

TERMS AND CONDITIONS

These Terms and Conditions apply in relation to the provision of certain services contemplated in the Order Form.

EXPLANATORY NOTE

The Services provided under these Terms and Conditions comprise certain services that are provided by or behalf of LeanIX and resold to Customer (i.e. the LeanIX Services) and other services to be provided by Citadel (i.e. the Citadel Services).

Where different terms apply to the Citadel Services and the LeanIX Services under these Terms and Conditions, the different terms applicable to the LeanIX Services are the terms on which those services are offered to Citadel for resale to its customers, as generally set by LeanIX for its own customers.

1. Services

1.1 General

Citadel will provide, or procure the provision of, the Services to the Customer on and subject to these Terms and Conditions.

1.2 Subscription Services

- (a) Citadel will procure that the Customer is given access to use the Subscription Services during the Subscription Term in accordance with these Terms and Conditions. The Customer acknowledges that Citadel, as reseller of the Subscription Services, will engage LeanIX to provide the Subscription Services.
- (b) The Customer is licensed to access and use the Subscription Services on a non-exclusive, non-transferable, worldwide basis for the Subscription Term for the Customer's (and its Affiliates') internal business purposes, up to the Licensed Volume. This licence permits the Customer to configure the Subscription Services via the Configuration Functionalities. However, this licence specifically excludes (and nothing in this Agreement or otherwise gives the Customer) any rights in relation to the source code of the Subscription Services.
- (c) The Customer may provide Permitted Users with login credentials that will enable them to access and use the Subscription Services. The Customer is responsible for all actions taken by Permitted Users or by anyone using login credentials assigned to the Customer or its Permitted Users.
- (d) The Customer must not, and shall not permit or allow any entity or person, directly, indirectly, alone or with another person, to: (i) use the Subscription Services in violation with the terms of the Agreement and the Documentation; (ii) make the Subscription Services available to anyone other than Permitted Users, or use the Subscription Services other than in support of Customer or its Affiliates' internal business

purposes; (iii) modify the Subscription Services except as permitted via the Configuration Functionalities; (iv) translate, or create derivative works based on the Subscription Services; (v) remove or obscure any proprietary notices from the Subscription Services; (vi) rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Subscription Services; (vii) attempt to interfere with, compromise the integrity or security of the Subscription Services or decipher any transmissions to or from the servers running the Subscription Services; (viii) upload Virus to or through the Subscription Services; (ix) except to the extent permitted by applicable Law, reverse engineer, decompile, or disassemble the source code, object code or underlying structure of the Subscription Services; and (x) use the Subscription Service in violation of any applicable Laws.

- (e) The Customer must comply with the fair use requirement for the Subscription Services, as set out at section 3 of the Service Description.

1.3 Support Services

- (a) Whilst Citadel may use its reasonable endeavours to attempt to remedy Defects in the Subscription Services in the first instance following notification from the Customer, the Customer acknowledges that Citadel, as reseller of the Subscription Services, will engage LeanIX to provide Support Services.
- (b) Subject to clause 1.3(d), Citadel will procure that Support Services are provided to the Customer during the Subscription Term in accordance with the Support Services Document. For the purposes of this clause 1.3(b), LeanIX will liaise directly with the Customer where the relevant Defect in the Subscription Services is reported to LeanIX by either Customer or Citadel.
- (c) Support Services will include certain Defect rectification services, certain maintenance services and the provision of certain updates for the Subscription Services. The scope of the Support Services is set out in the Support

Services Document and will be based on the Service Class specified in the Order Form.

- (d) Despite clause 1.3(b), the parties acknowledge and agree that clause 2.2(a) of the Support Services Document (i.e. the clause dealing with service credits) will not apply to this Agreement. Instead, the following terms will apply: (i) the Customer may make a written service credit claim in the event that the Subscription Services do not meet the Target Availability (as that term is defined in the Support Services Document); (ii) the other terms of the Support Services Document will apply in determining whether the Subscription Services have met the Target Availability (eg: unavailability due to maintenance outages and Force Majeure Events is to be disregarded) and the Customer is entitled to a service credit; (iii) the service credit claim must be made in relation to a 12 month period commencing on the Subscription Commencement Date or an anniversary of that date, no later than 60 days after the end of that period; (iv) the quantum of the service credits a Customer will be entitled to will be calculated in accordance with Item 6 of the Order Form (**Service Credit**); and (v) where a Customer is entitled to a Service Credit under this clause 1.3(d), the applicable Service Credits will be offset against the Customer's next invoice or, where no further invoices are required to be paid and the Subscription Services have been terminated,, Citadel will promptly pay the Service Credits to the Customer. This constitutes the Customer's sole and exclusive remedy with respect to the Subscription Services not meeting or exceeding the Target Availability (as that term is defined in the Support Services Document).

