

Lead IT and Cloud Services Master Services Agreement

TERMS AND CONDITIONS

- **DEFINITIONS AND INTERPRETATION**
 - **Definitions**

In this **Agreement**, unless the context clearly indicates otherwise:

Address for Service means, in respect of a party, the address for service of notices to that party as specified in the Service Schedule;

Agreement has the meaning given in clause 2(a);

Business Day means any day that financial institutions are open for business in the place where an act or thing is to be done in respect of this Agreement or a Service Schedule;

Confidential Information means the information of either party or in either party's control, which is by its nature confidential, including information relating to:

- Customer's specification or requirements for the Services;
- The terms of either party's contractual relations with third parties;
- Details concerning the personnel, policies and business strategies of Customer;
- Details of LeadIT sites, including security information and details of essential services supplied to the sites;
- Third party information which is in a party's control and is of a confidential nature; and
- The terms of any Service Schedule,

but excluding information that is or becomes public knowledge, other than by breach of this Agreement, or was in the possession of a party before it was disclosed to it by the other party;

Consolidated Entity has the meaning given in section 9 of the Corporations Act;

Corporations Act means the Corporations Act 2001 (Cth);

Customer Contract Representative means the person identified as the primary Customer contact nominated in each Service Schedule for the Services referred to in that Service Schedule, or as otherwise notified by Customer to LeadIT from time to time;

Customer IP means any and all Intellectual Property in Materials owned or controlled by Customer before the commencement of this Agreement and during the Term;

Customer Premises means those premises set out in the Service Schedule at which Customer requests LeadIT to supply the Services;

Customer Premises Service Delivery Point means the point and/or location at Customer Premises at which the Equipment and/or Customer's equipment and/or communications network connects to the Services;

Discloser means a party who discloses or otherwise makes available its Confidential Information to the other party by any means;

Documentation means any materials provided by LeadIT to Customer in relation to the Services whether in physical or electronic form and whether delivered to Customer or otherwise accessed by Customer;

Electronic Message means electronic mail or a message sent via the LeadIT online portal;

Equipment means all equipment supplied by LeadIT to Customer and related to or required for the supply of the Services;

Fault means a design flaw or malfunction in respect of a Service that causes a material loss of ability to operate in accordance with the Specifications;

Force Majeure Event means a circumstance beyond the reasonable control of the parties, which results in a party being unable to observe or perform an obligation under this Agreement, including but not limited to acts of God, lightning strikes, storms, floods, earthquakes or any natural disasters, explosions, war, invasion, rebellion, sabotage, epidemic and labour disputes (excluding labour disputes relating to the workforce of either party), problems with telecommunications networks provided by Other Suppliers and Other Supplier's technical problems which cannot be avoided by either party and impact on the provision of the Services;

GST means tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and legislation of the Commonwealth, a State or a Territory that is enacted to replace or supplement that Act;

Information System has the meaning given to that term in section 5(1) of the *Electronic Transactions Act 2000* (NSW);

LeadIT Contract Representative means the person identified as the primary LeadIT contact nominated in each Service Schedule for the Services referred to in that Service Schedule, or as otherwise notified by LeadIT to Customer from time to time;

LeadIT IP means any and all Intellectual Property in Materials owned or controlled by LeadIT before the commencement of this Agreement and created by LeadIT (at its expense) or on its behalf during the Agreement in the course of providing the Services;

LeadIT Service Management Supplement means the manual of operational procedures by which LeadIT manages the Services and Fault resolution;

Insolvency Event means the occurrence of any one or more of the following events in relation to either party:

- - - An application is made to a court for an order that it be wound up (other than for the purposes of amalgamation or reconstruction of the companies comprising a Consolidated Entity), declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed unless the application is withdrawn, struck out or dismissed within 5 Business Days of it being made;
 - A liquidator, provisional liquidator or mortgagee in possession is appointed;
 - An administrator or a controller is appointed to any of its assets;
 - It enters into an arrangement or composition with one or more of its creditors, or assignment for the benefit of one or more of its creditors;
 - It proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding-up or dissolution (other than for the purposes of amalgamation or reconstruction of the companies comprising a Consolidated Entity);
 - It is insolvent as disclosed in its accounts or otherwise, states that it is insolvent or is presumed to be insolvent under an applicable law;
 - It becomes an insolvent under administration or action is taken which could result in that event;
 - It is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
 - A notice is issued under sections 601AA or 601AB of the Corporations Act;
 - A writ of execution is levied against it or a substantial part of its property;
 - It ceases to carry on business or threatens to do so; or
 - Anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition;

