MANDATORY DISCLOSURES

The *Fair Trading Act 1987* (NSW) requires certain Us to take reasonable steps to disclose certain terms in connection with this agreement, and the provision of Our Services to You.

They are:

(a) **Exclusion of Liability**: Clauses 5, 7(c), 8(b), 13 of our Terms limits our liability in respect of the Services provided to you.

(b) **Information**: Clause 6 of our Terms & Conditions permits us to provide data about you, or data provided by You, to a third party in a form that may enable the third party to identify the you.

(c) **Payments**: The Quotation, and clause 3 records the fees, charges and extra fees payable by You and clause 15 includes Fees payable by You in the event that the Agreement is terminated early

1 TERM OF THE AGREEMENT

(a) Your Agreement commences on the Commencement Date and remains in force for the period as described as the Initial Term.

(b) After the expiration of the Initial Term, Your Agreement will continue in force for successive periods as follows (unless either party provides written notice to the contrary of no later than 90 days prior to the expiration date of the Initial Term, or the expiration date of any such subsequent period):

(i) if the Quotation records a 90 day Initial Term, the successive periods will be subsequent 90 days each; or

(ii) if the Quotation records 12 or more months as the Initial Term, the successive periods will be subsequent 12 months each.

2 SERVICES

(a) During the term of the Agreement, We will supply the Services in accordance with the service description as set out in Our Quotation (as amended in accordance with this document) and We will ensure that the Services are performed in accordance with the Service Levels.

(b) The Services will be provided during Our Business Hours.

(c) You agree that additional Fees will be chargeable for Services provided outside of Business Hours and which are recorded in the Quotation supplied to You, or any other notification provided to You within a reasonable time period.

(d) At all times You:

(i) must cooperate with Us to ensure that We have all such information as reasonably required so that We can perform the Services,

(ii) agree that if such information or assistance is not provided by You when requested by US, We will not liable for any breaches of this Agreement or any loss that You may suffer; and

(iii) agree to comply with any of Our Policies or any Critical Information Summary provided to You upon entering into this agreement, or otherwise provided to You over the course of this agreement.

3 FEES

(a) You will pay Us the Fees specified in the Quotation in the manner and at the frequency specified the Quotation upon receipt of invoice.

(b) The Fees payable by You will be reassessed as follows:

(i) on the anniversary of the Commencement Date, or such other Commencement Date of any Further Period;

(ii) in the event that Your required Services change;

(iii) in the event of any third-party vendor prices are altered; and/or

(iv) if the levels of Services required by You exceed the agreed upon support hours as reasonably determined by Us.

(c) If any amount owed to Us by You remains unpaid for a period in excess of 7 days after the due date for payment, We will be entitled to charge interest at the rate of 5% per annum above Our bank's overdraft facility on overdue monies, compounding daily and capitalising monthly (**Default Interest**).

(d) In the event that any monies due and payable by You to Us remain unpaid as at the due date, You agree to indemnify Us in respect of all costs, disbursements, expenses (including legal costs and collection agency costs), and fees associated with Your default and the collection of such monies.

(e) At Our sole discretion if any amount remains unpaid for a period in excess of 14 days after the due date, We may terminate this Agreement immediately, or choose to suspend our Services. If Services are suspended in accordance with this clause We are not liable for any costs, damages or losses (whether direct or indirect) arising out of the exercise of rights under this clause.

(f) In the event that this Agreement is terminated earlier than the expiry date of the Initial Period, or such other expiry date of any Further Period, You agree to pay any subscriptions, fees or other monies for the balance of the term immediately.

(g) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

(h) In addition to paying the charge and any other amount payable or in connection with this Agreement (which is exclusive of GST), You will:

(i) pay to Us an amount equal to any GST payable from any supply by Us in respect of which the charge or any other amount is payable under this Agreement; and

(ii) make such payment either on the date when the charge is due or within 14 days after You are issued with a tax invoice, whichever is the later.

(i) We must, within 30 days of request from You, issue a tax invoice (or an adjustment note) to You for any supply under or in connection with this Agreement.

(j) We will promptly create an adjustment note for (and apply to the Commissioner of Taxation for) a refund, and refund to You, any overpayment by You for GST but the Bureau need not refund You any amount for GST paid to the Commissioner of Taxation unless the Bureau has received a refund or credit for that amount.

4 ADJUSTMENT OF SYSTEM

(a) If You, directly or through an agent:

(i) adds either an item of Equipment or Software to the Facilities;

(ii) withdraws an item of Equipment or Software from the Facilities; or

(iii) substitutes an item of Equipment or Software in the Facilities for another item of Equipment or Software,

We will, subject to provision of reasonable notice in writing by You, continue to provide the Services in respect of the Facilities as adjusted in accordance with the terms of this Agreement.

