operational responsibility for the performance of that Service. The specific functions and responsibilities for management and security will be set forth in an applicable Flexential Guide provided to City and the R&R Matrix applicable to such Service.
  - 1.6. **“Subcontractor”** means any third party engaged by Flexential to aid in providing Managed Services to City.
2. **DATA PRIVACY FOR MANAGED SERVICES**
  - 2.1. Flexential will access Customer Data only for the purpose of fulfilling its duties under this MSA and for City's sole benefit and will not share Customer Data with or disclose it to any third party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Flexential will not use Customer Data for Flexential's own benefit and, in particular, will not engage in “data mining” of Customer Data, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.
  - 2.2. Flexential will provide access to Customer Data only to those Flexential employees, contractors and subcontractors who need to access the Customer Data to fulfill Flexential's obligations under this MSA. Flexential will ensure that, prior to being granted access to the Customer Data, Flexential employees who perform work under this MSA have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection laws applicable to the performance of the Services.
  - 2.3. Intentionally omitted.
  - 2.4. Flexential shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions sufficient to protect against disclosure of Regulated Customer Data, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Regulated Customer Data.
3. **DATA SECURITY AND INTEGRITY FOR MANAGED SERVICES**



- 3.1. Flexential shall have and maintain during the Service Term ISO 27001, HITRUST, SOC 1, SOC 2, SOC 3, FISMA (NIST 800-53), and ITAR reports and certifications, prepared on an annual basis, and such reports and certifications will be available to Customer on the Customer Portal.
- 3.2. Promptly report all Data Incidents of which Flexential becomes aware, including Data Incidents that do not result in unauthorized disclosure or loss of data integrity.
- 3.3. The City agrees to notify Flexential before using the Services to create, receive, transmit, use or disclose Federal Tax Information. Flexential shall comply with the background check requirements defined in IRS Publication 1075.
- 3.4. Flexential will, at its expense, conduct or have conducted the following at least once per year:
  - 3.4.1. A SSAE 18/SOC 2 (or industry standard replacement therefor) of Flexential's security policies, procedures and controls in form and substance substantially similar to those presented to the City by Flexential prior to the date hereof;
- 3.5. Flexential will provide City with evidence of successful completion of the above audit within seven (7) business days of Flexential's receipt of such results.
- 3.6. Based on the results and recommendations of the above audit, Flexential will, within thirty (30) calendar days of receipt of such results, take such action as it determines necessary in order to meet its obligations under this MSA and provide City with written evidence of such actions; provided, however, that Flexential shall not be in breach of this MSA if, in Flexential's reasonable discretion, any such action requires more than thirty (30) days to complete and Flexential is working to complete such action(s).

#### **4. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA IN MANAGED SERVICES**

- 4.1. If Flexential receives a subpoena, warrant, or other legal order, demand or request (collectively, "Order") for disclosure of Customer Data, Flexential shall comply with any such Order and will, unless otherwise prohibited by law or legal process:
  - 4.1.1. notify City in writing promptly upon receiving notice of such Order and prior to any such disclosure;
  - 4.1.2. allow the City to intervene;
  - 4.1.3. cooperate with City's reasonable requests, at City's sole cost and expense, in connection with efforts by City to intervene and quash or modify the Order; and
  - 4.1.4. upon City's request, provide City with a copy of its response.
- 4.2. If City receives an Order seeking Customer Data, City will promptly provide a copy of such Order to Flexential. Flexential will supply, as promptly as practical and, in any event, within seventy-two (72) hours after receipt of the Order, City with copies of data retained on systems owned by Flexential (but excluding Customer Data) and required for City to respond to the Order, and will cooperate with City's reasonable requests in connection with its response, all at City's sole cost and expense.

