

THE FOLLOWING IS A PRODUCT LICENSE AGREEMENT (“AGREEMENT”) WITH FLUX CORPORATION (“FLUX”). BY CLICKING ON THE “ACCEPT LICENSE” BUTTON ON THE FORM THAT ACCOMPANIES THIS AGREEMENT, YOU AND THE COMPANY OR PERSON IDENTIFIED ON THAT FORM (“CUSTOMER”) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL THE TERMS OF THIS AGREEMENT AND WILL BE CONSENTING TO BE BOUND BY THEM. IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER MAY NOT USE THE PRODUCT, CUSTOMER MUST SELECT THE "DECLINE LICENSE" BUTTON ON THE FORM THAT ACCOMPANIES THIS AGREEMENT, ANY DOWNLOAD PROCESS WILL NOT CONTINUE, AND CUSTOMER MUST CONTACT FLUX IN WRITING WITHIN THIRTY (30) DAYS TO REQUEST A REFUND OF ANY FEES PAID FOR THE PRODUCT.

Product License Agreement

1. Definitions.

“Intellectual Property Rights” means all copyright rights, patent rights, trademark rights, trade secret rights, moral rights, rights of publicity, authors’ rights, contract and licensing rights, goodwill, and all other intellectual property rights as may exist now and/or hereafter come into existence and all applications therefor and registrations, renewals, continuations, continuations in part, and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country, or jurisdiction.

“Licensee” means the Customer.

“Product” means Flux’s proprietary software product called “Flux” and its accompanying documentation, as provided to Licensee by Flux.

“Computer” means a computer or computer server.

“Production Computer” means a Computer that is used for production purposes.

“Development Computer” means a Computer that is used for development purposes.

“Agent Add-on” means that portion of the Product that encompasses agent functionality.

“Agent Computer” means a Computer that uses an Agent Add-on.

2. License.

(a) Grant. Subject to the terms and conditions of this Agreement, Flux grants Licensee, under Flux’s Intellectual Property Rights, a limited, non-exclusive, non-transferable, perpetual license, without the right to sub-license, to install and use the Product under a Production Computer License, a Development Computer License, or an Agent Computer License, as defined below. Under a Production Computer License, Licensee may install and use the Product without an Agent Add-on on up to the number of Production Computers as set forth on applicable Product invoices issued by Flux solely for Licensee’s internal business purposes. Under a Development Computer License, Licensee may install and use the Product without an Agent Add-on on up to the number of Development Computers as set forth on applicable Product invoices issued by Flux solely to interoperate with the Product for internal business development and testing purposes. Under an Agent Computer License, Licensee may install and use solely the Agent Add-on on up to the number of Agent Computers as set forth on applicable Product invoices issued by Flux solely for Licensee’s internal business purposes. A license is required if the Product is installed, used, or loaded in a Java Virtual Machine.

(b) Restrictions. The license set forth above does not include any rights to and Licensee shall not (i) reproduce (except as expressly set forth herein), modify, translate or create any derivative work of all or any portion of the Product; (ii) sell, rent, lease, loan, provide, distribute, or otherwise transfer all or any portion of the Product; (iii) reverse engineer, reverse assemble, or otherwise attempt to gain access to the source code of all or any portion of the Product; (iv) display or disclose the Product to any person other than as expressly permitted herein; (v) use the Product for third-party training, commercial time-sharing, or service bureau use; (vi) remove, alter, cover, or obfuscate any copyright notices or other proprietary rights notices placed or embedded by Flux on or in any Product; or (vii) cause or permit any third party to do any of the foregoing. Licensee agrees that only Flux shall have the right to maintain, enhance, or otherwise modify the Product.

(c) Backup Copies. Licensee may make a reasonable number of copies of the Product solely for its backup, disaster recovery, or archival purposes; provided that any such copy includes all intellectual property rights notices that appear on the original. Any copy of the Product is the exclusive property of Flux.

(d) Reservation of Rights. Except as expressly set forth in this Section 2, Flux reserves all rights and grants Licensee no licenses of any kind hereunder, whether by implication, estoppel, or otherwise.

3. Financial Consideration.

(a) License Fees. In consideration for the license granted by Flux under this Agreement, Licensee shall pay Flux the license and other fees in the amounts and in accordance with the payment terms set forth on applicable Product invoices issued by Flux (the "Fees"). All amounts are payable in United States Dollars. Any amounts not paid when due shall accrue interest at the lesser of 1.5% per month (or portion thereof) or the maximum rate allowed by law.

(b) Taxes. Licensee is solely responsible for the payment of any taxes (including any sales, use, excise, ad valorem, property, withholding, value added tax, or other tax and any income tax withheld at source), tariff, duty or assessment levied or imposed by any government authority that may be owing in connection with Licensee's use of or access to the Product, or delivery thereof to Licensee, exclusive of taxes based on Flux's net income. Flux reserves the right to have Licensee pay any such taxes as they fall due to Flux for remittance to the government authority. Licensee shall hold Flux harmless from all claims and liability arising from Licensee's failure to report or pay any such taxes.

