Linx Software End-User Licence Agreement ("EULA")

IMPORTANT – PLEASE READ CAREFULLY BEFORE INSTALLING OR USING THIS SOFTWARE. YOUR CONTINUING TO INSTALL AND/OR USE THIS SOFTWARE INDICATES YOUR ACCEPTANCE OF THESE LICENSING CONDITIONS WHICH ARE LEGALLY BINDING. (IF YOU ARE INSTALLING THIS SOFTWARE FOR USE BY OTHER PARTIES, YOU AGREE TO INFORM THE USERS THAT USE OF THE SOFTWARE INDICATES THEIR ACCEPTANCE OF THESE TERMS).

LINX SOFTWARE PTY LTD GRANTS THE USER A PERSONAL, NON-EXCLUSIVE LICENCE TO USE THIS SOFTWARE (BEING LINXCRM, LINXMAIL OR LINXCASH, ALONG WITH ANY RELATED MATERIALS, AND REFERRED TO BELOW AS "THE SOFTWARE") ON THE FOLLOWING TERMS AND CONDITIONS.

IF YOU DO NOT ACCEPT THESE CONDITIONS YOU SHOULD NOT PROCEED WITH THE INSTALLATION. IF ALREADY INSTALLED YOU SHOULD DELETE IT FROM YOUR COMPUTER.

1   HEADINGS

Headings used throughout this EULA are provided for information and clarification purposes only and for no other reason.

2   THE PARTIES

a.   The software is produced by Linx Software Pty Ltd (ABN 63 083 726 578), hereinafter referred to as "Linx Software", whose Registered Office is at 44 Gordon Street, Mackay, Qld 4740, Australia.

b.   Your acceptance of these terms and conditions is either on your own behalf, or on behalf of any business or corporate entity which you own, which employs you, or which you represent. In this licence agreement "you" includes any such business or corporate entity and the provisions of this EULA shall bind you and that entity jointly and severally.

3   COPYRIGHT

The software is licensed, not sold, and all designs, features, programming code, help systems, manuals or other materials supplied in or with the software are and remain the property, copyright and/or the intellectual property of Linx Software. This includes any designs, features or functionality that may have been suggested by users, potential users or other third parties.

4   ACTIVATION

a.   The software contains technological measures that are designed to prevent unlicensed or illegal use of the software. Each copy of the software must first have a Licence Key inserted which is uniquely linked to your User or Business Name and Locality. The software must then be activated either by going on-line for automatic activation or by manual entry of an Activation Code. Such activation uniquely identifies each computer and user by login name, Windows login name, hardware ID (including MAC address), network name and IP address. No other personally-identifiable information is read, transmitted or stored in this process.

b.   You agree to activate the software within any required time limits or to immediately remove it from each computer or virtual computer where it has not been activated but any free trial period has expired.

c.   You further agree that each installed copy may be automatically validated periodically on-line, such as when seeking on-line help, when automatically re-activating toward the end of a

subscription period, or when carrying out an upgrade, using the same information as in a. above.

d. You agree to de-activate the software on any existing computer or virtual computer before re-installing it in an alternative environment.

e. Some Licence Keys or Activation Codes may be temporary, to assist with prompt installation and setup.

f. Where the software is a trial, beta or subscription version all Licence Keys and Activation Codes are time-limited.

g. You may be required to provide suitable proof of identity before receiving Licence Keys or Activation Codes.

5   SUBSCRIPTION SERVICE (LinxCRM Only)

a. Where the software is used under a subscription service, the conditions in this EULA apply equally as if the software licence were not used under a subscription service.

b. You agree that the minimum subscription period is 12 months from the date of initial supply, payments must be made at least quarterly by automatic Direct Debit or credit card charge (in the latter case where a service fee may apply), or other method as determined from time-to-time by Linx Software, approximately 10 days prior to any pre-paid period expiring and that any cancellations must be made in writing at least 30 days prior to the expiry of a pre-paid period.

c. You agree that if the subscription is cancelled by you prior to the minimum period of 12 months then the balance of the 12 months will be charged and payable immediately and that you will be provided with an Activation Code valid to the end of the 12 month period.

d. You agree that the subscription may be cancelled at any time, and without notice, by Linx Software with a pro-rata rebate of any unexpired pre-paid subscription amount being refunded to you.