#### **5. DATA INCIDENT RESPONSE FOR MANAGED SERVICES**

- 5.1. Flexential shall maintain documented policies and procedures for Data Incident and breach reporting, notification, and mitigation as required by applicable law. If Flexential becomes aware of any Data Incident, it shall notify the City (unless prohibited by law) promptly and cooperate with the City regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the City. If there is a Data Incident impacting residents of Colorado or any other jurisdiction, Flexential shall cooperate with the City to satisfy notification requirements as currently defined in either federal, state, or local law. City shall be responsible for the cost of notifying each person who may have been impacted by the Data Incident, except to the extent Flexential fails to comply with its responsibilities in the Roles and Responsibilities Matrix. After a Data Incident, to the extent the

Data Incident resulted from Flexential's failure to comply with its responsibilities in the Roles and Responsibilities Matrix, Flexential shall take steps to remedy Flexential's failure in order to reduce the risk of incurring a similar type of Data Incident in the future, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City.

- 5.2. Unless otherwise prohibited by law or legal process, Flexential shall report, either orally or in writing, to City any Data Incident of which Flexential becomes aware involving Customer Data, or circumstances that Flexential reasonably believes could have resulted in unauthorized access to or disclosure or use of Customer Data, and not authorized by this MSA or in writing by City, including any reasonable belief that an unauthorized individual has accessed Customer Data. Flexential shall make the report to City promptly upon discovery of the unauthorized disclosure, but in no event more than seventy-two (72) hours after Flexential reasonably believes there has been such unauthorized use or disclosure. Oral reports by Flexential regarding Data Incidents will be reduced to writing and supplied to City as soon as reasonably practicable, but in no event more than seventy-two (72) hours after oral report.
- 5.3. Flexential shall cooperate with City in any investigation of the circumstances, extent and causes of the Data Incident. To the extent the Data Incident results from Flexential's failure to comply with its responsibilities in the Roles and Responsibilities Matrix, Flexential shall keep City informed on a regular basis of the progress of its investigation until the issue has been effectively resolved.
- 5.4. To the extent the Data Incident results from Flexential's failure to comply with its responsibilities in the Roles and Responsibilities Matrix, Flexential shall prepare a report identifying, to the extent practicable: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Flexential has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Flexential has taken or shall take to prevent future similar unauthorized use or disclosure.
- 5.5. Within five (5) business days of the date Flexential becomes aware of any such Data Incident, and solely to the extent the Data Incident results from Flexential's failure to comply with its responsibilities in the Roles and Responsibilities Matrix, Flexential shall have completed implementation of corrective actions to remedy the Data Incident, restore City access to the Services as directed by City, and prevent further similar unauthorized use or disclosure.
- 5.6. Flexential shall cooperate fully with City's investigation of and response to any such Data Incident. Except to the extent the Data Incident results from Flexential's failure to comply with its responsibilities in the Roles and Responsibilities Matrix, City shall reimburse Flexential on an hourly basis for the time Flexential spends cooperating with the City at the rate of \$150 per hour.
- 5.7. Except as otherwise required by law, Flexential will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from City.



## **Additional Software Terms**

These Additional Software Terms are a part of the written agreement pursuant to which customers of Flexential Corp., a Delaware corporation formerly known as Peak 10, Inc. or its affiliated entities including without limitation Flexential Colorado Corp., a Colorado corporation formerly known as ViaWest, Inc. ("Flexential") receive Services from Flexential (the "Agreement"). These terms and conditions concern the use of various software products/services provided Customers by Flexential as described below. Please note that not all terms and conditions contained herein may apply to you or the Services you are receiving. Please consult your Agreement and/or your account manager.

### **I. General Definitions.**

- a. "Customer" or "you" means an entity receiving Services from Flexential pursuant to the Agreement.
- b. "Documentation" means technical documentation and operating instructions made available to Customer related to Software.
- c. "Services" means the services you receive from Flexential pursuant to the Agreement.
- d. "Software" means any third party software services/products provided to you via Flexential for your use in connection with the Services.