1.4 Citadel Services

- (a) This clause 1.4 applies where the Order Form specifies Citadel Services are to be provided by Citadel to the Customer.
- (b) Citadel will provide the Citadel Services to the Customer with skill, care, and diligence consistent with industry standards and in compliance with all applicable Laws (excluding Laws that solely apply to the Customer or to the section of the market to which the Customer belongs).
- (c) Where the Order Form specifies one or more milestone dates for the provision of the Citadel Services, Citadel will use its reasonable endeavours to meet those milestone dates in providing the Citadel Services.
- (d) In addition to the responsibilities of the Customer specified in section 4 of the Order Form, the Customer must: (i) promptly respond to Citadel's queries, and provide any assistance and information Citadel reasonably requires to provide the Citadel Services; and (ii) perform its responsibilities under this clause (d) and

section 4 of the Order Form in a timely manner, including as reasonably required by Citadel.

2. Fees

2.1 Fees

- (a) The Customer will pay the Fees to Citadel in accordance with this clause 2 and will also reimburse Citadel for out-of-pocket expenses that have been pre-approved by the Customer and have been incurred in the provision of the Citadel Services. Except as provided for in clauses 3.3(c)(iii), 8.3(c) and 9.1(a), all amounts paid by the Customer are non-refundable and payment obligations are non-cancellable.
- (b) The Customer will pay: (i) in respect of Citadel Services (if any), and Subscription Services and Support Services performed during the Initial Subscription Term, the Fees set out in the Order Form by the date(s) specified in the Order Form; and (ii) in respect of Subscription Services and Support Services for each Subscription Renewal Period, the applicable Fees (as contemplated in clause 2.2 below) in advance of commencement of the Subscription Renewal Period.
- (c) Citadel will provide a valid tax invoice in relation to Fees charged to the Customer.
- (d) If Customer fails to pay any sum due under this Agreement by the due date, then (without limiting any rights or remedies Citadel may have) the Customer must pay late fees to Citadel on that sum until the date of payment at a rate of 1.5% per month (or, if lower, the maximum amount permitted by Law).

2.2 Subscription Renewal Periods

- (a) Citadel may advise the Customer of updated Fees for Subscription Services and Support Services that will apply during a Subscription Renewal Period at least 90 days before the commencement of that Subscription Renewal Period. Subject to clause 2.2(b), the advised Fees will automatically apply. If Citadel does not advise the Customer of a change in Fees that will be applicable during a Subscription Renewal Period at least 90 days before the commencement of that Subscription Renewal Period, the then-current Fees will continue for that Subscription Renewal Period.
- (b) Citadel may not increase Fees for a Subscription Renewal Period by an amount greater than 7% of the Fees of the relevant Services which relates to the 12 months prior to the commencement of the Subscription Renewal Period.

2.3 Taxes and GST

- (a) All Fees are exclusive of Taxes and, except as expressly provided for in these Terms and Conditions, Customer will be responsible for all Taxes. The Customer will pay or reimburse Citadel for those Taxes incurred or levied in connection with an Order Form, and all Fees must be paid by Customer without any deduction or withholding on account of Taxes. In the event Customer is required to deduct or withhold Taxes from its payment of Fees, the Fees will be automatically increased so that, after making all required deductions and withholdings, Citadel receives and retains an amount equal to the amount it would have received had no deductions or withholdings been required to be made. If Customer is a tax-exempt organization, the Customer must notify and provide sufficient supporting evidence to Citadel, in which case Citadel will not charge Customer any taxes from which Customer is exempt.
- (b) Unless specified otherwise on an Order Form, all amounts payable under an Order Form are exclusive of GST. If one party ("**supplying party**") makes a taxable supply under or in connection with an Order Form and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration ("**receiving party**") must also pay an additional amount equal to the GST payable on that supply. The receiving party must pay the additional GST amount at the same time and in the same manner as the other consideration for the taxable supply to which the additional GST amount relates, but subject to the provision by the supplying party of a valid tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). In this clause 2.3(b): (i) terms used have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) unless the context suggests otherwise; (ii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply; and (iii) a reference to something done (including a supply made) by a party includes a reference to something done by any entity on whose behalf that party is acting.