(b) If an act by or on behalf of You pursuant to clause 4(a) materially affects the ability of Us to ensure the Services will comply with the Service Levels, We may seek to vary the Service Levels in accordance with the variation procedures set out in this Agreement.

5 THIRD PARTY SOFTWARE

If applicable, You will procure the right for Us to have access to any Third Party Software to the extent necessary for Us to provide the Services. You agree that You will indemnify Us in respect of any liability arising out of failure by You to comply with its obligations under this clause.

6 MAINTENANCE

(a) If recorded in the Services that We will supply to You, We will provide maintenance for the Facilities for the duration of this Agreement.

(b) Subject to the exclusions contained in this Agreement, maintenance services will embrace Equipment maintenance (preventive and remedial), Software support (including, but not limited to, error correction, modifications to achieve consistency with the specifications, installation of updates provided by You and installation of updates provided by third parties in relation to Third Party Software) and maintenance of telecommunications and related equipment.

(c) If any form of maintenance is deemed necessary by Us and such maintenance is excluded or otherwise not included in this Agreement, We may perform such maintenance on a time and materials basis at Our normal rates as disclosed to You at the time of undertaking those works.

(d) Except for the circumstances referred to in clause 6(c), maintenance services will continue for the duration of this Agreement at no additional charge to You.

7 DATA

(a) We acknowledge that data processed on such systems that You provide Us with access too will remain Your property.

(b) Unless expressly agreed too as part of the Services We are not required to make backup copies of Your data.

(c) If Your data is lost or altered due to Our (other than by our negligent act), We are not liable for, or required too, bear the direct and indirect costs of reconstituting the data, or any other loss or damage that You may incur.

(d) You agree, and provide consent, for Us to provide any of your data or Personal Information, to any third party so long as it pertains to the Services We agree to provide to You.

8 FACILITIES AVAILABILITY

(a) You will ensure the Facilities are available to Us during the period of this Agreement.

(b) We will not be liable for any costs, expenses or other loss (whether direct or indirect) if You are in breach of this clause.

9 SECURITY

(a) We will ensure the data and all components of the Facilities owned by You are kept secure from unauthorised interference at all times.

(b) Despite clause 9(a), We will permit access to the data and the system by any duly authorised law enforcement officer, officer of the Crown or by any other person authorised by law. We will bear the direct and indirect costs associated with Our storage of the data.

10 OWNERSHIP OF FACILITIES

(a) You warrant that You are the owner of the Equipment and the owner or licensee of the Software (except the Third Party Software).

(b) You will ensure that the Equipment and Software (except Third Party Software) are signified as the property of Yours and will remain free of any lien, security interest or other encumbrance of a third party.

(c) We will ensure that the Equipment is returned in the same condition as it was when delivered to Us pursuant to this agreement, save for the effects of normal wear and tear.

(d) We will not use or authorise the use of the system or any component of the system by any person or for any purpose other than as specified by this agreement.

(e) On termination of this Agreement, the system and each and every component of the system (except the Third Party Software) will be returned to You, save that no obligation in this regard will arise until payment of all outstanding payments due from You.

11 CONFIDENTIALITY

(a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

(b) A party will not be in breach of clause 11(a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.

(c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.

(d) Despite any other provision of this clause, a party may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

(e) This clause will survive the termination of this agreement.

12 PRIVACY

(a) We will not use or disclose any Personal Information for a purpose other than discharging our obligations under this agreement.

(b) We agrees to comply at all times with the Australian Privacy Principles and the Privacy Act 1988 (Cth) (**Privacy Act**) (or an applicable privacy code approved by the Commissioner pursuant to the Privacy Act) in the same way and to the same extent as You would have been required to comply had You been directly responsible for performing the act or practice concerned. We will take all necessary steps to protect Your Personal Information in Our possession against misuse or loss and We will return all such information to You (or if requested by You, destroy or de-identify such information) upon termination or expiry of this Agreement. This clause will survive the termination or expiry of this Agreement.

(c) You warrant that the disclosure of any Personal Information to Us for the purposes of this Agreement, and the collection of such information by Us, will not contravene the Australian Privacy Principles.

(d) For the purpose of this clause, **Personal Information** means information or an opinion about an individual as defined in section 6 of the Privacy Act which is collected, used, disclosed, stored or handled by a party for the purposes of this Agreement.

13 LIABILITY

Except in relation to liability for personal injury (including sickness and death), property damage or an infringement of confidentiality or intellectual property rights, and subject to any non-excludable statutory liability, Our liability for damages in respect of any act or omission by Us in connection with Our obligations under this Agreement will not exceed any amounts paid by You for the Services and will not include any direct, indirect and/or consequential loss and or expense (including loss of profit) suffered by You.

14 IMPLIED TERMS AND CONSUMER GUARANTEES

(a) Subject to clause 14(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.