Intellectual Property means any intellectual and industrial property rights throughout the world, including copyright, inventions (including patents), trademarks, service marks, designs, circuit layouts and rights to have information kept confidential, whether existing before or after the date of this Agreement and whether or not registered or registrable, and includes any right to apply for the registration of such rights, including all renewals and extensions;

Know How means the knowledge, techniques and methodologies developed and acquired by the Personnel of LeadIT in the course of providing the Services and any Documentation embodying such knowledge, techniques and methodologies;

Loss means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party);

Materials means anything that is written down (including in computer readable manner only), designs, software code, discoveries, inventions, process improvements, methodologies and guides;

Normal Business Hours means the hours of 8:30am to 5pm on any Business Day;

Other Supplier means a telecommunications carriage service provider, data centre facility manager or a software or equipment supplier engaged by Customer, including any subcontractors of those Other Suppliers, but excluding LeadIT and its subcontractors;

Out-of-pocket Expenses means all expenses incidental to the provision of the Services and which are not included in the Fees, including but not limited to any interstate or international travel costs, all meals for Personnel of LeadIT that are required to travel interstate or overseas and accommodation costs for Personnel of LeadIT that are required to travel interstate or overseas;

Personnel means in respect of a party, that party's officers, employees, contractors and agents;

Professional Services means any services, in addition to the Services, which are carried out by LeadIT at the request of Customer;

Recipient means a party who obtains the Confidential Information of the other party by any means;

Service Fees means the fees stated in the Service Schedule for the Services current at the time the Service Schedule is agreed, as varied from to time, or as otherwise agreed between the parties;

Service Level Agreement means the document by that name containing the Service Levels published by LeadIT and current at the date of the Service Schedule;

Service Levels means the standards of Service to be provided by LeadIT, as set out in the Service Level Agreement;

Services means the services set out in the relevant Service Schedule;

Service Schedule means an order for Services in the form agreed by the parties;

Service Start Date means the date identified as such in the Service Schedule as the date that LeadIT starts to provide Services to Customer;

Special Conditions means any special conditions varying the terms of this Agreement in respect of a Statement of Work;

Statement of Work means the document provided by LeadIT to Customer describing the Services;

Term means:

- In respect of this Agreement, the period commencing on the date of execution of this Agreement and continuing until terminated in accordance with clause 15; and
- In respect of each Service Schedule, the period commencing on the Service Start Date during which the Services must be provided as set out in a Service Schedule, unless earlier terminated in accordance with clause 15, and any extension of that period by agreement between the parties;

Terms and Conditions means these terms and conditions of the Master Services Agreement;

Territory means the geographical region specified in the Service Schedule.

- Interpretation

In this **Agreement**, unless the context requires otherwise:

- Words importing the singular shall (where appropriate) include the plural and vice versa;
- Words importing any gender shall (where appropriate) include the other genders and vice versa;
- Words importing natural persons shall (where appropriate) include firms, corporations, unincorporated associations, partnerships and any other entities recognized by law and vice versa;
- Headings are included for convenience of reference only and shall not affect the meaning or interpretation of this Agreement;
- References in this Agreement to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- References in this Agreement to clauses, schedules and parties shall be construed as references to the clauses, schedules and parties of and to this Agreement;
- A reference to \$ or dollars is a reference to the lawful currency of Australia; and
- The obligations and liabilities imposed and the rights and benefits conferred on the parties under this Agreement shall be binding upon and ensure in favour of the respective parties and each of their respective legal personal representatives, successors in title and permitted assigns.

- **AGREEMENT COMPOSITION AND ORDER OF PRECEDENCE**
 - This Agreement consists of the following:
 - The Statement of Work;
 - These Terms and Conditions;
 - The Service Level Agreement; and
 - The Service Schedule.