2.4 Exceeding the Licensed Volume

- (a) In the event that the Customer exceeds the then-applicable Licensed Volume: (i) the Customer must pay an additional Fee to Citadel, calculated as the additional amount payable for that higher Tier of usage (for both the Subscription Services and Support Services), from the next anniversary of the Subscription Commencement Date; and (ii) the Licensed Volume will be increased automatically to the high-end of the volume specified for the Tier referred to in clause (i) above.

- (b) From time to time during the Subscription Term, Citadel may undertake a review of the Customer's usage of the Subscription Services to confirm the Customer has complied with, and not exceeded, the Licensed Volume (where the Customer's actual usage will be determined with reference to the metrics specified in the Service Description). Where necessary, on receipt of a written notice from Citadel, Customer will reasonably cooperate with Citadel's review and if necessary discuss any changes to the Service Volumes that may be required and/or will provide copies of records required to demonstrate the Subscription Service volumes actually used by the Customer.

3. Term and Termination

3.1 Term and Subscription Term

- (a) This Agreement commences on the Effective Date and continues until the expiry of the Subscription Term.
- (b) Subject to clause 3.1(d) below, the Subscription Services will commence on the Subscription Commencement Date and will continue for the Initial Subscription Term, unless this Agreement is terminated earlier in accordance with clause 3.2.
- (c) On completion of the Initial Subscription Term, the Subscription Term of the Subscription Services will automatically continue for consecutive Subscription Renewal Periods unless: (i) either party gives the other party a written notice of non-renewal at least 90 days prior to expiry of the Initial Subscription Term or the then-current Subscription Renewal Period (as applicable); or (ii) Citadel advises the Customer of an increase in the Fees pursuant to clause 2.2(a) above, and the Customer gives Citadel a written notice of non-renewal within 14 days of the date of being advised of that increase in Fees.
- (d) The Subscription Commencement Date will be the date specified at Item 2 of the Order Form but if LeanIX advises of a different commencement date, the Subscription Commencement Date will automatically be updated to that date upon written notification to the Customer.

3.2 Termination

- (a) A party may terminate this Agreement (including the Order Form) with immediate effect upon written notice to the other party: (i) if the other party has committed a material breach of its obligations under this Agreement and failed to cure such breach within 30 days of written notice by the non-breaching party (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in

good faith to cure such breach); (ii) if the other party has committed a material breach of its obligations under this Agreement and that material breach is incapable of being remedied by other party; or (iii) if the other Party becomes the subject of an Insolvency Event.

- (b) In addition to its rights under clause 3.2(a) above, upon written notice to the Customer, Citadel may immediately terminate this Agreement if its rights to resell the Subscription Services to the Customer are terminated by LeanIX other than where Citadel is at fault. For the purposes of this clause (b), Citadel is not at fault if its rights to resell the Subscription Services to the Customer are terminated due to any conduct on the part of the Customer or its Permitted Users (including any failure to comply with the terms of this Agreement).
- (c) This clause 3.2 and the other express rights provided for in this Agreement constitute the only circumstances in which a party may terminate this Agreement. To the extent permitted by Law, all other rights to terminate this Agreement at Law are hereby excluded.