**II. General Terms.** The following terms apply to any Software provided by Flexential in connection with the Services:

- a. Customer will not, and will not permit others to: (i) except as may be permitted with any Documentation provided by Flexential, transfer, copy or sublicense any Software; (ii) rent, lease, loan, auction or resell the Software and Documentation; (iii) modify, adapt, translate, or create derivative works of Software or related Documentation; (iv) remove, modify or obscure any copyright, trademark or other proprietary notices; (v) and (iii) reverse engineer, decompile, disassemble, modify, adapt or create derivative works from, Software or otherwise attempt to reconstruct or discover the source or object code or underlying ideas, algorithms, file formats, programming or interoperability interfaces; or (vi) use Software other than as specifically described in, and in accordance with, Documentation.
- b. Software may not be exported or re-exported without the appropriate United States or foreign government licenses. Software may be subject in certain jurisdictions to import laws or regulations and Customer is responsible for determining how and if Customer needs to comply with such laws or regulations.
- c. Upon the expiration or termination of the Agreement or if the Services are modified so that the Software is no longer provided, you will delete and destroy any software, including, without limitation, activation and serial numbers, documentation and all copies of such Software and you will make no further use of, or allow further use of, the Software. Software may only be used in connection with the Services.

- d. No ownership rights, including intellectual property rights, in any Software are transferred to you. The right to use any Software is non-exclusive.

### **III. Microsoft Terms.**

To the extent you receive Microsoft software, which includes computer software provided to you by Flexential as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually and collectively “Products”) these additional Microsoft Terms apply. Flexential does not own the Products and the use thereof is subject to certain rights and limitations which Flexential needs to inform you. Your right to use the Products is subject to the Agreement, and to your understanding of, compliance with and consent to the following terms and conditions, which Flexential does not have the authority to vary, alter or amend. To the extent this Section III conflicts with any other terms and conditions in these Additional Software Terms, the more restrictive obligation will apply.

#### **a. Definitions**

“Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or other electronic device.

“Server Software” means software that provides services or functionality on a computer acting as a server.

“Software Documentation” means any end user document included with server software.

“Redistribution Software” the software described in Paragraph IIId (Use of Redistribution Software”) below.

**b. Ownership of Products.** The Products are licensed to Flexential from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the Products (and the constituent elements thereof, including but not limited to images, photographs, animations, video, audio, music, text and “applets” incorporated into the Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

**c. Use of Client Software.** You may use the Client Software installed on your Devices by Flexential only in accordance with the instructions, and only in connection with the services, provided to you by Flexential.

**d. Use of Redistribution Software.** In connection with the services provided to you by Flexential, you may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively called “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/ OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO FLEXENTIAL, WHICH TERMS MUST BE PROVIDED TO YOU BY FLEXENTIAL. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Flexential.

**e. Copies.** You may not make any copies of the Products; provided, however, that you may (a) make one

(1) copy of Client Software on your device as expressly authorized by Flexential; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Flexential or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.

**f. Limitations on Reverse Engineering, Decompilation and Disassembly.** You may not reverse, engineer, decompile, or disassemble the Products, except and only to the extent that applicable by law, notwithstanding this limitation expressly permits such activity.

**g. No Rental.** You may not rent, lease, lend, pledge or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except in the form of software services in accordance with the terms of this agreement and any agreement between you and Flexential.

**h. Termination.** Without prejudice to any other rights, Flexential may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of its component parts.

**i. No Warranties, Liabilities or Remedies by Microsoft.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY FLEXENTIAL AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

**j. Product Support.** Any product support for the Products is provided to you by Flexential and is not provided by Microsoft or its affiliates or subsidiaries.

**k. Not Fault Tolerant.** THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVER PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**l. Export Restrictions.** The Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information see <http://www.microsoft.com/exporting/>.

**m. Liability for Breach.** In addition to any liability you may have to Flexential, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

**IV. Double-Take Solutions Software.** To the extent Customer receives Double-Take Software, the following terms and conditions apply.

- a. The "Usage Meter" is software developed and owned by Flexential or its licensor, Vision Solutions, Inc. ("**Vision**") and is installed on the "target servers". Customer agrees to maintain an active internet connection for the Usage Meter to report and exchange connection information. The information collected by the Usage Meter is used by Flexential or its licensor to invoice Customer for service use. The Usage Meter may cause Customer's computer or computer systems, without additional notice, to automatically connect to the internet and to communicate with a Vision website or server for the purposes of, but not limited to, license validation, product activation and invoicing information retrieval. Once connected, the software will transmit information to Vision via an internet connection.