- If there is any conflict between the documents referred to in clause (a), then those documents will prevail in the order listed in clause (a).
- SERVICES
 - Provision of Services
 - Subject to this Agreement, LeadIT shall supply the Services to Customer from the Service Start Date for the Term.
 - If Services are to be delivered progressively to several Customer Premises listed in a Service Schedule, then the Service Start Date for each Customer Premises will be specified in the relevant Service Schedule.
 - LeadIT will use reasonable endeavours to provide the Services at the relevant agreed Service Level (if any). Notwithstanding this clause, to the extent permitted by law, LeadIT:
 - will not be liable to Customer if LeadIT failure to achieve the the relevant Service Level is caused directly or indirectly by any act or omission of Customer, any third party (not directly employed by LeadIT in the provision of the Services), any Other Supplier or by reason of a Force Majeure Event; and
 - will otherwise only be liable to Customer to the extent set out in clause 6 (**Service Levels**).
 - LeadIT may engage contractors to perform the Services, provided each of those persons is suitably qualified and capable of performing the work LeadIT engages them to perform, and LeadIT remains liable for the performance of its obligations under this Agreement as if LeadIT had performed such obligations itself.
 - Variations to Services
 - Customer can from time to time request in writing a variation to the Services.
 - LeadIT will respond to any such request in writing within 10 Business Days advising whether it will perform the varied services and detailing any consequential amendments to the Service Fees.
 - If Customer wishes to proceed with the variation on the basis of LeadIT response under clause 3.2(b), it may submit a Service Schedule for those Services within 10 Business Days of receiving LeadIT response. On acceptance of that Service Schedule by LeadIT in accordance with clause 3.1(c), this Agreement will be amended accordingly.
 - Use of Services
 - Customer is responsible for all use of the Services at Customer Premises and from the Customer Premises Service Delivery Point, including unauthorised use. This means that if someone uses the Services without Customer's knowledge or consent, Customer is liable for all costs arising from that use.
 - Customer must not knowingly use the Services or permit any other person to use the Services:
 - to break any law or infringe any person's rights;
 - to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - in any way that damages, interferes with or interrupts the Services or the systems that LeadIT uses to supply the Services.

- Customer indemnifies LeadIT against all loss, damage, costs, actions, claims, demands or liabilities whatsoever suffered by LeadIT as a result of any person using the Services for any of the purposes identified in clause 3.3(b).
- Co-Operation with Third Parties
 - If requested to do so by Customer, LeadIT will cooperate with the reasonable requests of Customer and any of Customer's third party consultants and suppliers for the purpose of Customer receiving products and services from those third parties, provided Customer agrees to pay LeadIT reasonable fees incurred in providing the requested co-operation at the rates specified in the Service Schedule for Professional Services. Such co-operation will include providing access, information, documents and instructions regarding operating environment, system constraints, protocols, interfaces and other operating parameters.
 - Prior to providing access or disclosing information pursuant to clause 4(a), LeadIT may require Customer's third party consultants or suppliers to sign a confidentiality agreement in the form required by LeadIT and to enter into a licence agreement with respect to the use of the Intellectual Property (including LeadIT IP) in any Materials provided by LeadIT.
 - LeadIT is not liable for any breach of a Service Level to the extent that the breach is attributable to an act or omission of a third party consultant or supplier with which Customer requests LeadIT to co-operate under clause 3.4(a).
- Online Portal
 - Where LeadIT provides Customer with access to an online portal as part of the Services so that Customer can manage its Services or order additional Services online, LeadIT will provide Customer with a login identity and secret password.
 - Customer is responsible for maintaining the confidentiality of its password and account information. Furthermore, Customer is responsible for all activities that occur in its account and Customer agrees to notify LeadIT immediately of any unauthorised use of its account. LeadIT is not responsible for any loss that Customer may incur as a result of any unauthorised person using Customer's account or password unless that usage is attributable to LeadIT breaching this Agreement or its negligence.
 - Customer indemnifies LeadIT against any loss, damage, costs, actions, claims demands or liabilities whatsoever suffered by LeadIT as a result of any unauthorized personal using Customer's account or password.
 - Customer will be bound by any online order received by LeadIT that is documented in a Service Schedule and accepted by LeadIT by notice issued via the online portal or otherwise.
- Customer's Responsibilities
 - Customer must:
 - permit LeadIT Personnel to have access to Customer Premises as reasonably required to install the Equipment;

