

## **Customer Relationship Terms**

(general terms for the provision of technology Goods and Services)

### **1. INTRODUCTION**

These are the general terms of the relationship between RedLinX and Customer. It covers transactions (including transaction carried out electronically using a computer or network, or in person) where RedLinX provides to Customer who receives technology Goods or Services. An Order, incorporating these terms will specify the commercial terms of the transaction between RedLinX and Customer. The Order will prevail if there is a conflict of meaning. Nothing in these terms obligates either Party to enter into any Orders.

### **2. INTERPRETATION**

In the Agreement, unless a contrary intention appears:

- 2.1 the rule of interpretation that a contract must be interpreted against the Party responsible for the drafting or preparation of the contract and any other similar rules of interpretation, will not apply and the Parties waive any rights they have to rely on these rules;
- 2.2 any reference to “days” will be a reference to calendar “days” unless qualified by the word “business” in which case a “business day” will be any day other than a Saturday and a Sunday or a public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 2.3 the word “include” and “including” means “include without limitation” and “including without limitation”. The use of the word “including” followed by a specific example/s will not limit the meaning of the general wording preceding it;
- 2.4 any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally.

### **3. DEFINITIONS**

In the Agreement unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause:

- 3.1 “**Agreement**” means the agreement between RedLinX and Customer consisting of these terms and any Orders the Parties enter into;
- 3.2 “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 3.3 “**Business Hours**” means RedLinX’s normal business hours on a Business Day;
- 3.4 “**Customer**” means the purchaser of Goods or Services from RedLinX in terms of the Agreement;
- 3.5 “**Effective Date**” means in respect of each Order, the effective date stipulated in each Order, in the absence of which it will be the date that RedLinX accepts the Order;
- 3.6 “**Fees**” means the fees, charges, or purchase consideration that Customer will pay to RedLinX in respect of Goods and Services provided by RedLinX under Orders;
- 3.7 “**Goods**” means any goods (including Hardware and software) RedLinX provides to Customer under Orders;
- 3.8 “**Hardware**” means technology hardware and includes computers, computer components, peripheral devices, communications appliances and related accessories and equipment but excludes software;
- 3.9 “**Intellectual Property Rights**” means all intellectual property rights, including (i) all works eligible for copyright under section 2 of the Copyright Act 98 of 1978, domain names, trade or business names, trade secrets and know-how, (ii) any application or right to apply for registration of any of these rights; and (iii) all rights of a similar nature to any of the above rights that may subsist in South Africa or elsewhere, whether or not such rights are registered or capable of being registered;
- 3.10 “**Order**” means a goods or services, purchase or sales order agreed to and signed by both Parties describing the specific Goods or Services RedLinX will sell to Customer;
- 3.11 “**Party**” and “**Parties**” mean RedLinX and Customer;
- 3.12 “**Personnel**” means any director, employee, agent, consultant, contractor or other representative;
- 3.13 “**Quote**” means the estimate price RedLinX submits to Customer in writing for any Goods or Services that Customer requests;
- 3.14 “**RedLinX**” means Systematic Designs (Proprietary) Limited with registration number 2003/000580/07, trading as RedLinX;
- 3.15 “**Services**” means any services RedLinX provides to Customer under Orders;
- 3.16 “**Service Levels**” means the levels according to which RedLinX will provide each Service as agreed by the Parties;

- 3.17 “**Third Party Contractor**” means the contractor, supplier, vendor or licensor (as the case may be) of the goods or services which is not a party to the Agreement;

- 3.18 “**Web site**” means www.redlinx.co.za.

### **4. PRODUCTS AND SERVICES**

- 4.1 **Third Party Contractors:** Third Party Contractors may require personal information of Customer as end user of the Goods or Services, in order to comply with their local legislation, in which instance Customer consents to:

- 4.1.1 provide the required personal information to RedLinX on request;
- 4.1.2 complete and return related documentation to RedLinX on request;
- 4.1.3 indemnify RedLinX for any damages or losses sustained as a result from providing the requested personal information and documentation.

- 4.2 **Goods description:** RedLinX sells Goods and provides Services to Customer as described and specified on the Web site or as otherwise agreed in writing, in terms of the Agreement.

- 4.3 **Software subject to License Agreement:** RedLinX supplies all software subject to the license agreement terms provided with the software. Customer acknowledges that the software license agreement terms constitutes a separate agreement between Customer as the end user of the software and the owner or licensor of the software and RedLinX is not a party to that agreement. Accordingly RedLinX does not make any warranties or representations relating to the ownership or use of the software.