- b. **Intellectual Property and Confidentiality.** Customer agrees that any efforts to circumvent or disable any copyright protection mechanisms or the Usage Meter violate the intellectual property rights of Flexential or its licensor.
- c. **Disclaimer.** The Usage Meter, any updates thereto, and all third-party software are distributed on an "AS IS" basis, without any warranty. FLEXENTIAL MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE USAGE METER OR ANY ASSOCIATED SOFTWARE PROVIDED HEREUNDER, AND HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FLEXENTIAL DOES NOT WARRANT THAT THE USAGE METER OR ANY THIRD PARTY SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. Some jurisdictions do not allow the disclaimer of certain warranties, so all or part of the above limitation may not apply. These disclaimers are in addition to the disclaimers set forth in the MSA.
- d. **Indemnification.** Customer shall indemnify Flexential and Vision against any damage, loss, liability or expense (including reasonable attorneys' fees) ("Damages") that Flexential or Vision may incur: (i) with respect to any damages caused by Customer's willful misconduct or negligent act or omission; or (ii) any modifications to the services/Software described hereunder made without Flexential's approval.
- e. **Limitation on Liability.** Notwithstanding anything to the contrary in the MSA, Flexential's entire liability in connection with Double-Take Software shall be limited to the amount received by Flexential during the twelve (12) month period prior to the date the cause of action arose.
- f. **Information Sharing.** Flexential may share with Vision basic information about Customer, including Customer name, address, contact information and any End User records related to the fees paid for the services described hereunder.

**V. ANTI-VIRUS Software Services.** To the extent Customer receives Anti-Virus Software services, the following terms and conditions apply:

- a. The term "Anti-Virus Product" means the anti-virus software listed in the Agreement and includes any updates, improvements, corrections, modifications, revisions or new versions of the software made from time to time. The Anti-Virus Product is considered "Software".
- b. Flexential and its licensors reserve the right to take reasonable steps to prevent unauthorized access to, or use of, the Anti-Virus Product.
- c. The Anti-Virus Product may only be transferred to the U.S. Government with the prior written consent of an officer of Flexential and/or its licensors and solely with "Restricted Rights", as that term is defined in the Department of Defense ("DOD") Supplement to the Federal Acquisition Regulations ("DFARS") in paragraph 252.227-7202.32 (c)(1) if to the DOD, or, if the Product is

supplied to any unit or agency of the US Government other than DOD, the Government's rights in Product shall be no greater than those set forth in FAR 52.227-19(c)(1) or (c)(2), Commercial Computer software - Restricted Rights; or FAR 52.227-14, Rights in General Data Alternative III, as applicable. Contractor: Trend Micro Incorporated, 10101 N. De Anza Blvd., Cupertino, CA 95014. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Flexential and its licensors to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

- d. Customer may not, and may not authorize others to use the Anti-Virus Product to provide services to third parties.
- e. Customer is advised that it must regularly backup data and computer systems on separate media.
- f. In connection with the Anti-Virus Product, neither Flexential nor any licensor will be liable for any consequential, incidental, special or punitive damages and the entire liability of Flexential and any or any suppliers/licensors shall be limited to one-year of license fees paid or payable by Customer for use of the Anti-Virus Product.
- g. Customer acknowledges Flexential and/or its licensors may (i) use uploaded data from the Anti-Virus Product to improve products and services; (ii) share data that has been identified as malicious or unwanted content with affiliates and security partners; and (iii) use and disclose uploaded data for analysis or reporting purposes only if any such use, sharing or disclosure does not identify Customer or include any information that can be used to identify any individual person.