- ensure that LeadIT has full access to the Equipment during Normal Business Hours or at such other times as Customer and LeadIT mutually agree;
 - ensure that any equipment it uses in connection with the Service which is not supplied by LeadIT has all required regulatory approvals, is not prohibited by law or any regulator and is capable of operating with the Service;
 - not cause or permit any Equipment to be configured, repaired, serviced or moved except by suppliers approved by LeadIT;
 - locate the Equipment in a suitable physical environment for the operation of the Equipment (where applicable); and
 - use all reasonable endeavours to assist LeadIT in any investigation by any government body or regulator in which LeadIT is involved where Customer's use of the Services is relevant to the investigation regardless of whether or not Customer is required by law to assist.
- If LeadIT employees, agents or contractors attend by arrangement at Customer Premises to inspect the Customer Premises to establish the method or location of installation of the Equipment or to install the Equipment, and Customer requires that inspection or installation to be rescheduled, then Customer shall pay to LeadIT all costs associated with cancelling, postponing or rescheduling that inspection or installation at the rates specified in the Service Schedule for Professional Services.
- Customer indemnifies LeadIT against any loss (including any liability, cost expense, legal costs on a full indemnity basis) or damage suffered by LeadIT or a claim made by any person against LeadIT caused by Customer's wrongful acts, omissions, negligence or breach of this Agreement.
- Fault Reporting
 - Customer may report a Fault with the Services to LeadIT on a 24 x 7 basis, and reported Faults will be dealt with by LeadIT in accordance with the relevant procedure in the LeadIT Service Management Supplement.
 - Customer acknowledges that LeadIT is not responsible for Faults caused by Other Suppliers, nor is LeadIT liable to Customer for any failure by that Other Supplier to remedy the Fault within the timeframes in any Service Level.
 - When LeadIT has remedied a Fault, it will notify Customer that the Fault ticket is "closed".
 - If LeadIT determines that:
 - A Fault arises out of or in connection with any equipment, facilities, networks or systems of Customer or of an Other Supplier to Customer; or
 - There is or was no Fault,

then LeadIT may require Customer to pay LeadIT reasonable costs and expenses at the rates specified in the Service Schedule for Professional Services in dealing with or remediating a Fault, on issue of an LeadIT invoice.

- Transition – Out Services

LeadIT will, on request, develop a transition-out plan to assist Customer to transfer the Services in-house or to an Other Supplier at the end of the Term of the relevant Service Schedule. These transition-out Services will be charged to Customer on a time and materials basis at LeadIT then standard rates for similar services.

- FEES and PAYMENT
 - Fees
 - The Service Fees and fees for Professional Services are invoiced in Australian Dollars unless otherwise agreed to by both parties, in which case those fees will be determined in accordance with the exchange rate set out in the Service Schedule or, if no such rate is specified, at the exchange rate published in the Australian Financial Review on the date on which those Services are billed.
 - Subject to clauses 4.1(c) and 4.3 (**Invoicing**), the Service Fees specified in the Service Schedule represent the total consideration payable by Customer to LeadIT for the supply of the Services.
 - Customer is responsible for paying all reasonable Out-of-pocket expenses that are incurred by Personnel of LeadIT. Customer must authorise such expenses, which authorisation will not be unreasonably withheld. Such expenses shall be payable by Customer on issue of an LeadIT invoice supported by receipts.
 - Fees for Professional Services

LeadIT reserves its right to charge Customer fees for Professional Services at the day rate or where applicable, for the fixed price set out in the Service Schedule.

- Fee Review

The Service Fees and other fees payable under this Agreement will be adjusted on each anniversary of the date of commencement of the Term by the greater of:

- The increase in the Consumer Price Index (All Groups) Sydney; and
- The increase in the cost of labour as demonstrated by the Australian Information Industry Association Salary Survey

During the immediately preceding 12-month period.