- 4.4 **Services:** RedLinX provides Services to Customer at the Service Levels.

- 4.5 **Remote Support:** For the sole purposes of rendering remote support services to Customer, Customer authorises and grants permission to RedLinX to access and interfere with Customer’s Hardware, software, networks and data and to the extent necessary, to modify such data, or do whatever be required and is necessary to provide the support services.

- 4.6 **Service hours:** RedLinX will provide Services on Business Days during Business Hours. If RedLinX needs to provide Services at Customer’s premises, Customer will ensure that RedLinX has the necessary access to the premises and Customer Personnel.

- 4.7 **Backups:** Customer must maintain proper backups of all files, data programs and the like before RedLinX provides the Services and RedLinX will not be liable for any loss or damage suffered by Customer if Customer fails to do so.

### **5. OWNERSHIP OF GOODS**

- 5.1 RedLinX retains ownership in and title to all Hardware sold to Customer until full payment is received, at which date and time ownership and title in the Hardware will pass to Customer.

- 5.2 Customer will possess and hold the Hardware on behalf of RedLinX from delivery to Customer, until ownership passes from RedLinX to Customer.

- 5.3 RedLinX has the right to take immediate repossession of the Hardware if the Agreement is cancelled before full payment of the purchase price has been received by RedLinX.

- 5.4 Risk in the Hardware passes to Customer on delivery of the Hardware to Customer notwithstanding ownership and title still vesting with RedLinX.

- 5.5 Customer must ensure that all Hardware delivered by RedLinX to Customer over R50, 000 per Order is adequately insured at Customer’s cost until ownership and title in the Hardware passes to Customer. RedLinX may request proof of this insurance.

### **6. ORDERS**

- 6.1 The marketing of the Goods or Services by RedLinX (including any Quote given by RedLinX to Customer) is only an invitation to do business or for Customer to make an offer to procure Goods or Services. The Parties only conclude an agreement when RedLinX accepts the offer made by Customer. RedLinX only accepts an offer relating to Goods or Services, when RedLinX confirms acceptance of the offer to the Customer in writing. RedLinX may only accept a portion of the offer. RedLinX will refund any monies paid by Customer in terms of an offer if RedLinX does not accept the offer.

- 6.2 Despite RedLinX’s best efforts, stated Fees may be incorrect. RedLinX will confirm Fees for Goods or Services when RedLinX accepts the Customer’s offer.

- 6.3 Third party terms and conditions may apply where a third party supplies or delivers any Goods or Services directly to Customer. Customers are solely responsible to ensure they understand and agree to those terms.

- 6.4 The Parties only conclude an agreement when a duly authorised representative of RedLinX accepts an offer in writing and at RedLinX’s head office. RedLinX will communicate the acceptance of the offer to Customer by email or fax to the email address or fax number provided by Customer on the offer.

- 6.5 The customer relationship terms in effect at the time Customer makes an offer will govern the Order. Each Order will create a separate agreement. Despite that, RedLinX may consider the breach of any one Order to constitute a breach of any or all Orders.

7. **NO CANCELLATION**

- 7.1 Subject to clause 9.6, or unless agreed in writing by RedLinX, Customer may not reschedule or cancel an Order.
- 7.2 Customer remains responsible for payment of an Order in the event of attempted cancellation.
- 7.3 Any attempt by Customer to reschedule or cancel an Order, other than in terms of clause 9.6, will be a material breach of the Agreement.

8. **DELIVERY AND INSTALLATION**

- 8.1 RedLinX will make all reasonable efforts to meet delivery date estimates.
- 8.2 Dates for delivery or installation of Goods or rendering of Services are only estimate dates and subject to clause 9.6, Customer may not cancel the Agreement or institute any legal proceedings or claims for a delay in delivery or installation.
- 8.3 All Goods will be delivered subject to RedLinX's standard inspection prior to delivery and will meet RedLinX's published specifications or the published specifications of its Third Party Contractors on delivery.
- 8.4 Goods will be deemed delivered at the time when and place where the courier's waybill is signed by Customer or its purported representative.
- 8.5 If the purchase price of Goods includes installation, it will be deemed delivered when installed in accordance with acceptance criteria agreed between the Parties.
- 8.6 If Customer assists with the installation of the Goods, RedLinX will not be liable for any damage or loss arising from Customer's assistance with the installation.