**VI. Red Hat Software.** To the extent Customer receives Red Hat Software (including, without limitation Red Hat Enterprise Linux and Red Hat Application Stack), the following terms and conditions apply:

- a. Customer agrees to the Cloud Services Subscription Agreement set forth at [www.redhat.com/licenses/cloud\\_cssa/](http://www.redhat.com/licenses/cloud_cssa/), (the "Red Hat Terms") which may be amended from time to time by Red Hat in its sole discretion. If Red Hat determines Customer has breached the Red Hat Terms, Customer acknowledges that Red Hat may terminate Customer's use of any and all Red Hat Software.
- b. THE RED HAT SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Flexential makes no representations or warranties on behalf of Red Hat regarding the Red Hat Software.
- c. Customer acknowledges and agrees that Red Hat Software is not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems or (c) direct life support systems and will not use Red Hat Software in connection with such uses.

**VII. NetApp AltaVault Software (Cloud Storage Bridge).** Prior to utilizing Cloud Storage Bridge, Customer must install NetApp AltaVault Software. In connection with such installation, Customer will be required to agree to a NetApp End User License Agreement (the “**NetApp EULA**”). Customer agrees to the NetApp EULA, as may be updated or modified by NetApp. The NetApp EULA is incorporated into the Agreement and in the event of a conflict between the Agreement and the NetApp EULA, the NetApp EULA will control.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/25/2019

**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).**

<b>PRODUCER</b> MARSH USA INC. 1225 17TH STREET, SUITE 1300 DENVER, CO 80202-5534 Attn: Denver.certrequest@marsh.com  CN119172492--GAWUE-18-19	<b>CONTACT</b> NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL: ADDRESS:  <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Charter Oak Fire Insurance Company</td> <td>25615</td> </tr> <tr> <td>INSURER B : Travelers Casualty Insurance Company Of America</td> <td>19046</td> </tr> <tr> <td>INSURER C : N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER D : Beazley Group</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Charter Oak Fire Insurance Company	25615	INSURER B : Travelers Casualty Insurance Company Of America	19046	INSURER C : N/A	N/A	INSURER D : Beazley Group		INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															
<b>INSURED</b> Flexential Parent Holding 11900 E Cornell Ave Aurora, CO 80014															

**COVERAGES****CERTIFICATE NUMBER:**

SEA-003617137-03

**REVISION NUMBER: 5**

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
A	<b>COMMERCIAL GENERAL LIABILITY</b> <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:	X	X	6603K662599	12/01/2018	12/01/2019	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	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	BA3K669921	12/01/2018	12/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> 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	N/A	UB1L06956A - AOS	12/01/2018	12/01/2019	<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	Media Tech E&O and Cyber			W15LZ6181301	12/01/2018	12/01/2019	Limit \$ 1,000,000 Deductible \$ 100,000

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

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteer are included as Additional Insureds as respects the Commercial General Liability and Business Auto.

**CERTIFICATE HOLDER****CANCELLATION**

City and County of Denver Chief Information Officer 201 West Colfax Avenue, Dept. 301 Denver, CO 80202	<p><b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b></p> <p><b>AUTHORIZED REPRESENTATIVE</b>          of Marsh USA Inc.          Nathan Mulhauser</p>
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## EXHIBIT H

### HIPAA Business Associate Agreement and MSA Amendment

1. General. The undersigned party identified on the signature page as the "Customer" ("**Customer**" or "**you**") has entered into an agreement with Flexential Corp., a Delaware corporation formerly known as Peak 10, Inc., or one of its affiliated entities (including Flexential Colorado Corp., a Colorado corporation formerly known as ViaWest, Inc.) ("**Flexential**") pursuant to which Flexential provides Services to Customer (the "**MSA**"). Flexential and Customer hereby enter into this HIPAA Business Associate Agreement and MSA Amendment (this "**BAA**") effective as of the first date it has been executed by both Customer and Flexential. This BAA defines the rights and responsibilities of each of us with respect to protected health information as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as each may be amended from time to time (collectively, "**HIPAA**"). This BAA shall be applicable only in the event and to the extent Flexential meets, with respect to you and the Services you are purchasing from Flexential, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions. The MSA is hereby amended to incorporate this BAA into the terms of the MSA in its entirety. Other than to the extent expressly set forth herein, the terms and conditions of the MSA shall continue in full force and effect.