- Invoicing
 - LeadIT will invoice Customer for Service Fees monthly in advance, and fees for Professional Services (if any) and Out-of-pocket Expenses (if any) monthly in arrears and Customer must pay each invoice from LeadIT within 14 days of the date of that invoice.
 - The invoice will include sufficient information to enable Customer to ascertain the Services (and any Professional Services and Out-of-pocket Expenses) to

which the invoice relates, and the monthly amount payable in respect of each of the Services.

- If Customer does not pay any undisputed invoice from LeadIT within 45 days of the date of the invoice, LeadIT may suspend the Services immediately by written notice to Customer.
- Fees Dispute

If Customer disputes any Service Fees or other amounts invoiced by LeadIT:

- Customer must notify LeadIT of the dispute within 14 days of the invoice date;
- Customer may withhold payment of the disputed amount until the dispute has been resolved provided Customer has provided adequate details regarding the nature of the dispute to allow a proper investigation, but Customer remains liable to pay any amount not in dispute in accordance with clause 4 [Invoicing];
- If the dispute relates to only a portion of the invoice, LeadIT may (at Customer's request) cancel the disputed invoice and re-issue Customer with invoices for each of:
 - The disputed portion of the invoice; and
 - The undisputed portion of the invoice;
- Customer must pay the invoice for the undisputed portion referred to in clause 5(c)(ii) as soon as reasonably practicable after its date of receipt by Customer; and
- The dispute will be resolved in accordance with the dispute resolution process set out in clause 13 [**Dispute Resolution**].
- GST
 - Unless otherwise specified, all the amounts identified as payable in the Agreement as Service Fees and fees for Professional Services are GST exclusive. If the supply under or connection with this Agreement is a taxable supply then these amounts must be increased by an amount calculated as $A \times R$ where:

A is the GST exclusive amount;

R is the rate of GST prevailing at the time the supply is made (currently 10%).

- All GST amounts payable by Customer will be separately identified on the tax invoice issue by LeadIT. Customer must pay the invoice in full.
- If a payment required to be made by Customer is a reimbursement for costs or expenses incurred by LeadIT, and is calculated by reference to the GST inclusive amount of an expense or cost incurred by LeadIT, then the payment due by Customer is to be first reduced by the amount of any input tax credit to which LeadIT is entitled in respect of that expense or cost, before an adjustment is made to it for GST in accordance with the formula in clause 5(a).
- Service Levels
 - LeadIT will use reasonable endeavours to perform the Services so as to meet or exceed the Service Levels.
 - If LeadIT fails to meet a Service Level in accordance with this Agreement (and subject to clause 4(c)), then the sole remedy available to a Customer is stated in the Service Level Agreement for that particular Service.

- LeadIT will perform all Service Level reporting in the manner described in the LeadIT Service Management Supplement.
- On each occasion on which LeadIT fails to meet any Service Level commitment, LeadIT must:
 - Promptly investigate, perform (where Customer considers it necessary in the case of Severity 1 and Severity 2 failures, as defined in the LeadIT Service Management Supplement) a root cause analysis on the failure, identify the problem causing the failure and report to Customer;
 - Correct the problem as soon as practicable (regardless of cause or fault), and in any case, within the applicable time period (if any) specified in the Service Levels and resume meeting the Service Level commitments; and
 - Advise Customer of the status of the problem at regular intervals.
- Intellectual property
 - LeadIT IP
 - Customer acknowledges that LeadIT IP remains the property of LeadIT.
 - Any know-how acquired or developed by LeadIT becomes part of LeadIT knowledge base and may be used by the Personnel of LeadIT without restriction, even where the Know How was acquired or developed in the course of or as a consequence of providing the Services or any Professional Services to Customer.
 - LeadIT grants a personal, non-exclusive, royalty free license to Customer in the Territory to use the LeadIT IP solely in conjunction with and to the extent necessary for Customer to use any deliverables of the Services provided by LeadIT to Customer.
 - Licence of Customer IP

Customer grants a personal, non-exclusive, royalty free license to LeadIT throughout the world during the Term of the relevant Service Schedule to use Customer IP to the extent necessary for LeadIT and its Personnel to provide the Services to Customer.

