

## TLX Communications Standard Terms and Conditions



This is an agreement between Customer and TLX Communications

1. TLX Communications warrants that all products and services provided by TLX Communications will be in good working order on the day installed and TLX Communications will make reasonable efforts to maintain the products and services provided by TLX Communications in working order. TLX Communications does not warrant uninterrupted or error-free operations of a product or service.
2. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
3. The foregoing warranties and representations are the only warranties and representations made by TLX Communications and supersede all prior statements, representations and warranties, whether written or oral.
4. TLX Communications will not be responsible for any damages caused by delay in delivery, installation or furnishing any products or services.
5. In recognition that service interruptions in the I.T. and Telecommunications industry are frequently due to circumstances beyond TLX Communications' control, TLX Communications will not be responsible to the Customer for interruptions in service or errors in the operation of a product or service, unless caused by the unlawful, intentional, reckless or grossly negligent acts or omissions of TLX Communications.
6. TLX Communications is not liable for any damage to the premises of Customer resulting from the furnishing of a product or service or the installation or removal of any products or services when the damage is not the result of the negligence of TLX Communications' agents or employees.
7. Customer understands that some of the products or services to be provided by TLX Communications under this Agreement are dependent upon the provision to TLX Communications of certain products or services by others. TLX Communications is not liable to the Customer for any act or omission of any such other entity providing products or services. TLX Communications will, however, provide to the Customer any of its assignable warranties for products or services provided to Customer by others through TLX Communications.
8. TLX Communications is not liable, either in contract or in tort, for the unauthorized access to, or alteration, theft or destruction of data files, programs, procedures and/or information of the Customer or other authorized user by any person through accident or by any other means or devices. TLX Communications recommends Customer install firewall security protection between the Internet and Customer network.
9. TLX Communications will not be responsible for the installation, operation or maintenance of any product or service provided directly by customer or provided to Customer by others. Where such products or services are connected to products or services furnished by TLX Communications under this agreement, the responsibility of TLX Communications will be limited to the furnishing of products or services under this agreement and to the maintenance of such products or services in the proper manner.
10. TLX Communications will not be responsible to the Customer or any user if changes in any of TLX Communications' facilities, operations, procedures, products or services: 1. Render obsolete any products or services provided by the Customer directly or provided to the Customer by others; 2. Require modification or alteration to such products or services; or 3. Otherwise affect its performance.
11. Neither party shall be considered in default of its obligations (except for the payment of money, which shall not be excused) if the performance of such obligations is prevented or delayed by acts of God, or government, war, riots, acts of civil disobedience, labor disputes, failure or delay of transportation, shortage of goods or such other causes as beyond such party's control.
12. In all situations involving performance or non-performance of products or services by TLX Communications, the customer's sole remedy is repair of product or service; for any other claim concerning performance or non-performance by TLX Communications, the Customer's damages, if any, shall be limited to those actually proven as directly attributable to TLX Communications and shall be subject to the limits set forth in this agreement and the following: 1. In no event will TLX Communications be liable for any damages caused by the Customer's failure to perform the Customer's responsibilities, (including Customer's responsibility to backup their own data) or for any lost profits or other consequential damages, even if TLX Communications has been advised of the possibility of such damages, or for any claim against the Customer by any other party; 2. TLX Communications' liability for damages to the Customer for any cause whatsoever and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the amounts paid to TLX Communications by Customer under this agreement for the most recent period of six consecutive months; 3. No action arising out of any claimed performance or non-performance by TLX Communications under this Agreement or the transaction under this agreement may be brought more than one year after the cause of action has accrued.
13. Travel time to and from the customer site will be invoiced at a flat rate of \$75 per hour. Mileage will not be charged. Travel time only applies if the trip is 30 miles or more. Then it applies from the beginning of the trip. All efforts will be made to complete all engineering work on the same day so as to minimize any potential travel time that the customer is responsible to pay for. However, we do not guarantee that the customer won't have to pay travel time in cases where engineering work cannot be completed on the same day for whatever reason.
14. Customer agrees to be bound by the TLX Communications Service Agreement and Acceptable Use Policy which TLX Communications may change from time to time and without notice to Customer, and to comply with the Avaya Global Software License Terms for End Users (EULA).