2. Defined Terms. For the purposes of this BAA, unless otherwise defined in this BAA, capitalized terms have the meanings set forth in this Section. Capitalized terms not defined in this BAA have the meanings given to them in the MSA.

"**CFR**" means the Code of Federal Regulations.

"**Individual**" has the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"**Privacy Rule**" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

"**Protected Health Information**" or "**PHI**" shall mean "protected health information" (as defined in HIPAA) limited to the information Flexential receives from, or creates, maintains, transmits, or receives on behalf of, Customer in performing Services pursuant to the MSA.

"**Required By Law**" has the same meaning as the term "required by law" in 45 CFR §164.103.

"**Secretary**" means the Secretary of the Department of Health and Human Services or his or her designee.

3. Obligations and Activities of Flexential.

- a) Flexential shall not use or disclose PHI other than as permitted or required by this BAA or as permitted or Required by Law.
- b) Flexential agrees to provide those administrative, physical and technical safeguards that are shown as a Flexential responsibility with respect to the applicable Services listed in the R&R Matrix.
- c) Flexential agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Flexential of a use or disclosure of PHI by Flexential or its agents or subcontractors in violation of the requirements of this BAA.
- d) Flexential agrees to report to you any impermissible acquisition, access, use or disclosure of PHI of which it becomes aware without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the acquisition, access, use or disclosure, and will comply with Flexential's notification obligations pursuant to 45 CFR §164.410.



- e) Flexential agrees to obtain from any agent, including a subcontractor to whom it provides PHI in the performance of the Services, reasonable assurances that it will adhere to the same restrictions and conditions that apply to Flexential under this BAA with respect to such information.
  - f) All PHI maintained by Flexential on Flexential Equipment for you will be available to you in a time and manner that reasonably allows you to comply with the requirements under 45 CFR § 164.524. Flexential shall not be obligated to provide any such information directly to any Individual or person other than you.
  - g) All PHI and other information maintained by Flexential on Flexential Equipment for you will be available to you in a time and manner that reasonably allows you to comply with the requirements under 45 CFR § 164.526.
  - h) Flexential agrees to make internal practices, books, and records available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary's determining your compliance with HIPAA; provided, however, that time incurred by Flexential in complying with any such request that exceeds its normal customer service parameters shall be charged to you at Flexential's then current standard hourly rate for Supplemental Services.
  - i) You acknowledge that Flexential is not required by this BAA to make disclosures of PHI to Individuals or any person other than you, and that Flexential does not, therefore, expect to maintain documentation of such disclosure as described in 45 CFR § 164.528. In the event that Flexential does make such disclosure, it shall document the disclosure as would be required for you to respond to a request by an Individual for an accounting of disclosures in accordance with 45 CFR §164.528, and shall provide such documentation to you promptly on your request.
4. Permitted Uses and Disclosures by Flexential. Except as otherwise limited in this BAA or other portion of the MSA, Flexential may use or disclose PHI to perform functions, activities, or Services for, or on behalf of, you as specified in the MSA, provided that such use or disclosure would not violate the Privacy Rule if done by you.
5. Specific Use and Disclosure Provisions. Except as otherwise limited in this BAA or other portion of the MSA, Flexential may:
- a) use PHI to carry out Flexential's legal responsibilities;
  - b) disclose PHI for the proper management and administration of Flexential or to carry out Flexential's legal responsibilities, provided that disclosures are (i) Required By Law, or (ii) Flexential obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person will notify Flexential of any instances of which it is aware in which the confidentiality of the information has been breached; and
  - c) use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).
6. Your Obligations.
- a) You shall notify Flexential of (i) any limitations(s) in your notice of privacy practices in accordance with 45 CFR § 164.520 to the extent that such changes may affect Flexential's use or disclosure of PHI; (ii) any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Flexential's use or disclosure of PHI; and (iii) any restriction to the use or disclosure of PHI that you have agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Flexential's use or disclosure of PHI.
  - b) You agree to report to Flexential any impermissible acquisition, access, use or disclosure of PHI relating to the Services of which you become aware without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the acquisition, access, use or disclosure.
  - c) You agree that you will not request Flexential to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by you.



