

# FLUX End User Licence Agreement

SLC3 PTY LTD

## 1 Acceptance of this End User Licence Agreement

- 1.1 SLC3 PTY LTD ABN: 53 622 803 712 (**us, we** or **our**) license the cloud-based FLUX Software, including all instructions in hard copy or electronic form and any update, modification or release of any part of the cloud-based FLUX Software (**FLUX Software**) which is accessible at [www.flux.qa](http://www.flux.qa) (**Site**).
- 1.2 This EULA applies to:
  - (a) the primary account (**Primary Account**) holder of the FLUX Software (**Account Holder**);
  - (b) you, where you are invited by the Account Holder to create a user account as an end user (**User Account**) in accordance with the terms of your Account Holder's chosen licensing package (**Subscription**); and
  - (c) any other person or entity using or accessing the FLUX Software,  
  
(jointly and severally known as **you** and **your**).
- 1.3 If applicable, the terms of this EULA are deemed incorporated into our separate agreement with you, for the supply of the FLUX Software by reference. You accept this EULA by clicking a box indicating acceptance via the Site or by using or accessing the FLUX Software.
- 1.4 This EULA will commence on the date on which you accept this EULA and will continue until the date this EULA is terminated in accordance with **clause 10** (the '**Term**').
- 1.5 By accepting this EULA, creating a User Account or Primary Account and/or accessing and/or using the FLUX Software, you warrant to us that you have the legal capacity to enter into a legally binding agreement or (if you are under 18 years of age) you have your parent's or legal guardian's permission to access and use the FLUX Software and they have agreed to this EULA on your behalf.

## 2 Licence to use

In consideration for your compliance with this EULA and if applicable, subject to the terms of your Subscription, we grant you a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable and revocable licence to access, display and use the FLUX Software for business purposes for the Term and only on as many computers, devices and in such configurations as is expressly permitted by us as set out on the Site or otherwise (**Licence**).

## 3 Restrictions

- 3.1 You must not access or use the FLUX Software except as permitted by the Licence and you must not and must not permit any other person to:
- (a) use the FLUX Software in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;
  - (b) use the FLUX Software to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (c) use the FLUX Software in any way that damages, interferes with or interrupts the supply of the FLUX Software;
  - (d) introduce malicious programs into our hardware and FLUX Software or Systems, including viruses, malware, worms, trojan horses and e-mail bombs;
  - (e) use the FLUX Software to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
  - (f) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the FLUX Software; or
  - (g) use the FLUX Software to circumvent user authentication or security of any of your networks, accounts or hosts or those of any other third party.

## 4 Third Parties

4.1 You acknowledge and agree that:

- (a) the provision of the FLUX Software may be contingent on, or impacted by, third parties, other customers' use of our services, suppliers, other subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible and will have no Liability, for any default or breach of this EULA or law, if such default or breach was caused or contributed to by any Third Party Inputs.

4.2 You acknowledge that the FLUX Software includes certain optional functionality that may interface or interoperate with third party Software, hardware or services. To the extent that you choose to use such functionality, you are responsible for:

- (a) the purchase of;
- (b) the ancillary requirements related to; and
- (c) the licensing obligations related to the applicable third party Software, hardware and services.

4.3 It is your responsibility to ensure the requirements are met in order for you to benefit from the specific functionality made available to you.

## 5 Support services

5.1 During the Term, where you lodge a support ticket with us, we will provide you with technical support services in accordance with the specifications of the Account Holder's Subscription as set out on the Site.

5.2 You agree, where we provide any support services to you, to assist us in investigating and ascertaining the cause of the fault and provide us with access to all necessary information relevant to the fault (including what you have done in relation to the fault).

## 6 Your warranties

6.1 You warrant and agree that:

- (a) you have reviewed this EULA available on the Site, (with your parent or legal guardian if you are under 18 years of age);
- (b) you have all hardware, FLUX Software and services which are necessary to access and use the FLUX Software;
- (c) you will use the FLUX Software in accordance with this EULA;
- (d) all information and documentation that you provide to us in connection with this EULA is true, correct and complete and you acknowledge and agree that we will rely on such information and documentation in order to provide the FLUX Software;
- (e) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the FLUX Software to be provided in accordance with this EULA, at your cost, and for providing us with the necessary consents, licences, authorities and permissions; and
- (f) if applicable, you will maintain the confidentiality and security of any of your Primary Account and/or User Account details and passwords.