e. You agree that subscription prices may be increased at any time after the initial 12 month period, without notice, but within the terms and conditions published in the price list prevailing at the time, a copy of which is available on request.

f. You agree that, after payment has been made for each period, each computer must go on-line to re-activate the software or, if this is not possible, then you may request an Activation Code for each computer by email (which may cause delays for which Linx Software accept no liability).

g. You further agree that once a payment is made for any period, no refunds or credit can be given for that period (except in the case of Clause 5d) since the on-line Activation Code has been released.

h. You agree that neither the number of licensed users, nor the Product Feature Level, can be reduced once a subscription's Licence Key has been issued, until after the initial 12 month period. If such changes to an installation are made after this time, you agree to advise us on a legally-binding declaration (in a form acceptable to Linx Software), signed by a Director or Partner, certifying that the software has been uninstalled from the computers or virtual computers where the software is no longer required. Subscription charges will be reduced from the later of:

- the date of receipt of the declaration, or
- the expiry of any pre-paid period, or

- the expiry of any minimum subscription period.

6   BETA SOFTWARE

If you are using a Beta version of the software (indicated by "Beta" on the Main Menu, or after the Version No., or otherwise in documentation provided to you) you agree that there may be undisclosed errors, omissions or additions in the software which may adversely affect your operation of the software, or trial features which may later be withdrawn. You further agree to undertake evaluation of the software and to provide Linx Software with reasonable feedback on the performance and suitability of the software, including but not limited to usability, error reports and test results. You agree that all such information is completely confidential and at all times is the property of Linx Software. This provision shall survive the termination or expiration of this EULA. Linx Software does not undertake to address all such issues raised either in a further Beta release or in a Full version. All other conditions of this EULA, that do not contradict this condition, apply as if this software were not Beta software.

7   THIRD-PARTY FACILITIES

a.   The software makes provision for linking to third-party software and Web sites (including the location of the on-line Help system). These third-party facilities are not under the control of Linx Software and Linx Software is not responsible for the contents of, or communication to or from, any third-party facilities, any links contained in third-party facilities, or any changes or updates to such third-party facilities (other than the contents of the Help system). Linx Software is providing these links to third-party facilities only as a convenience and the inclusion of any link does not imply an endorsement by Linx Software (or related entities) of the third-party facilities.

b.   All title and intellectual property rights in any such third-party facilities is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. Use of any such third-party facilities may be governed by the respective terms of use relating to such services.

c.   No responsibility is accepted by Linx Software in regard to any consequences or costs of connecting to any such third-party facilities, whether connected via the software or in any other manner. This includes the effect of any computer viruses or other malicious attacks on your computer. You undertake to install and keep updated appropriate virus and firewall protection measures at all times during the term of this licence.

8   UPGRADES

a.   Linx Software does not undertake to supply, or continue to supply, upgrades to the software.

b.   However, where upgrades are provided, the End-User Licence Agreement current at the time of installation of the upgrade will apply to such upgrades and will therefore replace this EULA. A copy of the current EULA will be made available to you upon request but can also be accessed from the Licence Activation screen at any time.

c.   Any supplied upgrades will be supplied at the cost shown in the price list prevailing at the time of such supply or may be supplied free as part of an existing upgrade agreement or subscription service.

d.   Upgrades may only be installed by you if you are properly licensed under this EULA and eligible for the upgrade. After installing the upgrade, the licence for any previous version is revoked and must not be used on any computer or virtual computer, by any person or entity.

e. For the purpose of this clause "upgrades" also includes partial updates or enhancements.

9 PRODUCT SUPPORT

a. Support for the software is available on the terms shown in the prevailing price lists on our web sites. You agree to pay all charges incurred in such support (if any) at the rate current at the time support is provided. If unclear of your rights, responsibilities or costs in this regard you agree to seek clarification before such support is requested.

b. Payment for support fees and other services are payable on invoice. Further services, including subscriptions, may be suspended until accounts are paid in full.

c. Where support is provided free-of-charge such support is limited to matters directly related to the software and specifically excludes hardware, networking or similar issues and any matters outside the control of Linx Software. It is also subject to reasonable limits and may be withdrawn by Linx Software at any time without notice.

d. You agree that no liability is accepted by Linx Software or their agents for data loss or security in cases where your data is sent for examination or repair, or remote or onsite access is granted for the purposes of support. Whilst all due care and consideration will be exercised by Linx Software or their agents, you accept full responsibility for the security of your data and systems at all times, including the need to back up your data daily and maintain adequate security measures.