- d) You agree to encrypt all PHI stored or contained by or in, or accessed by, Flexential servers in connection with the Services.
- e) You acknowledge that you are solely responsible for selecting appropriate safeguards as required to comply with HIPAA and the Privacy Rule other than as set forth herein.

7. Term and Termination.

- a) The term of this BAA shall continue until the earlier of (i) the termination of the MSA; or (ii) as mutually agreed by both of us in writing.
- b) Upon termination of the MSA for any reason Flexential shall use commercially reasonable efforts to destroy (or, at your request, cost and expense, return) all PHI in its possession or control. This provision shall apply to PHI that is in the possession of subcontractors or agents of Flexential as well as Flexential itself, but does not include PHI that resides on your computers, servers or equipment. Notwithstanding the foregoing, you acknowledge that you have access to PHI stored on Flexential Equipment in connection with Cloud or Managed Services, and that Flexential may not have the necessary access to delete such PHI. Upon termination of the MSA for any reason: (i) Customer agrees that it has the ability to and shall, unless applicable law requires otherwise, delete any PHI (including existing copies) stored on Flexential Equipment in connection with Cloud or Managed Services in accordance with applicable law, and (ii) Customer may request Flexential to provide professional services at Customer's expense to assist Customer with such deletion.

8. Amendment. Each of us agrees to take such action as is reasonably necessary to amend this BAA from time to time as is necessary for you to comply with the requirements of HIPAA as they may be amended from time to time; provided, however, that if such an amendment would increase the cost of Flexential providing Services under the MSA, Flexential shall have the option to terminate the MSA with thirty (30) days prior written notice to you. Except as otherwise expressly set forth in this BAA, the terms and conditions of the MSA and all Order Forms and Quotes shall remain in full force and effect.

9. Law Enforcement Delay in Notification. Flexential and Customer agree that they shall comply with the requirements of 45 CFR §164.412 with respect to any notifications, notices or postings required to be made by them pursuant to 45 CFR §164, Subpart D.

10. Access to PHI for Services. Flexential does not require or intend to access Customer data in its performance of the Services pursuant to the MSA, including but not limited to any confidential health related information of Customer's clients that constitutes PHI. Any exposure to PHI in connection with the Services will be random, infrequent and incidental to Flexential's provision of Services and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI, which exposure is allowable under 45 CFR 164.502(a)(1)(iii).



## Professional Services Addendum

The customer agreeing to these terms ("**Customer**") has entered into an agreement with 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. and/or Applied Trust Engineering, Inc., a Colorado corporation doing business as Flexential Professional Services) ("**Flexential**") under which Flexential has agreed to provide services to Customer (as amended from time to time, the "**MSA**"). Customer and Flexential agree that this Professional Services Addendum (this "**Addendum**") amends, is incorporated into, and forms part of the MSA, effective as of the first date that it has been agreed in writing by both Customer and Flexential.