- Third Party Intellectual Property

The parties acknowledge that in the connection with the Services it may be necessary to use Materials in which someone other than LeadIT or Customer owns the Intellectual Property. If LeadIT provides Materials to Customer as part of the deliverables of any Services in respect of which a third party owns the Intellectual Property, then LeadIT will procure for Customer at Customer's cost a licence to use those Materials at Customer's cost on the terms imposed by the relevant third party. In such circumstances, Customer must only use Materials which are subject to a third party licence in accordance with the relevant third party licence terms.

- CONFIDENTIAL INFORMATION

- Confidential Information
 - The Recipient of Confidential Information from the Discloser undertakes to the Discloser to:
 - Use the Confidential Information of the Discloser only for the purpose of this Agreement; and

- Not disclose or allow to be disclosed any Confidential Information from the Discloser except as permitted in this clause 8 or to its Personnel to the extent its Personnel need to know that Confidential Information for the purposes of this Agreement or a Service Schedule.
 - A Recipient may disclose the Confidential Information provided by the Discloser in order to comply with:
 - (i) Any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial Body or any stock exchange; or
 - (ii) As authorised in writing by the Discloser.
 - Before any disclosure is made by a Recipient under clause 1(b), the Recipient must:
 - (i) Give notice to the Discloser with full details of the circumstances of the proposed disclosure of the relevant Confidential Information to be disclosed; and
 - (ii) With as much time as reasonably possible in all the circumstances to challenge the proposed disclosure in a court of law or appropriate body.
 - Upon the expiration or termination of this Agreement or upon demand by the Discloser, the Recipient must promptly return to the Discloser (or if the Discloser requests, destroy) all materials containing any of the Confidential Information in the Recipient's possession or control, provided that if the Recipient is LeadIT it may keep a copy of Confidential Information of Customer in so far as it is relevant, and solely for the purpose, of keeping a business record of the Services provided under this Agreement.
 - Survival of clause

This clause 8 will survive the termination of this Agreement.

- ASSIGNMENT

This Agreement is personal to each party and neither party may assign the rights or benefits of this Agreement to any person except:

- To a related body corporate, without consent, for the sole purpose of amalgamation or restructure of the companies comprising a Consolidated Entity; or
- Otherwise, with the prior written consent of the other party, which the other party may give, give conditionally or withhold in its absolute discretion.
- Personnel
 - Performance of Services

LeadIT must ensure that all of its Personnel will at all times during the term of this Agreement perform the Services in a professional manner and exercise due care and skill.

- Non-solicitation

- Each party agrees that it must not, during the term of this Agreement and for 6 months after the Agreement terminates, act of its own initiative to recruit an employee of the other party involved in the provision or receipt of the Services without the prior written consent of the other party. This clause will not apply where an employee of either party applies of their own volition for a publicly advertised position with the other party.
- PUBLICITY AND SITE REFERENCE
 - Neither party shall make any public announcement about this Agreement without the prior written consent of the other party, which consent shall not to be unreasonably withheld or delayed. Despite the foregoing, nothing in this clause will prevent LeadIT from naming Customer as one of its customers.
 - LeadIT may seek to use Customer as a site reference providing information to prospective Customers of LeadIT. LeadIT shall seek the consent of Customer before doing so.
- Limitation of liability
 - Exclusions limited by law

Any provision of this Agreement which seeks to limit or exclude a liability of LeadIT or Customer is to be construed as doing so only to the extent permitted by law.

- Liability cap

Subject to clause 12.4, the liability of LeadIT in respect of any Loss arising in connection with:

- This Agreement, being a master vehicle only, is limited in aggregate to \$100; and
- Any Service Schedule is limited in aggregate to an amount equal to 12 months Service Fees under that Service Schedule,

whether such liability arises in contract (including any indemnities), tort (including negligence), statute or otherwise, and whether or not LeadIT was aware that such loss or damage might be suffered or incurred by Customer.

- Indirect loss excluded

To the extent permitted by law, LeadIT hereby excludes liability to Customer under or in connection with this Agreement or a Service Schedule for:

- Loss of data;
- Loss of production;
- Loss of profit;
- Loss of revenue;
- Loss of business;
- Loss of goodwill;
- Loss of anticipated saving;
- Financing costs;
- Increased operating costs; or
- Any consequential loss or damage not included within clauses 3(a) to (j).