(b) Our liability for breach of a guarantee conferred by the Australian Consumer Law (**ACL**) (other than those conferred by sections 51 to 53 of the ACL) is limited:

(i) in the case of goods, to any one of the following as determined by Us:

(A) the replacement of the goods or the supply of equivalent goods;

(B) the repair of the goods;

(C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(D) the payment of the cost of having the goods repaired; and

(ii) in the case of the Services, to any one of the following as determined by Us:

(A) the supplying of the services again; or

(B) the payment of the cost of having the services supplied again.

15 TERMINATION

(a) A party may terminate the Agreement:

(i) by agreement of the parties in writing;

(ii) with 90 days' written notice at any time; or

(iii) with immediate written notice of the affected party to the other party if any of the following events has occurred in respect of the other party (**Terminating Event**):

(A) a material breach of the Agreement which is not remediable or is capable of remedy;

(B) where the other party fails to remedy a breach of this agreement within 30 days of written notice or fails to provide a written undertaking that the breach will not occur;

(C) an insolvency event occurs, other than an internal reconstruction with notice to the other party;

(D) the permanent discontinuance or use of the Software or any part of the Software by You;

(E) the merger with or the takeover of either party by another person; or

(F) the purchase of the software by You pursuant to an agreement between the parties.

(b) Neither party will be liable for the consequences of an occurrence of any event beyond its reasonable control.

(c) We will, immediately on termination by Us pursuant to clauses 15(a)(i) to 15(a)(iii) inclusive, return to Your data and information in Our possession in relation to Your business and any of Your Software or Third Party Software including all copies of the Software, all revisions, enhancements and upgrades of the Software. Alternatively, if You request, We must destroy such data, Software, copies, revisions, enhancements and upgrades by erasing them and must certify in writing to You that they have been destroyed.

(d) Any termination of the Agreement will not affect any accrued rights or liabilities of either party, nor will it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

(e) In the event this Agreement is terminated before the expiry date of the Initial Term (or expiry date of any subsequent term) additional Fees, or monies will be payable for the balance of the agreed term. You agree that these Fee, or monies, are immediately payable to Us on the date of termination without set-off.

16 GUARANTEE

16.1 In this condition:

(a) the **Guarantor** is the person, or persons, named in the Quotation (and each are jointly and severally liable); and

(b) **Guaranteed Money** means all amounts which at any time, for any reason and subject to any contingency, are or may be come payable by You to Us in connection with, or as a result of any breach of, this Agreement.

16.2 The Guarantor acknowledges that We have entered this Agreement at the request of the Guarantor and in reliance on the guarantee and indemnity set out in this special condition.

16.3 The Guarantor unconditionally and irrevocably guarantees payment to Us of the Guaranteed Money.

16.4 If You do not pay the Guaranteed Money on time and in accordance with the terms of this Agreement, the Guarantor agrees to pay the Guaranteed Money to Us on demand whether or not demand has been made on You. A demand may be made at any time.

16.5 In consideration of Us entering in the Agreement at the request of the Guarantor, the Guarantor guarantees the performance of all the obligations of You under the Agreement. The Guarantor indemnifies Us from any liability, claim, expense or loss that We may incur arising out of Your failure to perform any of its obligations under this Agreement.

16.6 As a separate obligation, the Guarantor indemnifies Us against all liability or loss arising from:

(a) the Guaranteed Money not being recoverable from You because of any circumstances; and

(b) any costs, charges or expenses incurred in connection with of this special condition.

16.7 This guarantee and indemnity is a continuing security and extends to all of the Guaranteed Money and other money payable under this guarantee and indemnity. The Guarantor cannot Us to proceed against or enforce any other right, power, remedy or security, or claim payment from You or any other person before claiming from the Guarantor under this guarantee and indemnity.

16.8 The liabilities under this guarantee and indemnity of the Guarantor as a guarantor, principal debtor or indemnifier and the rights of Us under this guarantee and indemnity are not affected by anything which might otherwise affect them including, without limitation, one or more of the following:

(a) We or another person granting time or other indulgence to, compounding or compromising with or releasing You;

(b) acquiescence, delay, acts, omissions or mistakes on the part of Us; or

(c) any variation or novation of a right of Us, or alteration of this contract or a document, in respect of You.

16.9 Until the Guaranteed Money is paid in full, the Guarantor may not, without the consent of Us:

(a) try to reduce its liability under this guarantee and indemnity, raise a defence, set-off or counter-claim available to it or You against Us, or claim a set-off or make a counter-claim against Us;

(b) prove in competition with Us if a liquidator, provisional liquidator, official manager or trustee in bankruptcy is appointed in respect of You or if You are otherwise unable to pay Your debts when they fall due; or

(c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a mortgage, charge, other encumbrance or guarantee held for the Guaranteed Money or other money payable under this guarantee and indemnity.