1. **Background.** Customer has requested that Flexential provide certain professional services as described in the applicable Quote (including, if such terms are used in the MSA, any Exhibit A, Change Order Order Form and/or Statement of Work). The terms and conditions contained in this Addendum apply solely to the Professional Services (as defined below). Except as otherwise provided herein, in the event any term or condition of this Addendum 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 Addendum will control but only with respect to the Professional Services. All other terms and conditions of the MSA and any other amendment or exhibit to the MSA shall remain in full force and effect.
2. **Definitions.** Capitalized terms not defined herein shall have the meaning set forth in the MSA. "**Professional Services**" means those services designated as Advanced Client Services or Professional Services in the applicable Quote, and includes any Migration Services (as defined below) and Security Assessment Services (as defined below).
3. **Limited Warranty; Disclaimers.** Flexential 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 Quote. Customer shall notify Flexential in writing of any breach within thirty (30) days after performance of the non-conforming Professional Services. Upon receipt of such notice, Flexential, shall first 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 3 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 MSA. FLEXENTIAL DOES NOT GUARANTEE, AND HEREBY DISCLAIMS, ANY PARTICULAR RESULTS FROM THE PROFESSIONAL SERVICES.
4. **Flexential Personnel; Hourly Services.** Certain Professional Services may involve the assignment of a specific point of contact or technical resource manager. While Flexential may designate a specific point of contact, Professional Services may be performed by any Flexential employee ("**Personnel**"). Personnel are not Customer employees. Personnel will only provide such Services as set forth in the applicable Quote and Flexential will direct the actions of all Personnel. Customer will not request that Personnel perform activities outside of those set forth in the applicable Quote. Flexential may terminate, reassign or replace any Personnel in its sole discretion without prior notification to Customer. Such reassignment may be permanent or temporary. Flexential may offer engineering services on an hourly basis. To the extent Flexential does so, such services will be considered Professional Services and will be governed by the terms of this Addendum.
5. **Non-Solicitation.** Intentionally omitted.
6. **Limitation on Liability.** Intentionally omitted.
7. **Data Migration.** In addition to providing project management of data migration into the Flexential Cloud, Flexential may also assist Customer with migration of Customer Data to the Flexential Cloud ("**Migration Services**"). "**Customer Data**" means all information stored, maintained, received or transmitted by Customer using the Services. "**Flexential Cloud**" means an information technology system, owned/leased, operated, maintained, and housed by Flexential, which is comprised of software and hardware including data storage, physical servers (hosts), and networking components used to provide Services to Customer. The specific processes for migration and the responsibilities of each party will be set forth in the applicable Quote. Notwithstanding anything to the contrary in the Quote: (a) Customer is responsible for ensuring it has a back-up of all Customer Data to be migrated; (b) Customer is responsible for the integrity and completeness of the Customer Data and acknowledges and agrees Flexential does not review Customer Data for integrity or completeness; (c) Customer will provide all reasonable assistance required to provide the Migration Services, including promptly providing validation of a successful migration, chain of custody sign-off and validation and provide tracking information if shipped; (d) to the extent Flexential provides a USB NAS device (a "**Device**") in connection with the Migration Services Flexential does not transfer any ownership rights in such Device; (e) if Customer does not return the Device to Flexential within ten (10) days or the timeframe specified in

the applicable Quote, Customer will be responsible for the reasonable replacement value of the Device; (f) the customer acknowledges that the USB drive will be scanned for viruses prior to connection and may delay the migration if viruses are found; (g) Customer acknowledges that while a USB NAS device may be encrypted, Flexential does not encrypt any Customer Data and Customer is responsible for ensuring Customer Data is encrypted in accordance with all applicable laws; and will not disable encryption of the USB device.

8. **VM Import Assessment.** In connection with the Migration services, Flexential will not migrate any systems or hosts ("**Hosts**") that: (a) are running deprecated operating systems, (b) contain compromised software or operating systems, (c) are missing patches released more than 120 days ago or (d) that contain any vulnerability rated (using the CVSS scoring system) at a 7.0 or higher. Hosts will need to be rebuilt to a current supported operating system and cleaned prior to migration. Customer acknowledges these exceptions and agrees to validate the hosts prior to migration.
9. **Security Assessment Services.** Customer acknowledges that, to successfully perform any security assessment or testing services ("**Security Assessment Services**") requested by Customer, Flexential will perform scheduled, non-intrusive TCP/IP port and vulnerability scan tests of Customer's network (the "**Scanning Activities**"). If Customer has engaged Flexential to perform any Security Assessment Services: (a) Customer hereby authorizes the Scanning Activities, and acknowledges that it may result in discovery of security vulnerabilities of Customer's network and/or computer systems; (b) Customer acknowledges that it is possible, but extremely unlikely, that Scanning Activities could result in degradation or disruption of Customer's environment during the test; and (c) Customer assumes sole responsibility for any degradation or disruption of service during the test.
10. Any examination of Flexential's books, documents, papers or records conducted pursuant to Section 33(m) of the MSA shall be performed at Customer's sole cost and expense.