3.3 Effect of termination

- (a) Expiry or termination of this Agreement does not impact any accrued rights of either party arising before the date of expiry or termination of this Agreement.
- (b) The Customer acknowledges and agrees that LeanIX may retain Customer Data for Customer to recover for a period of 30 days after expiry or termination of this Agreement (**Retention Period**). Unless prohibited by Law, Citadel will procure that LeanIX delete all Customer Data after expiry of the Retention Period.
- (c) On termination or expiry of this Agreement: (i) Customer must cease to access and use the Services, and its rights under this Agreement (including the Order Form) to receive, access and/or use all Services will immediately terminate; (ii) except as contemplated in clause 3.3(b), each party must (at the election of the other party) return or destroy the Confidential Information of the other party; (iii) where the Customer has terminated this Agreement pursuant to clause 3.2(a) or Citadel has terminated this Agreement pursuant to clause 3.2(b), Citadel will refund the unused portion (on a pro-rata basis) of prepaid Fees paid by the Customer for Subscription Services and/or Support Services; and (iv) unless otherwise agreed in writing, Citadel will have no requirement to provide any transitional or disengagement services.

3.4 Suspension

- (a) Without limiting Citadel's other rights under these Terms and Conditions, Citadel may

suspend Customer's access to the Services in any of the following circumstances: (i) Customer has breached (or is reasonably suspected to have breached) clause 1.2; (ii) it is necessary to preserve the security, integrity, or accessibility of the Subscription Services, the Customer Data or of LeanIX, Citadel or any of their customers; and/or (iii) Customer has not paid overdue Fees within 30 days of receipt of a written notice from Citadel specifying the overdue Fees.

- (b) Where Citadel can foresee the need for a suspension of any Services, Citadel will aim to provide at least 2 business days' advance notice to Customer. Citadel will restore Customer's access to the suspended Services as soon as the relevant grounds for the suspension have been resolved to Citadel's reasonable satisfaction.

3.5 Survival

Any provision which is intended to survive termination or expiry of an Order Form, including clauses 1.2(d), 2.4, 3.3, 4, 6.2, 6.3, 6.4, 7, 8, 9.2, 10, 11, 12 and this clause 3.5, will survive termination or expiry of an Order Form.

4. Confidentiality

- (a) Each party agrees: (i) to hold the other party's Confidential Information in strict confidence; (ii) not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than: (A) to LeanIX and other third parties involved in the provision of the Services; and (B) to a party's officers, directors, employees, or other Affiliates, agents, or professional advisors (including financial advisors, accountants and attorneys) who have a need to know in connection with this Agreement and who are otherwise bound by a duty or obligation of confidentiality to such party; (iii) not to use such Confidential Information for any purposes other than to exercise its rights and/or perform its obligations under this Agreement without the disclosing Party's written authorisation.
- (b) A receiving party may disclose Confidential Information of the disclosing party as required to comply with Law, provided that the receiving party (i) gives the disclosing party reasonable prompt notice to allow it to seek a protective order or other appropriate remedy (to the extent the foregoing is allowed under Laws); (ii) discloses only such information as required by Law; and (iii) uses its commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

5. Commitments regarding LeanIX Services

In the provision of the LeanIX Services, Citadel will ensure that:

- (a) (*security*) LeanIX will maintain the information security program described in the Data Security Document;
- (b) (*data processing*) processing of Customer Data by LeanIX and its subcontractors/service providers will be regulated by the Data Processing Document;
- (c) (*hosting of Subscription Services*) unless otherwise agreed, the Subscription Services will be hosted from a location in Australia;
- (d) (*service levels*) LeanIX uses its reasonable endeavours to meet the applicable service levels described in the Support Services Document; and
- (e) (*compliance with laws*) LeanIX complies with all applicable Laws (excluding Laws that solely apply to the Customer or to the market of section to which the Customer belongs).

6. Privacy and data

6.1 Privacy

- (a) This clause 6.1 does not apply in relation to the processing of Customer Data by LeanIX and its subcontractors/services providers, which will be regulated as contemplated in clause 5(b).
- (b) Each party must comply with Privacy Laws to the extent applicable to its performance of its obligations under this Agreement.
- (c) Without limiting clause 6.1(b), each party must, to the extent that it handles Personal Information created or obtained by it pursuant to this Agreement: (i) only use, disclose and otherwise handle that Personal Information for the purposes of fulfilling its obligations and exercising its rights under this Agreement, unless otherwise required by Law; (ii) take such steps as are reasonable in the circumstances to protect any Personal Information from misuse, interference, loss and unauthorised access, modification or disclosure; (iii) notify the other party immediately if it becomes aware of any actual or potential misuse, interference, loss or unauthorised access, modification or disclosure of Personal Information; (iv) notify the other party within 7 days after it receives any request concerning access to or correction of any Personal Information or complaint about the handling of any Personal Information; and (v) notify the other party as soon as reasonably practicable after it becomes aware that a disclosure of any Personal Information may be required by Law and, if requested by the other

party, provide reasonable assistance to the other party to prevent, resist, object to or limit such disclosure.