16.10 The Guarantor represents and warrants that its obligations under this guarantee and indemnity are valid and binding and that it does not enter into it in the capacity of a trustee of any trust or settlement.

16.11 This special condition is an essential term of this Agreement.

17 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to management of the Facilities. No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

18 NOTICES

All notices which are required to be given under this Agreement must be in writing and must be sent to the address of the recipient as directed by that party, or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by prepaid letter or email. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by prepaid letter) or when on transmission by the sender (if sent by facsimile) or (if sent by email and unless agreed otherwise), when the email enters the recipient's mail server.

19 ASSIGNMENT

You will not assign, whether in whole or part, the benefit of this Agreement or any rights or obligations under this Agreement, without the prior written consent of Us.

20 LAW

This Agreement will be governed by and construed in accordance with the laws for the time being in force in New South Wales and the parties agree to submit to the jurisdiction of the courts and tribunals of that state.

21 WAIVER

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.

22 VARIATION AND CHANGE CONTROL

No variation of this Agreement will be effective unless in writing and signed by both parties.

23 SEVERABILITY

Should any part of this Agreement be or become invalid, that part will be severed from this agreement. Such invalidity will not affect the validity of the remaining provisions of the agreement.

24 DISPUTE RESOLUTION

(a) A party claiming that a dispute, controversy or claim (**Dispute**) has arisen must notify the other party in writing giving details of the Dispute (**Notice**).

(b) The parties must negotiate in good faith to settle, as soon as possible, any Dispute after Notice has been given.

(c) If the parties are unable to resolve the Dispute within 20 days of the Notice referred to in clause 24(a), the parties must appoint a mediator or refer the Dispute to a mediator nominated by the chairperson of the Resolution Institute (ACN 008 651 232) or the chairperson's nominee.

(d) Unless the parties otherwise agree, any mediation will take place in Newcastle, NSW, in accordance with any mediation rules or guidelines of the Resolution Institute's Mediation Rules then in force.

(e) The parties will share equally the mediator's fees and disbursements and all other costs of the mediations. Otherwise, each party will meet its own costs of and in connection with the mediation.

(f) Nothing in this clause prevents a party to the agreement from seeking urgent injunctive relief or similar interim relief from a court.

(g) This clause will remain operative after the contract has been performed and despite its termination.

25 DEFINITIONS AND INTERPRETATION

25.1 Definitions

Adapted Software means any modifications or adaptions to the generative AI used.

Agreement means the Quotation provided to You, these Terms and Conditions, and Our Policies.

Artificial Intelligence (AI) means the field of technology that uses computers or other technology to do things that have traditionally been done using human intelligence and includes techniques, methods and algorithms designed to imitate human reasoning, learning and decision making in a manner that resembles human intelligence.

Business Hours means 9.00 AM to 5.00 PM Monday to Friday, and which exclude any public holidays.

Commencement Date means the earlier of either the date that Our Quotation has been executed by You, or another date as specified as the date on which Our Services will be provided to You. signed .

Confidential Information means information that is by its nature confidential but does not include:

(a) information already known to the receiving party at the time of disclosure by the other party; or

(b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement.

Equipment means Your computer equipment specified in the Quotation as forming part of the Facilities.

Facilities means Your IT infrastructure, more fully specified the Quotation, which is to be the subject of the Services.

Fees means the monies payable by You as described in the Quotation, or otherwise notified to You by Us in respect of the Services.

Further Period means each successive period after the expiry of the Initial Period as describe in clause 1 of this document.

Generative AI means any type of AI that can be used to create new text, images, video, audio, code or synthetic data.

GST means:

(a) the same as in the GST Law;

(b) any other goods and services tax, or any tax applying to this agreement in a similar way; and

(c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

GST Law means the same as "GST law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Term means the period between the Commencement Date and the date as listed in the Quotation.

Policies means Our policies available to You, as amended from time to time and provided to You.

Services means the facilities management services to be provided by Us pursuant to this agreement, more particularly as specified in item **Error! Reference source not found.** of **Error! Reference source not found.** and includes the Services provided and the service levels (**Service Levels**) to be provided.

Software means the computer program, any related AI and Generative AI, any Adapted Software and related documentation as specified in Quotation as forming part of the Facilities.

Terms and Conditions means this document which may be amended from time to time subject to notice to You.

Third Party Software means software used on the system which is not owned or licensed for use by You and which is listed Quotation.

We and **Us** means Ling Enterprises Pty Limited ACN 642 323 304 trading as 'DYN IT Solutions'.

You and **Your** means the party as described in the Quotation, and if more than 1 party, each party will be jointly and severally liable.

25.2 Interpretation

Words importing the singular include the plural and vice versa and words importing one gender will include all other genders. Headings are for ease or reference only and will not affect the interpretation of this Agreement.