(c) Audit. Flux reserves the right, upon reasonable prior notice to Licensee and during Licensee's normal business hours, to audit Licensee's use of the Product to confirm compliance with this Agreement. In the event any audit of Product usage by Licensee reveals any underpayment of license fees, Licensee shall promptly pay Flux any shortfall and reimburse Flux the reasonable costs of such audit.

4. Ownership. Flux or its licensors own and shall retain all right, title, and interest (including without limitation all Intellectual Property Rights), in and to the Product and any corrections, bug fixes, enhancements, updates, or other modifications thereto, whether made by Licensee, Flux, or any third party. Licensee shall have no right to receive any such corrections, bug fixes, enhancements, updates, or other modifications unless as otherwise specified in a current support and maintenance agreement with Flux. Licensee acknowledges that the license granted under this Agreement does not provide Licensee with title to or ownership of the Product, but only a right of limited use under the terms and conditions of this Agreement. Licensee shall keep the Product free and clear of all claims, liens, and encumbrances.

5. WARRANTY DISCLAIMER. FLUX AND ITS SUPPLIERS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO PRODUCTS OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE, OR TRADE. NEITHER FLUX NOR ANY OF ITS SUPPLIERS WARRANT THAT ANY PRODUCT, SERVICE, OR ANY PART THEREOF WILL MEET LICENSEE'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE, OR ERROR-FREE, OR THAT ANY ERRORS IN THE PRODUCT WILL BE CORRECTED.

6. LIMITATION OF LIABILITY. IN NO EVENT SHALL FLUX OR ITS SUPPLIERS BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, LOSS OF PROFITS, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. FLUX'S TOTAL LIABILITY ARISING OUT OF OR UNDER THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED THE TOTAL AMOUNTS PAID TO FLUX HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION AROSE. THE LIMITATIONS SET FORTH IN THIS SECTION 6 SHALL APPLY EVEN IF FLUX AND/OR ITS SUPPLIERS ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. Indemnification.

(a) Infringement Indemnity. Flux will defend, indemnify, and hold harmless Licensee from any third party claim, action, suit, or proceeding against Licensee (a "Claim") to the extent that such Claim is based upon an allegation that the Product infringes any right protected by any patent, copyright, trademark, or trade secret of any third party that is enforceable in the United States. Flux will indemnify Licensee for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from a Claim. Flux's obligations under this section are conditioned upon the following: (i) upon becoming aware of the Claim, Licensee provides to Flux prompt written notice of the Claim; (ii) Licensee gives to Flux sole authority and control of the defense and/or settlement of the Claim; and (iii) Licensee provides all reasonable information and assistance requested by Flux to handle the defense and/or settlement of the Claim. Licensee, at its expense, may hire legal counsel of its choice to participate in an advisory capacity related to discussions, negotiations, or proceedings of the Claim, but such legal counsel shall not, without the prior written consent of Flux, participate in any other capacity with respect to the Claim.

(b) Remedial Measures. If Product becomes the subject of a Claim, or if Flux reasonably believes that use of such Product may become the subject of a Claim, then Flux may do, at its own expense and option, at least one of the following: (i) procure for Licensee the right to continued use of the Product at no additional cost to Licensee for such right; (ii) replace the Product with a

non-infringing product while maintaining the Product's essential specifications; (iii) modify the Product so that it becomes non-infringing while maintaining the Product's essential specifications; or (iv) refund to Customer a pro-rated portion of the fees paid to Flux for the Product, based upon a linear monthly depreciation over a five (5) year useful life, in which case Licensee will both cease all use of the Product and return the Product to Flux.

(c) Exceptions and Limitations. Flux will have no defense or indemnity obligation for any Claim based upon: (i) a Product that has been modified by someone other than Flux; (ii) use or combination of a Product with Third Party Products, if such use or combination results in the infringement; or (iii) Licensee's products or Third Party Products. The term "Third Party Products" means any products manufactured by or supplied by a party other than Flux, and may include, without limitation, products ordered by Licensee from third parties.

(d) No Other Remedies Regarding Infringements. THE FOREGOING STATES FLUX'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

8. Term and Termination.

(a) Term. This Agreement and the license granted hereunder shall be effective as of the date Flux provides Licensee the Website address that contains the form that accompanies this Agreement and shall continue in perpetuity unless terminated sooner in accordance with this Section 7.

(b) Termination. Either party shall have the right to terminate this Agreement and the license granted herein in the event: (i) the other party fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within thirty (30) days after written notice of such default to the other party; or (ii) the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (C) becomes insolvent or subject to direct control by a trustee, receiver, or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise. In addition to the foregoing, Flux may terminate this Agreement immediately upon written notice (i) if Licensee breaches Section 2(b) or (ii) if Licensee is sixty (60) days or more past due on any payments owed Flux.