10 WARRANTY, REFUNDS & LIMITATION OF LIABILITY

a. The software is provided by internet download only and, should a download file be found to be faulty, Linx Software's entire liability, and your exclusive remedy, shall be the provision of a replacement file, made available by download.

b. The software is provided on an "as is" basis and Linx Software makes no warranty or guarantees of any kind, either express or implied, including, but not limited to, any warranties of quality, merchantability, fitness for a particular purpose, compatibility with other systems or ability to achieve a particular result.

c. You acknowledge that no promise, representation, warranty or undertaking has been made or given by Linx Software (or a related entity) to any person or company on its behalf in relation to the profitability of, or any other consequences or benefits to be obtained from, the delivery or use of the software. You have relied upon your own skill and judgement in deciding to acquire the software for your use.

d. Neither Linx Software nor any related entity or individual will under any circumstances be liable for any damages whatsoever (including, without limitation, damages for loss of business, lost profits, business interruption, loss of business information or other indirect, special, incidental or consequential loss) arising out of the use of, or inability to use, or supply, or non-supply of, the software, even if Linx Software has been advised of the possibility of such damages, nor for any claim by any third party. The total liability under any provision of this agreement is in any case limited to the amount actually paid by you for the software.

e. Except as described elsewhere in this EULA, and subject to the conditions in Clause 10f, below, no refunds will be provided for any period for which a Licence Key or Activation Code has already been issued, including for open-dated licences (ie. those with no expiry date) nor for any uncompleted minimum contract period.

f.   Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- o   to cancel your service contract with us; and
- o   to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

g.   The warranty is void if failure of the software has resulted from accident, abuse, tampering or misapplication.

11   PROMOTIONAL WARRANTY

In addition to any statutory rights you may have under Law, and irrespective of all other conditions in this EULA, the software may from time-to-time be advertised with an additional satisfaction warranty. Any such additional promotional warranty will be subject to any conditions advertised at the time, plus the following conditions:

a.   Any such promotional offer was advertised in writing and valid at the time of your purchase, and was relied upon in the making of your purchase.

b.   The original account was paid cash-with-order, or otherwise strictly within any special terms shown on your invoice.

c.   You have sought assistance from Linx Software Customer Service to resolve any issues or queries before making a claim under the promotional warranty and have made every effort to implement any suggestions or instructions received, in order to resolve such issues.

d.   Prior to any refund occurring, you agree to remove any and all copies of the software and related materials from your computer(s) or virtual computer(s), under telephone instruction from us.

e.   You will certify such removal in writing, in the manner described in Clause 5h, within the period specified in any written promotional material supplied at the time of purchase, but in no case later than 30 days from the issuing of your original Licence Key.

f.   You grant Linx Software the right to seek independent verification of such declaration prior to any refund being made.

g.   Any refunds under this clause apply to the cost of the software and to any unused, pre-paid subscription (on a time-remaining basis) but not to training, support or other services or materials.

h.   Any refund will be made, where possible, in the same manner by which payment was made and, if not available, then by another method at the discretion of Linx Software.

i.   Any disputes relating to any such satisfaction warranty will be determined at the sole discretion of Linx Software.

12 LIMITATIONS OF USE

a. This EULA is valid and grants the end-user rights only if the software is genuine and the appropriate licence fee has been paid.

b. The software is licensed to a single-user for use on one computer or virtual computer only. This license may not be shared, transferred to, or used concurrently on, different computers or virtual computers unless a multi-user version of the software has been licensed and paid for. The number of user who are required to be licenced is the greater of:

    • the number of computers or virtual computers where the software is installed, or
    • where multiple Windows logins are configured on one machine (such as, but not limited to, thin-client environments), then that number of users having access to the software, or
    • the maximum number of people with separate logins to the software, whether used concurrently or otherwise, and whether on a single computer or virtual computer or otherwise.