9. **SHIPPING**

- 9.1 RedLinX will bear the costs of shipping as specified in the Order.
- 9.2 Shipping dates are based upon prompt receipt of all necessary documents referred to in the Agreement from Customer.
- 9.3 Any environmental issues, including access or security provisions relating to a delivery must be communicated in writing to RedLinX by way of fax or email, in advance of delivery, and if such issues cause RedLinX to incur additional costs, the price Quoted by RedLinX, will be adjusted accordingly.
- 9.4 Unless otherwise agreed in writing, RedLinX will select its own carrier.
- 9.5 RedLinX will not be liable for any costs caused by a delay in delivery or non-labour, energy, components, raw materials or supplies, acts of God, labour unrest, fire, explosions or earthquake. If such a delay occurs, the date of delivery will automatically be extended for a period equal to the time lost by reason of the delay.
- 9.6 RedLinX will be in default for failure to deliver if it does not commence to cure failure within ten days after receipt of written notice or failure to deliver to Customer. Customer's remedy for this default will be cancellation of the Order.
- 9.7 If RedLinX has insufficient supplies to meet future demand or Orders, RedLinX may in its discretion allocate production deliveries amongst its Customers or cancel the Agreement, subject to the provisions of clause 16.2. RedLinX will have no liabilities to Customer as a consequence of any allocation of Goods or cancellation of the Agreement, except to refund Customer for any monies already paid. Customer agrees to accept partial shipments and pay for Goods comprising a partial shipment, provided however, that RedLinX will only submit an invoice for Goods that it has actually shipped, unless otherwise agreed to in writing by the Parties.

10. **PRICE**

- 10.1 All Fees are in South African Rand (unless otherwise stated or agreed to in writing) and are **exclusive** of VAT.
- 10.2 Any price information, including Quotes is provided as general information and as estimates only.
- 10.3 Price is only agreed when RedLinX signs and accepts an Order in writing and signed.
- 10.4 If any Fees, partly or in full, are in a currency other than South African Rands, Customer bears the risk in currency exchange rate fluctuations between South African Rands and the other currency.

11. **PAYMENT TERMS**

- 11.1 Payment of invoices is due 25 days from date of statement. RedLinX will issue tax invoices on delivery.
- 11.2 Customer will pay interest from the due date of payment at 1.5% per month.
- 11.3 The Parties will mutually agree on any additional surcharges and penalties and specify that in the Order. RedLinX may withhold or remove any Goods or halt the provision of any Services until Customer has paid all amounts that are due.
- 11.4 RedLinX may appropriate payment received from Customer towards any indebtedness of Customer to RedLinX under the Agreement. Customer may not withhold payment of any amount due to RedLinX for any reason. A certificate, signed by an accountant appointed by RedLinX of the amount due by Customer and the date on which it is payable will be conclusive irrefutable proof of the correctness of the certificate's contents. Unless otherwise stated, the Parties will bear their own costs to implement (or perform their obligations under) the Agreement.

12. **WARRANTY**

- 12.1 Subject to Customer using and installing Goods in terms of accompanying specifications, RedLinX warrants that Goods will be free from defects in material and workmanship under normal use and service for a period of one year from date of delivery (the "warranty period"), except third party products that come with their respective manufacturers warranty.
- 12.2 The Services RedLinX provides will be performed by individuals in a professional and workmanlike manner.
- 12.3 RedLinX's obligation under this clause is limited to repairing or replacing Goods, at RedLinX's option, at its authorized repair centres, provided each item is returned to RedLinX, shipping and insurance prepaid by Customer, and received by RedLinX within the warranty period. Customer must notify RedLinX of a failure of the Goods to substantially perform in accordance with the standards set forth in the accompanying documentation in the manner specified on the web site at [http://www.redlinx.co.za/all\\_support.htm](http://www.redlinx.co.za/all_support.htm) during the warranty period.
- 12.4 Customer must supply RedLinX with a report specifying the defaults in the Goods or Services ("Fault Report"), following the procedure set out on the Web site at [http://www.redlinx.co.za/RL\\_RMA\\_Fault\\_Report\\_Template.doc](http://www.redlinx.co.za/RL_RMA_Fault_Report_Template.doc) before returning the Goods.
- 12.5 The warranties provided for in this paragraph 12 will not cover the repair of damage to Goods which occurs during shipment from Customer to RedLinX. Customer will bear all the risk of shipment in the Goods and accordingly file a claim with the carrier for recovery of Customer's cost to repair such damage.
- 12.6 The above warranties are in lieu of all other warranties, expressed implied or statutory or arising by custom or trade usage, including any warranty of merchantability or fitness for any unique, special or express purpose and of all other obligations or liabilities, including liability for damages (whether general or special, direct or indirect, consequential, punitive, incidental, exemplary) or for any claim for the loss of profits or business or for damage to goodwill
- 12.7 Save for the warranties in 12.1 and 12.2 and any manufacturer's warranties provided by the manufacturer of the Hardware, RedLinX does not give any further express or implied warranties, including warranties of merchantability, fitness for purpose, title or non-infringement regarding the Goods at all.
- 12.8 Under no circumstances will any advice or information furnished by RedLinX or its Personnel be construed as a warranty of any kind and Customer acknowledges that it has not entered into the Agreement in reliance upon any warranty or representation by any person or entity.
- 12.9 Customer warrants that any person signing an Order referred to in clause 6 or a waybill referred to in clause 8.4 has the power, authority and legal right to sign the Order or waybill and has duly been authorised by all necessary actions of the relevant persons to constitute such signature valid and binding on Customer.