(c) Effect of Termination. The rights and obligations of Flux and Licensee in Sections 2(b), 4, 5, 6, 7, 8(c), 8(d), and 9 shall survive termination of this Agreement. All other right and obligations of the parties, including all licenses, shall terminate immediately upon any termination of this Agreement, other than liabilities that have accrued prior to termination. Within five (5) days after termination of this Agreement, Licensee shall destroy the Product, including all copies thereof, and deliver to Flux a certification, in writing signed by an officer of Licensee, that the Product and all copies thereof have been destroyed and their use discontinued. Nothing contained herein shall limit any other remedies that Flux may have for the default of Licensee under this Agreement nor relieve Licensee of any of its obligations incurred prior to such termination.

(d) No Liability for Termination. Neither party shall incur any liability or compensation obligation whatsoever for any damage (including and without limitation damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by the other party arising from or relating to any termination of this Agreement pursuant to the terms hereof, whether or not such party is aware of any such loss or expenses. Termination is not the sole remedy and except as otherwise provided herein, all other remedies remain available to each party.

9. General

(a) Assignment. Unless substantially all of a party's assets are transferred to a third party, neither party shall transfer, assign, or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of the other party. Any such purported transfer, assignment, or delegation without such prior written consent shall be null and void. Subject to the foregoing, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

(b) Entire Agreement; Modification; Waiver. This Agreement and the form that accompanies it constitute the entire agreement between Flux and Licensee with respect to the subject matter hereof, and merge all prior negotiations and drafts of the parties with regard thereto, and supersede any and all other written or oral agreements existing between the parties hereto, including any terms that may appear on Licensee's purchase orders, regarding the subject matter of this Agreement. Licensee agrees that it has not entered in this Agreement based on any representations other than those contained herein. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the party to be charged. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

(c) Delays. Neither party shall be responsible for failure to fulfill its obligations under this Agreement (except for payment of money) due to causes beyond its reasonable control.

(d) Governing Law; Venue. This Agreement is governed and interpreted in accordance with the laws of the State of Nevada, USA without reference to conflicts of laws principles. The parties consent to the exclusive jurisdiction of, and venue in, the state and federal courts within Clark County, Nevada, USA and agree that process may be served in the manner provided herein for giving notices or otherwise as allowed by Nevada or federal law. The United Nations Convention on Contracts for the Sale of Goods shall not apply to this Agreement.

(e) Severability. If any of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable under any applicable statute or rule of law, such provision shall, to that extent, be deemed omitted, and the remaining portions of this Agreement shall remain in full force and effect.

(f) Communications. All notices permitted or required under this Agreement shall be in writing and shall be delivered in person; mailed by first class, registered, or certified mail, postage prepaid; or faxed to the address of either party, or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt. Each party may disclose the existence of this Agreement. Neither party may disclose the terms and conditions of this Agreement.

(g) Basis of Bargain. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR PROVISIONS OF THIS AGREEMENT AND THAT FEES AND CONSIDERATION PAYABLE HEREUNDER REFLECTS THESE DISCLAIMERS AND LIMITATIONS.

(h) United States Government Restricted Rights. The Product is a commercial product, developed at private expense, and provided with restricted rights. Use, reproduction, release, modification, or disclosure of the Product, or any part thereof, including technical data, by the United States Government is restricted in accordance with Federal Acquisition Regulation (“FAR”) 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement (“DFARS”) 227.7202 for military agencies.

(i) Compliance with Applicable Laws. Licensee shall at all times comply with all laws and regulations applicable with respect to any use of the Product.

(j) Headings. The section headings contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

THE FOREGOING IS A PRODUCT LICENSE AGREEMENT WITH FLUX. WHEN YOU CLICK ON THE “ACCEPT LICENSE” BUTTON ON THE FORM THAT ACCOMPANIES THIS AGREEMENT AND PROVIDE THE INFORMATION REQUIRED ON THAT FORM, YOU ARE (I) REPRESENTING AND WARRANTING THAT (A) YOU HAVE THE AUTHORITY TO BIND THE CUSTOMER AND (B) THE FORM THAT ACCOMPANIES THIS AGREEMENT HAS BEEN FULLY AND ACCURATELY COMPLETED AND (II) YOU ARE CONSENTING TO BE BOUND BY, AND ARE BECOMING A PARTY TO, THIS AGREEMENT. IF YOU DO NOT AGREE TO (OR CANNOT COMPLY WITH) ALL OF THE TERMS OF THIS AGREEMENT, CLICK ON THE “DECLINE LICENSE” BUTTON ON THE FORM THAT ACCOMPANIES THIS AGREEMENT AND YOU WILL NOT ASSENT TO THE AGREEMENT.

IF YOU ARE DEEMED TO HAVE MADE AN OFFER, FLUX ACCEPTANCE IS EXPRESSLY CONDITIONAL ON ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS; IF THESE TERMS ARE CONSIDERED AN OFFER BY FLUX, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.