## 7 Intellectual Property rights

7.1 All Intellectual Property in the FLUX Software and that Intellectual Property developed, adapted, modified or created by us or our officers, employees, contractors, sub-contractors or agents including in connection with this EULA and the FLUX Software and any machine learning algorithms output from the FLUX Software is and will remain owned exclusively by us or our third party service providers.

7.2 You must not, without our prior written consent:

- (a) copy or use, in whole or in part, any of our Intellectual Property;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
- (c) reverse assemble, reverse engineer, reverse compile or enhance the FLUX Software;
- (d) breach any Intellectual Property rights connected with the FLUX Software, including altering or modifying any of our Intellectual Property;

- (e) cause any of our Intellectual Property to be framed or embedded in another website, except where the FLUX Software expressly recommend this action;
- (f) create derivative works from any of our Intellectual Property;
- (g) resell, assign, transfer, distribute or make available the FLUX Software to third parties;
- (h) “frame”, “mirror” or serve any of the FLUX Software on any web server or other computer server over the Internet or any other network; or
- (i) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the FLUX Software.

7.3 As between you and us:

- (a) all Data is and remains your property or the property of the Account Holder (as applicable);
- (b) you grant us a limited licence to copy, transmit, store and back-up or otherwise access the Data during the Term solely to:
  - (i) supply the FLUX Software to you (including to enable you to access and use the FLUX Software);
  - (ii) diagnose problems with the FLUX Software;
  - (iii) enhance and otherwise modify the FLUX Software;
  - (iv) develop other services, provided we de-identify the Data; and
  - (v) as reasonably required to perform our obligations under this EULA.

7.4 You must, at all times, ensure the integrity of any Data you input and that your use of the Data is compliant with all Laws. You represent and warrant that you have obtained all necessary rights, releases and permissions to provide all your Data to us and to grant the rights granted to us in this EULA.

7.5 We assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.

- 7.6 We have no obligation to monitor any content uploaded to the FLUX Software. Nonetheless, if we deem such action necessary for any reason, we may (without limiting our other rights) remove your Data from the FLUX Software. We have no liability to you for removing your Data from the FLUX Software.
- 7.7 You acknowledge and agree that we will own any suggestions, enhancement requests, recommendations or other feedback provided by you, your personnel or customers, relating to the FLUX Software without liability to you.

## 8 ACL

- 8.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 8.2 Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Services, you are entitled:
- (a) to cancel this EULA with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the services rectified in a reasonable time and, if this is not done, to cancel this EULA and obtain a refund for the unused portion of this EULA.

- 8.3 If the ACL applies to you as a consumer, nothing in this EULA excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this EULA.
- 8.4 Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

## 9 Our Liability

9.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) our maximum aggregate Liability arising from or in connection with this EULA (including the FLUX Software or the subject matter of this EULA) will be limited to, and must not exceed in the aggregate for all claims \$10; and
- (b) we will not be liable to you for any Consequential Loss,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

9.2 Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

- (a) loss of, or damage to, any property or any injury to or loss to any person;
- (b) failure or delay in providing the FLUX Software;
- (c) breach of this EULA or any Laws; or
- (d) unavailability, outage or interruption of the Computing Environment,

where caused or contributed to by any:

- (i) Force Majeure Event;
- (ii) fault, defect, error or omission in your Computing Environment or Data; or
- (iii) your act or omission,

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the FLUX Software.

9.3 To the maximum extent permitted by law, you indemnify and continue to indemnify us against all Liability we suffer or incur arising from or as a consequence of a breach of **clause 7** (Intellectual Property), your use of the FLUX Software contrary to this EULA, including from any claim relating to the Data.