13. **EXCLUSION AND LIMITATION OF LIABILITY**

- 13.1 Neither RedLinX nor its Personnel will be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage (whether arising, or may arise out of the Goods or Services or the use thereof, under contract, delict, including negligence and gross negligence or otherwise), sustained by Customer or its Personnel, including any loss of profits, loss of operation time, corruption or loss of information or data or loss of contracts or profits.
- 13.2 RedLinX's total liability to Customer, including liability for breach of a warranty, will be limited to the payment of direct damages only, limited to the total Fees already paid by Customer to RedLinX for the Goods or Services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
- 13.3 RedLinX's liability for direct damages under clause 13.2 will be excluded where such liability results or may result from Customer's use of any third party products or services accessible or used in conjunction with the Goods or Services, but which are not provided by RedLinX.

14. **INTELLECTUAL PROPERTY INDEMNITY**

- 14.1 RedLinX will not be obligated to defend any suit or proceeding brought against Customer or to pay any settlements and damages finally awarded against Customer based on a claim that any of the Goods infringe or misappropriate any Intellectual Property Rights as of the delivery date of such Goods. If Goods are held in any such suit to infringe and the use of the Goods is enjoined, RedLinX will have the option, at its own discretion and expense, to (i) procure for Customer the right to continue using such Goods, (ii) replace the Goods with a non-infringing goods of similar quality and purpose, (iii) modify the Goods to make it non-infringing, provided the modified Goods remains similar in quality and purpose to such Goods, or (iv) terminate the Agreement and return to Customer the depreciated value of the Goods based on straight line depreciation over 5 years.
- 14.2 Customer agrees to defend and hold RedLinX harmless from all losses, claims, lawsuits, awards, judgement or liability arising in any way from Customer marketing, use, sale, lease or other distribution of any non-standard hardware configurations that have infringed Intellectual Property Rights of third parties.
- 14.3 This indemnity will include all attorney's fees and costs reasonably incurred by RedLinX in defence of any claim or lawsuit subject to this article.

15. **CUSTOMER'S UNDERTAKING**

Customer undertakes and agrees:

- 15.1 Not to directly or indirectly solicit, offer employment to, employ or contract in any manner with any RedLinX Personnel or approach RedLinX Personnel with the view to offer him a position at a RedLinX competitor. Customer agrees to pay RedLinX a penalty fee equal to the Personnel's annual salary in addition to any other claim for damages by RedLinX, if Customer fails to comply with this clause.
- 15.2 not to use or infringe any of RedLinX's Intellectual Property Rights.
- 15.3 not to prejudice any proprietary rights of RedLinX or its Third Party Contractors.
- 15.4 that it will be a material breach of the Agreement not to comply with any of the provisions of this clause 15 in which case RedLinX can claim all direct and indirect damages suffered from Customer.

