

TIME AND MATERIALS PROFESSIONAL SERVICES TERMS AND CONDITIONS



These terms and conditions (“**Terms**”) apply to any professional services (“**Professional Services**”) delivered by TLUX Technologies to you or your organization (“**Customer**”).

1. **Time and Materials.** TLUX Technologies will provide Customer the Professional Services described in a Quote (an “**Engagement**”). Professional Services are provided on a time and materials basis and the Professional Services fees and travel and expenses set forth in a Quote are estimates only; should additional Professional Services be required, a change order will be needed. Customer will pay TLUX Technologies at the applicable rate for the specified resource level for actual time worked. Professional Services shall be deemed accepted upon delivery. If TLUX Technologies provides Professional Services at Customer’s location(s), Customer will reimburse TLUX Technologies for actual and reasonable travel expenses.
2. **Invoicing and Payment.** TLUX Technologies will invoice Customer monthly in arrears for Professional Services performed and expenses incurred; Customer agrees to pay TLUX Technologies all such fees up to the limit set forth in the respective Quote. All payments are non-refundable and shall be made within thirty (30) days of the date of invoice. All fees are pre-tax and Customer shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of TLUX Technologies). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.
3. **Delays and Cancellations.** If performance of Professional Services is delayed due to Customer’s failure to provide required access, personnel availability or canceled with less than five (5) business days’ notice once ordered by Customer, Customer shall pay TLUX Technologies at the rate set forth in the Quote for each day for each person assigned by TLUX Technologies to provide the applicable Professional Services if the TLUX Technologies resources cannot be redeployed by TLUX Technologies using reasonable efforts. In addition, Customer agrees to reimburse any travel expenses which have been incurred and are non-cancelable, non-refundable, or non-creditable.
4. **Termination.** Either party may terminate this Engagement immediately upon five (5) business days written notice to the other party. Any provision that by the very nature of which should survive shall survive any termination of the Engagement.
5. **Deliverables.** TLUX Technologies will retain exclusive ownership of all rights, title and interest in and to anything delivered by TLUX Technologies as a part of Professional Services (“**Deliverables**”). Customer acknowledges that its use of the Deliverables will not vest in Customer any right, title or interest in or to the Deliverables other than the license rights granted below, and all intellectual property rights arising from such uses will be owned by TLUX Technologies or its respective licensors. TLUX Technologies grants to Customer a perpetual, non-exclusive, royalty-free, worldwide, non-transferable and non-assignable license to use Deliverables solely for Customer’s internal purposes.
6. **Warranty.**
 - a. **Professional Services Warranty.** TLUX Technologies represents and warrants to Customer that the Professional Services will be of a professional quality conforming to generally accepted industry standards and practices. TLUX Technologies’ sole liability (and Customer’s exclusive remedy) for any breach of this warranty shall be to re-perform the non-conforming Professional Services. If TLUX Technologies determines such remedy to be impracticable within a reasonable period of time, then

TLUX Technologies will refund the fees paid for the non-conforming Professional Services.

- b. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, NEITHER TLUX TECHNOLOGIES NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **Compliance with Customer Policies.** TLUX Technologies personnel performing Professional Services at a Customer location will comply with all applicable and reasonable policies of Customer that are provided to TLUX Technologies in writing in advance, provided that such policies do not materially add to or conflict with these Terms or purport to impose any personal liability on such personnel.
 8. **Limitation of Liability.**
 - a. **Consequential Damages Waiver.** NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THIS WAIVER SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY.
 - b. **Limit of Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, EACH PARTY’S ENTIRE LIABILITY TO THE OTHER PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER (OR WITH RESPECT TO FEES DUE, PAYABLE) TO TLUX TECHNOLOGIES PURSUANT TO THE ENGAGEMENT GIVING RISE TO THE CLAIM. THIS LIMITATION SHALL NOT APPLY TO A PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY, OR A CLAIM BY ONE PARTY AGAINST THE OTHER RELATING TO SUCH PARTY’S INTELLECTUAL PROPERTY RIGHTS.
 9. **Confidentiality.**
 - a. **Confidential Information.** “Confidential Information” means any business and/or technical information that is received by a party (“**Recipient**”) from the disclosing party (“**Discloser**”) that a) is in written, recorded, graphical or other tangible form and is marked “Confidential” or “Trade Secret” or similar designation; b) is in oral form and identified by the Discloser as “Confidential” or “Trade Secret” or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) calendar days of such disclosure; or c) could reasonably be construed to be confidential. Any software, documentation or technical information provided by TLUX Technologies (or its agents), and performance information relating to TLUX Technologies’ software products, shall be deemed “Trade Secrets” of TLUX Technologies without any marking or further designation.
 - b. **Protection of Confidential Information.** The Recipient shall a) have the right to disclose the Confidential Information only to its employees, consultants and affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser’s Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under these Terms; and d) at the



Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Except as expressly authorized herein, for a period of three (3) years following the disclosure date of Confidential Information to the Recipient, the Recipient will hold in confidence and not make any unauthorized use or disclosure of any Confidential Information. No time limit shall apply to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret".

c. Exclusions. The Recipient's nondisclosure obligation shall not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).

d. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

10. General

a. Governing Law. For Customers in North America and Latin America, these Terms will be governed by the laws of the State of Illinois and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Customers in Europe, Middle East, or Africa, these Terms will be governed by the substantive laws of England and Wales, excluding that body of law known as conflicts of law and without regard to the United Nations Convention on Contracts for the Sale of Goods. For Customers in Australia, these Terms will be governed by the laws of the State of Victoria, Australia without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Customers in Japan, these Terms will be governed by the laws of Japan without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Customers in the Asia Pacific region other than Australia and Japan, these Terms will be governed by the laws of Special Administrative Region of Hong Kong without regard to conflicts of laws provisions thereof, and without regard to the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods.

b. Independent Contractors. The parties to these Terms are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Customer acknowledges and agrees that the Professional Services and Work Product may provide results and conclusions based on facts, assumptions, data, material, and other information that TLUX Technologies has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Professional Services or Work Product; all actions taken or not taken by Customer based on the output of the Professional Services or Work Product shall be the responsibility of Customer. Neither party will have the power to

bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

c. Non-Solicitation. During the term of an Engagement and for a period of one (1) year thereafter, Customer agrees that it will not hire or attempt to hire, on behalf of Customer or any other organization, any employee of TLUX Technologies unless Customer has first obtained TLUX Technologies' written consent. Notwithstanding the foregoing, Customer shall not be in breach of this provision if an employee of TLUX Technologies responds to a general advertisement for employment.