    Using a single-user copy of the software in a multi-user environment is a breach of copyright, will void all warranties and may lead to prosecution.

c. You may not copy, translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the software.

d. The software is licensed as a single product. Their component parts may not be separated for use on more than one computer, virtual computer or computer network.

e. You may not rent, lease, lend, sublicense, sell, copy, assign, pledge, redistribute, transfer or otherwise allow third parties to use the software directly or indirectly, whether on a time-sharing or service bureau arrangement, or otherwise deal in the software, on a temporary or permanent basis.

f. You agree not to use the software in violation of any law, statute, ordinance or other regulation or any obligation to which you are bound. You agree to comply with all applicable laws and regulations regarding your use of the software. You agree to indemnify Linx Software (and associated entities and individuals) from and against any liability that Linx Software may incur arising from your breach of this EULA or your use of the software.

g. This EULA does not grant you any rights in connection with any trademarks (registered or otherwise) of Linx Software or that of any related entities or individuals. You agree that you will not use, run, manipulate, install or implement the software, in whole or in part, in any manner that has the effect of overriding, modifying, eliminating, obscuring, altering or de-emphasizing the visual appearance of any trademark, trade name or intellectual property notice that appears on any computer display screen or printed report normally generated by, or as a result of, or as part of, the software.

h. You will not take any action that jeopardizes Linx Software's proprietary rights, or acquire any rights in the software. Linx Software will own all rights in any copy, translation, modification, adaptation or derivation of the software, including any improvement or development thereof, or any improvement or development thereof suggested by you or your organisation. At Linx Software's request you will execute, or obtain the execution of, any instrument that may be appropriate to assign these rights to Linx Software or its designee.

i. You may print one copy of any electronic documentation supplied as part of the software.

j.   Without prejudice to any other rights, Linx Software may cancel this EULA if you do not abide by the terms and conditions contained herein. In such event, you must destroy all copies of the software and related materials.

k.   You agree that the LinxInsure module, being part of LinxCRM Professional, is licenced for use:

*   In New Zealand, only by LinxCRM Professional users who are current members of the Professional Advisers Association, or
*   Elsewhere, by any entity licenced to use LinxCRM Professional

and you agree to ensure that, if you have installed the LinxInsure module outside of New Zealand, you will prevent access to that module from anyone inside New Zealand, unless they are current members of the Professional Advisers Association.

13   TRANSFER OF LICENCE

You may transfer this licence and use of the software to another party (such as on the sale of your business) provided you permanently and wholly transfer all your rights under this EULA, retain no copies of the software (in whole or in part) and the transferee agrees to abide by all the terms of this EULA. A signed acceptance of this EULA must be provided by the transferee to Linx Software prior to such transfer or use of the software by them along with formal documentation, satisfactory to Linx Software, evidencing a business transfer or similar transaction. Any purported transfer not in accordance with this clause will be void and deemed to be a breach of copyright.

14   EXPORT

a.   You will comply with all applicable laws, rules and regulations governing export of goods and information, including the laws of Australia. In particular, you will not export or re-export, directly or indirectly, separately or as a part of a system, the software or other information relating thereto to any country for which an export licence or other approval is required without first obtaining such licence or other approval. This includes countries for which an export licence is required, or countries under an embargo, for computer software and similar items exported from the United States of America. You agree to indemnify and protect Linx Software (and associated entities and individuals) from any liability incurred from any breach by you of such regulations.

b.   All patents, copyrights, trade secrets, trademarks, and other proprietary rights in or related to the software are and will remain the exclusive property of Linx Software or it's associated entities, whether or not specifically recognized, registered or perfected under the laws of the country where the software is located. You hereby assign and agree to assign any and all rights you may have or acquire in or to the software to Linx Software for no additional consideration.

15   DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this contract, or the breach of this contract, shall be settled by binding internet arbitration at judge.me (http://www.judge.me/) in accordance with the judge.me arbitration agreement. The arbitrator's decision shall be final and legally binding and judgment may be entered thereon.

Should such arbitration fail, or arbitration is considered not appropriate by judge.me or Linx Software, or there is non-compliance with the arbitrator's decision, then each party hereby irrevocably agrees that the courts of Queensland and the Commonwealth of Australia shall have jurisdiction to resolve any controversy or claim of whatever nature arising out of or relating to this licence agreement or breach thereof, and that such laws shall govern any controversy or claim.

16 ENTIRE AGREEMENT

This EULA constitutes the complete and entire understanding and agreement of all terms, conditions and representations between you (or your personnel) and Linx Software (or their personnel) with respect to the software and supersedes all previous communication between the parties.

22 Mar 2022

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