16. **BREACH AND TERMINATION**

- 16.1 Either Party may terminate the Agreement (i) if the other Party is in material or continuing breach of any of its obligations under the Agreement, which material breach will include (a) failure to pay any amount due in terms of the Agreement or failure of the Customer to meet reasonable credit or financial requirements established by RedLinX, including any limitations on allowable credit, or (b) failure to comply with the provisions of clauses 7.3 and 15 and the defaulting Party fails to remedy the breach (if capable of remedy only) for a period of 7 days after written notice by the other Party or (ii) if the other Party is involved in any legal proceedings concerning its solvency, or partly ceases or threatens to cease trading, or suspends payment of all or substantially all of its debts, or is unable to pay its debts as and when they fall due, or commits an act of insolvency, or is placed under judicial management, or is wound-up (whether provisionally or finally), or compromises with any of its creditors or endeavours or attempts to do so.
- 16.2 The Agreement may be terminated by RedLinX on seven days notice to Customer if RedLinX experiences insufficient supplies of Third Party Goods. Customer will have no claim against RedLinX for losses or damages suffered, whether arising from contract or delict as a result of termination for this reason.
- 16.3 Should Customer be in breach of the Agreement, RedLinX may, without prejudice to any other rights that RedLinX may have and without notice to Customer, claim immediate payment of all outstanding monies due to RedLinX. RedLinX may list Customer with any credit bureau if judgment is granted against Customer.
- 16.4 In all instances, RedLinX is entitled to retain all Fees already paid by Customer and recover all of its costs associated with Customer's breach, including legal costs, on an attorney and own client scale, whether incurred prior to the institution of, or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of such judgment.

17. **DISPUTE RESOLUTION**

- 17.1 If any dispute arises out of or in connection with the Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration.
- 17.2 The arbitration will be held as an expedited arbitration in Cape Town in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (below "AFSA") by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 5 (five) Business Days after the referral of the dispute to arbitration, the arbitrator will be appointed by the Secretariat of AFSA. The decision of the arbitrator will be final and binding on the Parties.
- 17.3 The provisions of this clause 17 will not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending the outcome of the arbitration for which purpose the Customer irrevocably submit to the exclusive jurisdiction of a division of the High Court of the Republic of South Africa.

18. **FORCE MAJEURE**

- 18.1 A delay or failure to perform in terms of the Agreement or breach by any Party will not be deemed to be a breach of the Agreement if a Force Majeure event (see below) happens. RedLinX will not be liable to the Customer for any damages suffered.
- 18.2 For purposes of clause 18.1 a "Force Majeure event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure or telecommunications lines provided by any third Party, including the Telkom Limited group of companies, or any circumstances of like or different nature beyond RedLinX's reasonable control.
- 18.3 If the Force Majeure conditions cannot be corrected by any Party affected within six (6) months from the date of the occurrence of the condition, then the other Party may terminate the Agreement.

19. **NOTICES**

- 19.1 The Parties choose as their *domicilium citandi et executandi* for all purposes under the Agreement for all Notices, the following addresses:  
**RedLinX :**  
Unit 2 Hyde Park  
Platinum Crescent  
Milnerton  
7441  
South Africa  
Fax number: 021 552 9299  
Attention: Mr Alastair Knight  
**Customer :**  
at the address and fax number listed on Customer's Order.
- 19.2 A notice must be:
  - 19.2.1 in writing, in English and signed by a person duly authorised by the sender; and
  - 19.2.2 hand delivered or sent by registered post or facsimile to the recipient's address for Notices specified in clause 19.1 above, as varied by any Notice given by the recipient to the sender.
- 19.3 A notice given in terms of clause 19.2 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
  - 19.3.1 if hand delivered, on delivery;
  - 19.3.2 if sent by registered post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside South Africa);
  - 19.3.3 if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire Notice,but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a business day, the Notice is taken to be received at 9.00am on the next Business Day.
- 20. **GENERAL**
- 20.1 **Entire agreement**  
The Agreement constitutes the entire agreement between the Parties.
- 20.2 **No Variation**  
No variation or consensual cancellation of the Agreement and no addition to the Agreement will be of any force or effect unless in writing and signed by the Parties or their duly authorised representatives.
- 20.3 **Severability**  
A term or part of a term of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining terms or parts of the terms of the Agreement continue in force.
- 20.4 **Assignment and delegation**  
Customer may assign its rights or delegate its obligations under the Agreement with the prior written consent of the RedLinX. RedLinX may assign the Agreement to any successor or purchaser of its business or some of its assets. RedLinX may sub-contract or delegate its obligations under the Agreement to Third Party Contractors, provided that RedLinX will remain liable for performance of the Third Party Contractors. RedLinX will not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to RedLinX's obligations under the Agreement.
- 20.5 **Waiver**  
A waiver of any of term of the Agreement will only be binding if in writing and signed by the Party. The waiver will be effective only in the specific instance and for the purpose given. Accordingly RedLinX's failure to specifically object to any term or condition contained in any communication received from Customer will not be deemed a waiver of the terms of the Agreement. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 20.6 **Governing law**  
The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 20.7 **Survival**  
Clauses 5, 12, 13 and 17 will survive the cancellation or termination of the Agreement for whatsoever reason or cause.
- 20.8 **Right to reference**  
Customer consents to RedLinX using its name in any marketing or sales material.