15. TLX Communications documents, proposals, product literature, pricing quotations and general communications are proprietary and confidential and customer agrees to not divulge them to others outside their company. TLX Communications likewise agrees Customer data and information is confidential and agrees to not divulge outside of TLX Communications.
16. Any labor time on a TLX Communications proposal is only an estimate unless the proposal explicitly states FIXED LABOR AMOUNT. The actual labor time will vary depending upon existing hardware and software, desired configuration and the exact tasks Customer directs to be done. Customer will only be billed for the actual hours used.
17. All returned products must be complete, unopened and in the original manufacturer's original packaging to receive credit. Products returned for any other reason other than DOA must be in new and unopened boxes. This means the outer box seal has not been opened or re-taped. Opened and re-taped boxes will be refused. Products may be returned up to 14 days from the date of purchase. There is a 20% restocking fee on returned items. Cisco Systems, Hewlett Packard and Lenovo/IBM products CANNOT be returned. This and other manufacturers provide for NO EXCEPTIONS to this policy other than DOA.
18. TLX Communications will always do its best to perform service according to Customer request. However, all response times quoted to Customer are based on the availability of TLX Communications engineers to fulfill the service request. Service requested as Immediate Attention, within 8 business hours, will be billed at 1.5 times standard rate with a 1 hour minimum. Service requested as Emergency, within 4 business hours, will be billed at 2.0 times standard rate with a 1 hour minimum.
19. TLX Communications standard business hours are 8am-5pm, Monday through Friday, excluding designated holidays. Service performed after hours will be billed at 1.5 times standard rate with a 2 hour minimum. Service performed on a Holiday is at 2.0 times the standard rate with a 2 hour minimum.
20. Unless otherwise granted in writing, all payments must be received by the due date specified on the invoice. TLX Communications may, in order to safeguard its interest, require the Customer to have satisfactory, verifiable credit. All Customers are required to submit a completed, signed credit application before a decision to offer credit will be made. TLX Communications may require additional security or deposit as it deems appropriate. TLX Communications reserves the right to decline sale or service should Customer's credit be unacceptable to TLX Communications. Requests for Deposit must be honored within five (5) business days, or TLX Communications may terminate this Agreement without liability. If this Agreement, or any of the Services provided herein, has been terminated, the Deposit shall be applied to all charges and other amounts then due TLX Communications. TLX Communications agrees to refund the excess portion of the Deposit, if any, within thirty (30) days following final settlement of Customer's account. The refunding or crediting of the Deposit in no way relieves Customer from complying with all terms and provisions contained in this Agreement or from tendering payments when due.
21. Customer is solely responsible for all charges for Services, even if such charges were incurred through fraudulent or unauthorized use of the Services; unless TLX Communications has actual knowledge of or is grossly negligent in discovering such fraudulent or unauthorized use and fails to inform the Customer.
22. If not sooner accepted, Customer accepts ownership of all products and services provided by TLX Communications upon delivery to Customer. If delivery to Customer is delayed by Customer and through no fault of TLX Communications, products will be invoiced one (1) week after ready date regardless of actual delivery date. TLX Communications shall be relieved from all risks of loss or damage to products and services provided by TLX Communications on the date of delivery of said products and services.
23. Finance Charges. Customer will be charged 1.5% per month simple interest, or the highest rate allowed by law, whichever is greater, on unpaid balances over 30 days. Payment is not deemed made until received by TLX Communications. All reasonable costs and expenses, including but not limited to attorneys' fees, expenses, court costs and service charges, incurred by TLX Communications in collecting past due payments will be an expense of and charged to the Customer. A \$20 NSF fee will apply to any check returned due to insufficient funds. Customer shall be solely responsible for all charges for Services, even if such charges were incurred through fraudulent or unauthorized use of the Services; unless TLX Communications has actual knowledge of or is grossly negligent in discovering such fraudulent or unauthorized use and fails to inform the Customer.
24. Taxes and Fees. Except for taxes or assessments based on TLX Communications net income, personal, and real property taxes imposed on TLX Communications property, Customer shall be solely responsible for payment of all sales, use, property, gross receipts, excise, access, bypass, franchise, value added, communications, Universal Service Fund, or other local, state and federal taxes, fees, charges, or surcharges, however designated, imposed by any domestic or international government entity on or based upon the provision, sale or use of Services delivered by TLX Communications.
25. All communications concerning disputed amounts must be submitted in writing to us at the address for billing inquiries, TLX Communications, 11 East Superior Street, Suite 240, Duluth, MN 55802, 218.720.4435, Fax: 218.722.1231. Any disputed amounts must be reported to TLX Communications within 45 calendar days of the invoice date. Checks or other payment instruments in an amount less than the full amount due that you send to us marked "paid in full", or which you otherwise attempt to tender as full satisfaction of a disputed amount, will not be deemed to be accepted by TLX Communications as satisfaction of the disputed amount even if cashed or otherwise negotiated by TLX Communications.
26. This Agreement and the legal relations between you and TLX Communications shall be governed by and construed in accordance with the laws of the State of Minnesota. The place for any legal disputes shall be at TLX Communications choice of venue.
27. During the term of this Agreement and for a period of twelve (12) months following the termination of this Agreement for any reason, Customer agrees not to in any way solicit on their own behalf or on behalf of any other Person, the services of any of TLX Communications' employees or any of the employees of any Related Entities or induce any of TLX Communications' employees or any of the employees of any Related Entities to terminate employment with TLX Communications or any Related Entities. The parties agree that the amount of damages would be substantial and significant, and would likely include, among other things, significant lost profits and opportunity costs. There are many variables that could affect the amount of such damages, such that quantifying the amount of damages would be impossible at this time, therefore the party shall be entitled to obtain equitable relief from a court of competent jurisdiction, in addition to any remedies at law