- Unlimited liability

Clause 12.2 does not apply to limit or restrict in any way:

- LeadIT liability for the death or personal injury of any person; or
- LeadIT liability for costs, losses and damage caused by the malicious or fraudulent actions of LeadIT or its employees.
- Implied warranties

LeadIT excludes all terms, conditions and warranties implied into this Agreement, and limits its liability in respect of such terms, conditions or warranties to the extent that it cannot exclude it, at its election, to either:

- In respect of goods:
 - (i) Repairing or replacing those goods; or
 - (ii) Paying the cost of having those goods repaired or replaced; and
- In respect of services:
 - (i) Resupplying the services; or
 - (ii) Paying the cost of having the Services resupplied.
- DISPUTE RESOLUTION
 - Informal Resolution of Dispute

Before a party seeks any external dispute resolution in relation to a dispute arising in connection with this Agreement or a Service Schedule, it must, subject to clause 13.3, use reasonable endeavours to resolve the dispute with the other party prior to commencing proceedings in an external judicial tribunal.

- Mediation
 - If the parties are not able to resolve a dispute in accordance with clause 1 within 20 Business Days, the parties will endeavour to resolve the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.\
 - The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation (Guidelines) that are in operation at the time that the dispute is referred to the ACDC.
 - The Guidelines set out the procedures to be adopted, the process for selection of the mediator and the costs involved.
 - The terms of the Guidelines are hereby deemed incorporated into this Agreement.
 - This clause will survive termination of this Agreement.
- Continuation of obligations

Despite the existence of a dispute between the parties with respect to this Agreement, each party must continue to comply with its obligations under this Agreement.

- Interlocutory Proceedings

Nothing in this clause 13 prevents a party from commencing proceedings for interlocutory relief.

- Survival

This clause 13 will survive termination of this Agreement for two years.

- **SUSPENSION OF A SERVICE OR PART OF A SERVICE**
 - LeadIT may, upon written notice to Customer, suspend the provision of a Service or part of a Service (including help desk services), without liability to Customer, if:
 - LeadIT performs emergency or scheduled maintenance or other scheduled service work in connection with its network or systems; or
 - The occurrence of a Force Majeure Event requires it to do so; or
 - LeadIT is required to do so by law or to comply with a request from a regulator or emergency service organisation.
 - If LeadIT suspends the provision of the Service pursuant to clause 14(a)(i), Customer may claim a pro-rata rebate of the Service Fee to be invoiced for the month for the Service for the period of suspension.
- **TERMINATION**
 - Either party may terminate this Agreement or, so far as the breach relates to a particular Service Schedule, that Service Schedule, immediately by notice to the other party if the other party breaches a material obligation under this Agreement:
 - Which is not capable of remedy; or
 - Which is capable of remedy, but fails to remedy that breach within 20 Business Days of receipt of a notice requiring it to do so,

Provided that any notice issued by either party under this clause 15(a) includes reasonably adequate details of the breach so that the other party can understand the exact nature of the alleged breach; or

- An Insolvency Event occurs in relation to the other party.
- LeadIT may, at any time, terminate any Service Schedule immediately by notice to Customer, if any third party on which LeadIT relies to supply the Services or any part of the Services under that Service Schedule:
 - Varies the terms and conditions, including terms relating to price, upon which it provides its services or facilities to LeadIT, or is incapable of providing its services or facilities to LeadIT;
 - That variation or any act or omission of the third party materially effects either LeadIT ability to provide, or the cost of LeadIT providing, the Services to Customer; and