9.4 You acknowledge and agree that:

- (a) you are responsible for your use of the FLUX Software;
- (b) you use the FLUX Software and any associated programs and files at your own risk;
- (c) we do not warrant that the FLUX Software is error-free or will be uninterrupted;
- (d) any information, recommendations, guidance or reports generated by the FLUX Software (**Content**) is general in nature and that the Content does not take into account your specific needs or circumstances. It is not advice, it does not constitute an express or implied warranty and you must not rely on it. We do not assume any liability for the accuracy, completeness, usefulness of any Content, or your reliance on any Content;
- (e) the technical processing and transmission of the FLUX Software, including your Data, may be transferred unencrypted and involve: (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (f) we may use third party service providers to host the FLUX Software. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features;
- (g) the FLUX Software may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
- (h) we do not guarantee that any file or program available for download and/or execution from or via the FLUX Software is free from viruses or other conditions which could damage or interfere with Data, hardware or FLUX Software with which it might be used;
- (i) we are not responsible for the integrity or existence of any Data on the Computing Environment, network or any device controlled by you;

- (j) from time to time, we may make certain services and/or features available to you for use which are still in their beta stage. These beta stage services have not been fully tested and are provided on an 'as is' basis; and, to the fullest extent permitted by Law, we make no representations, warranties or guarantees in relation to such beta stage services; and
- (k) we may pursue any available equitable or other remedy against you if you breach any provision of this EULA.

## 10 Termination of your User Account and this EULA

- 10.1 You may only terminate your User Account and/or this EULA via your User Account management dashboard or via email to us. You are solely responsible for properly terminating your User Account and/or this EULA.
- 10.2 If you are an Account Holder, you may only terminate this EULA but providing us with written notice of termination.
- 10.3 Your Account Holder may terminate your User Account, your access and this EULA at any time in their sole discretion.
- 10.4 If your Account Holder's Subscription is suspended or terminated we will also suspend your User Account, your access or terminate your User Account and this EULA (as applicable).
- 10.5 If we believe you are misusing or otherwise in breach of this EULA, we may immediately terminate your Primary Account and/or User Account and/or this EULA with notice to you.

## 11 General

- 11.1 We reserve the right at any time and from time to time to change or remove features of the FLUX Software.
- 11.2 If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, we may terminate the Primary Account, your User Account and/or this EULA with notice to you.
- 11.3 Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this EULA without first meeting with a senior

representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).

- 11.4 Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to us at the contact details below and to you on the contact details included in your User Account or Primary Account. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 4 business days in the case of post, or at the time of transmission in the case of transmission.
- 11.5 Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this EULA does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.
- 11.6 If a provision of this EULA are held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this EULA without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- 11.7 We may assign, transfer, novate or otherwise deal with all or any of our rights or obligations under this EULA without your prior written consent. You may not assign, transfer or otherwise deal with all or any of your rights or obligations under this EULA without our prior written consent. Any purported dealing in breach of this clause by you is of no force or effect.
- 11.8 We may vary this EULA with notice to you via email or via a notification within your Primary Account and/or User Account.
- 11.9 This EULA is governed by the laws of Victoria. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts. The FLUX Software may be accessed in Australia and overseas. We make no representation that the FLUX Software comply with the laws (including Intellectual Property laws), other than the General Data Protection Regulation 2016/679 where applicable, of any country outside of Australia. If you access the FLUX Software from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the FLUX Software.

11.10 **Clauses 2, 6, 7, 8, 10 and 11** will survive termination or expiry of this EULA.

## 12 Definitions

The following words will mean:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth), as amended, from time to time.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

**Computing Environment** means your computing environment including all hardware, FLUX Software, information technology and telecommunications services and Systems;

**Consequential Loss** includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this EULA (whether involving a third party or a Party to this EULA or otherwise);

**Data** means the information, documents and other data inputted by you, into the FLUX Software or stored by the FLUX Software or, subject to **clause 7**, generated by the FLUX Software as a result of your use of the FLUX Software;

**Force Majeure Event** means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Intellectual Property includes the FLUX Software;

**Laws** means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the Privacy Act 1988 (Cth), General Data Protection Regulation (EU) 2016/679 and the Spam Act 2003 (Cth);

**Liability** means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

**Party** means a party to this EULA; and

**System** means all hardware, FLUX Software, networks and other IT systems used by a Party from time to time, including a network.

**Subscription** is defined clause **1.2(b)**.

For any questions or notices, please contact [info@flux.qa](mailto:info@flux.qa)

SLC3 PTY LTD

ABN: 53 622 803 712

Last update: 2019-12-05