28. The Customer shall not assign this Agreement to any other entity or party without the express written consent of TLX Communications. However, either Party shall have the right to assign, convey or otherwise transfer its rights, title, interest and obligations under this Agreement, in whole or in part, to any entity controlled by, controlling or under common control of the Party, or any entity into which the Party may be merged or consolidated or which purchases all or substantially all of the assets of the Party.
29. This agreement represents the entire agreement between the parties and supersedes all other negotiations, representations, agreements and Terms and Conditions either written or oral.
30. TERM. The term of this Agreement shall commence on the date Service is activated for the term specified in the accompanying service order(s). Upon expiration of any term and unless TLX Communications or Customer provides written notice of termination at least thirty days prior to the end of such term, this Agreement will automatically continue on a month-to-month basis, at the appropriate rate, until renewed for an additional term or until TLX Communications or Customer provides at least thirty days' prior written notice of termination.
31. Termination for Cause. Either Party may terminate this Agreement for cause, provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given to the other Party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of any term of this Agreement, provided that in no event shall TLX Communications be liable for the acts, omission or delays caused by third party vendors to TLX Communications (specifically including incumbent carriers) as long as TLX Communications has made commercially reasonable efforts to obtain necessary services on a timely basis. Cause shall include but not be limited to failure of Customer to pay charges when due, improper use of Services resulting in degradation or blockage of the network, fraudulent use of the Services provided, or refusal of the Customer to abide by the term of the Agreement. Unless otherwise stated in this Agreement, if TLX Communications terminates for cause, Customer shall pay as liquidated damages and not as a penalty, the following:
  - a. if such termination is prior to installation of Services, damages shall be those actual and reasonable expenses incurred by TLX Communications through the date of termination;
  - b. If after activation of Services, Customer shall pay in addition to any charges for Services used, damages equaling 80% of the last three months average billing multiplied by the number of months remaining under the term of the Agreement, actual expenses incurred by TLX Communications to initiate or terminate the Services, any installation charges waived, and any discounts or credits granted.

If Customer terminates this Agreement for cause, Customer's sole remedy, in addition to any service credits that Customer may be entitled to, shall be to terminate this Agreement. All reasonable costs and expenses, including but not limited to attorneys fees, court costs and service charges, incurred by the Party terminating for cause in accordance with this section, will be an expense of and charged to the defaulting Party. Remedies under this Agreement are exclusive and limited to those expressly stated in this Agreement.
32. Termination without Cause. Customer may also terminate the Agreement without cause, upon thirty (30) days written notice; however, the Customer shall pay in addition to any charges for Services used, damages equaling 100% of the last three months average billing multiplied by the number of months remaining under the term of the Agreement, actual expenses incurred by TLX Communications to initiate or terminate the Services, any installation charges waived, and any discounts or credits granted.
33. Customers shall not and shall not permit others to rearrange, disconnect, remove, and attempt to repair, or otherwise tamper with any Equipment owned by TLX Communications without the written consent of TLX Communications. The Equipment is for use in connection with the Services and shall not be used for any purpose other than that for which TLX Communications provided it. In the event that Customer or a third party tampers with or attempts to maintain the Equipment without first obtaining written approval, in addition to any other remedies for breach by Customer of Customer's obligations, Customer shall pay TLX Communications for any damage to the Equipment and any ongoing service charges in the event that maintenance or inspection of the Equipment is required as a result of Customer's breach of this subsection. In no event shall TLX Communications be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused or related to tampering with the Equipment.
34. Service Suspension Maintenance. TLX Communications may occasionally suspend Service briefly for routine maintenance or reconfiguration of its equipment. Whenever reasonably possible, TLX Communications will attempt to give Customer prior notification thereof. Without limitation, TLX Communications shall not be liable to Customer or any third party for: (a) any lost revenues, profits, business opportunities, or any other incidental, indirect, special or consequential damages; or (b) any personal injury arising from or incurred as a result of failure of Services and/or equipment provided under this Agreement; or (c) any liability arising from or related to any agreement or relationship between Customer and its previous or other vendors. Remedies under this Agreement are exclusive and limited to those expressly described in this Agreement.
35. Right of Entry. TLX Communications reserves the right to enter Customer's premises with reasonable notice to Customer to perform its obligations under this Agreement. Reasonable notice of entry to Customer will not be required for instances of emergencies or Customer's default under this Agreement. TLX Communications shall not have any liability to Customer for entry on Customer's premises.

This agreement supersedes any/all other standard terms and conditions from TLX Communications. By purchasing products or services you adhere and recognize the above standard conditions.