- The parties are unable to agree a corresponding variation to this Agreement.
- If a Force Majeure Event prevents LeadIT from supplying the Services in respect of a Service Schedule for a period of more than three months, either party may, without liability to the other, terminate this Agreement and the relevant Service Schedule by giving no less than 10 Business Days' notice to the other party.
- Termination of this Agreement or a Service Schedule will not affect any other Service Schedule which may be in force as at the date of termination.
- CONSEQUENCES OF TERMINATION
 - Without limiting clause 16(b), if Customer terminates this Agreement or a Service Schedule other than pursuant to clause 15(a) or LeadIT terminates this Agreement or a Service Schedule pursuant to clause 15(a), Customer must immediately pay to LeadIT:
 - An amount equal to the Service Fees and other fees that would have been payable by Customer under any terminated Service Schedule for the unexpired period from the date of termination to the end of the Term;
 - Any costs incurred by LeadIT in establishing the Services which have not been recouped as at the date of termination;
 - Reasonable costs incurred in the removal by LeadIT of Equipment, if any, from Customer Premises; and
 - Any other amounts owing by Customer to LeadIT under this Agreement or otherwise as at the date of termination.
 - If this Agreement or a Service Schedule is terminated:
 - Customer must, in connection with each terminated Service Schedule:
 - Pay all amounts owing to LeadIT;
 - At its own cost, immediately return to LeadIT all Materials containing or comprising Confidential Information of LeadIT, or LeadIT IP (including any copies); and
 - Provide LeadIT with such access to Customer Premises as may be required to remove any Equipment;
 - It does not affect any rights or remedies either party may have against the other arising out of or in connection with this Agreement or a Service Schedule prior to termination; and
 - Clauses 3.3(c) and 3.5(c) [**Indemnity**], 7 [**Intellectual Property**], 8 [**Confidential Information**], 12 [**Limitation of Liability**], 13 [**Dispute Resolution**], and 16 [**Consequences of Termination**] survive the termination of this Agreement or any Service Schedule.
 - WARRANTIES

Each party represents and warrants that:

- At the date of this Agreement, it has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;
- It has taken all necessary action to authorise the execution of this Agreement;
- The delivery and performance of this Agreement does not contravene any contractual, legal or other obligations that apply to it; and

- It has not relied on the other's skill or judgment in relation to its decision to enter into this Agreement or any Service Schedule, and that it has relied on its judgement and its own independent investigations about the suitability of arrangements set out in this Agreement and each Service Schedule.
- RECORD KEEPING
- LeadIT must keep records, and must ensure any sub-contractors keep records, necessary to demonstrate compliance with their obligations under this Agreement. Those records (where they relate to financial matters) are to comply with generally accepted Australian accounting principles applied on a consistent basis.
- LeadIT must keep records required under clause (a) (a) until the later of:
 - Seven years after the expiry or termination of this Agreement; or
 - All disputes relating to this Agreement are resolved.
- GENERAL PROVISIONS
 - Entire agreement

This Agreement and any Service Schedule constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

- Variation

Neither this Agreement nor any Service Schedule may be varied except by a later written document executed by all parties.

- Waiver

A right created by this Agreement or a Service Schedule cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement and any Service Schedule.

- Time for doing acts
 - If:
 - The time for doing any act or thing required to be done; or
 - A notice period specified in this Agreement or a Service Schedule,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.
- Governing law and jurisdiction

- The laws applicable in the State of New South Wales govern this Agreement and each Service Schedule.
- The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.
- Severance

If any clause or part of any clause of this Agreement or a Service Schedule is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement or the relevant Service Schedule without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses), which will continue in full force and effect.

- Preservation of existing rights

The expiration or termination of this Agreement or a Service Schedule does not affect any right that has accrued to a party before the expiration or termination date.

- No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement or a Service Schedule for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

- Execution
 - This Agreement and any Service Schedule may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
 - Each party consents to the other party executing this Agreement and any Service Schedule by affixing their electronic signature.
- Relationship of parties

Unless otherwise stated:

- Nothing in this Agreement or a Service Schedule creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.
- Notices
 - Any notice, demand, consent, approval, request or other communication (notice) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
 - Hand delivered;
 - Sent by facsimile transmission;
 - Sent by prepaid ordinary mail within Australia;

- Sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries; or
- Sent by way of Electronic Message.
- A notice is given if:
 - Hand delivered, on the date of delivery;
 - Sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
 - Sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting;
 - Sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting; or
 - If sent by Electronic Message, an hour after the time the sender's Information System recorded that the Electronic Message left the sender's Information System unless, within 8 hours after the transmission (being counted as hours from 9.00am to 5.00pm on a Business Day), the sender is informed (by automatic notice or otherwise) that the electronic mail has not been received by the recipient,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (recipient's time), it is regarded as received at 9.00am on the following Business Day.