6.2 Customer Data

- (a) Customer retains all rights in and to Customer Data. Solely for the purpose of performing its obligations under this Agreement (including to provide the Subscription Services and the Support Services) Customer grants to Citadel a limited, non-exclusive, royalty-free, non-transferable right and license to process Customer Data. For the avoidance of doubt, the rights under such licence may be sub-licensed to LeanIX and its subcontractors/service providers who are involved in the provision of the LeanIX Services.
- (b) At any time during the Subscription Term, Customer is entitled to retrieve Customer Data in a machine readable format. Clauses 3.3(b) above will apply in respect of Customer Data after expiry or termination of this Agreement.

6.3 Derived Data

Citadel and LeanIX retain all rights in and to Derived Data. Citadel and LeanIX may use Derived Data for any purpose, including data and market analysis, reporting and optimisation of their respective products and services.

6.4 Feedback

Customer grants to Citadel a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the LeanIX Services and Citadel Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Permitted Users relating to the operation of the LeanIX Services. For the avoidance of doubt, rights under this licence may be sub-licensed to Citadel.

7. Intellectual Property

7.1 Subscription Services

- (a) Citadel, its Affiliates and its licensors (including LeanIX) retain all Intellectual Property Rights in and to the Subscription Services, including any and all related underlying databases, technology, source code and all copies, modifications and derivative works thereof, as well as to the Documentation. Except for the licence provided for in clause 1.2(b), no other rights are granted under this Agreement. For the avoidance of doubt, configuration by the Subscription Services shall not grant any right to Customer over the configured Subscription Services.
- (b) In the event that any Intellectual Property Rights in or to the Subscription Services, or any copy, modification or derivative work of the

Subscription Services, vest in the Customer, the Customer hereby assigns to Citadel those Intellectual Property Rights, including as a present assignment of future copyright, effective immediately on creation. The Customer will promptly do all things reasonably necessary, including executing further documentation, to give effect to the assignment of Intellectual Property Rights to Citadel under this clause 7.1(b).

7.2 Citadel Services

- (a) Citadel will own and retain all Intellectual Property Rights in and to the Citadel Services, including any and all Service Deliverables.
- (b) In the event that any Intellectual Property Rights in or to the Service Deliverables, or any copy, modification or derivative work of the Service Deliverables, vest in the Customer, the Customer hereby assigns to Citadel those Intellectual Property Rights, including as a present assignment of future copyright, effective immediately on creation. The Customer will promptly do all things reasonably necessary, including executing further documentation, to give effect to the assignment of Intellectual Property Rights to Citadel under this clause 7.2(b).
- (c) Citadel hereby grants to the Customer a licence to use the Service Deliverables in connection with the Subscription Services, on the same terms as the Customer is licensed to use the Subscription Services pursuant to clause 1.2(b).

7.3 Customer names and marks

- (a) Customer grants to Citadel a worldwide, non-exclusive licence during the Subscription Term for Citadel and LeanIX to use the Customer's name and marks on their respective websites and for marketing purposes in brochures, catalogues and emails, in each case for purpose of identifying the Customer as a customer of theirs or a customer of the Subscription Services.
- (b) Citadel will comply with, and use its reasonable endeavours to ensure that LeanIX complies with, any requirements about use of the Customer's name and marks which are notified by the Customer to Citadel.

8. Indemnities

8.1 Indemnities - Customer

- (a) Customer indemnifies and will hold harmless Citadel and its Affiliates against any Loss sustained or incurred by Citadel and each of its Affiliates which arises out of any claim brought or made by the Customer against LeanIX or any of its Affiliates in connection with the LeanIX

Services. For the avoidance of doubt, this indemnity survives expiry or termination of this Agreement for any reason.

- (b) During the Subscription Term, Customer will (subject to clause 8.4), at its own expense (i) defend any third party claim brought against Citadel or LeanIX to the extent alleging that Customer Data, or Customer's use of the Subscription Service in Customer's breach of this Agreement, infringes or misappropriates such third party's Intellectual Property Rights or violates applicable Laws and (ii) indemnify and hold harmless Citadel and LeanIX from any damages and costs caused by Customer finally awarded or agreed to in settlement by Customer in such claims (including reasonable attorneys' fees).

8.2 Indemnity - Citadel

- (a) Subject to clauses 8.2(b) and 8.4, during the Subscription Term, Citadel will, at its own expense: (i) defend any IP Claim brought against Customer; and (ii) indemnify and hold harmless Customer from any damages and costs caused by Citadel and finally awarded or agreed to in settlement by Citadel in such IP Claim (including reasonable attorneys' fees).
- (b) Citadel will have no liability and no obligation under clause 8.2(a) or the following clause 8.3(a) to the extent an IP Claim is arising or alleging based in whole or in part on: (i) use of the Subscription Services other than as specified in this Agreement or the Documentation, including use with third party hardware, services and/or software products not specifically authorised by Citadel or LeanIX, if such infringement would not have occurred without such use or combination; or (ii) modifications of the Subscription Services other than modifications made by Citadel as a Citadel Service.

8.3 Mitigation

Notwithstanding clause 8.2, if the Subscription Services become the subject of an IP Claim or in Citadel's opinion is likely to become the subject of an IP Claim, Citadel may at its own cost and expense:

- (a) procure for Customer the right to access and use the Subscription Services free of any liability for infringement;
- (b) procure that the Subscription Services are replaced or modified to make them non-infringing but with reasonably comparable functionality; or
- (c) if the previous two options are not available at commercially reasonable terms, terminate the applicable Subscription Service and issue Customer a pro-rated refund equal to the

unused portion of any prepaid Fees for the remainder of the applicable Subscription Term.

8.4 Conditions

- (a) The obligations of each indemnifying party under clauses 8.1(b) and 8.2(a) are conditioned upon receiving from the party seeking indemnification:
 - (i) prompt written notice of the claim (but in any event notice in sufficient time for the indemnifying Party to respond without prejudice);
 - (ii) the exclusive right to control and direct the investigation, defence and settlement (if applicable) of such claim; and
 - (iii) all reasonable necessary cooperation of the indemnified party, at indemnifying party's expense.
- (b) Clause 8 sets out each party's sole and exclusive obligation and liability, and the other party's sole and exclusive remedy, for third party claims referred to in clauses 8.1(b) and 8.2(a). For clarity, the exclusivity of such remedy shall not limit a party's right to claim damages connected to such third-party claims, in which case clause 10 shall apply.

9. Warranties and Disclaimer

9.1 Warranties

During the Subscription Term, Citadel represents and warrants that:

- (a) the Subscription Service will perform in substantial conformity with the applicable Documentation. Customer shall report to Citadel any material nonconformity within 21 days of the date on which it first appeared (**Notice Period**) and Citadel will procure that LeanIX rectifies those reported non-conformities which can be reproduced by LeanIX in the Subscription Services. If LeanIX determines rectification to be commercially unreasonable (as notified to Citadel or the Customer), as its sole remedy, the Customer may either request a reduction of the applicable Fees, to be agreed upon by the parties in good faith, or terminate the applicable Subscription Service and receive a pro-rated refund equal to the unused portion of any prepaid Fees for the remainder of the applicable Subscription Term as of the date of the warranty claim. In the event of non-conformities reported after the expiration of the Notice Period, Customer's sole remedy (and Citadel's sole liability) shall be to obtain rectification via the Support Services. This warranty in this clause 9.1(a) does not cover nonconformities caused by misuse, third-party hardware, software or services or modifications of the Subscription Services other than as allowed via the Configuration Functionalities;
- (b) the Subscription Services will not infringe upon any Intellectual Property Rights, or misappropriate any trade secret, of any third

party. In the event of third-party claims alleging that the Subscription Services infringe any Intellectual Property Rights or misappropriate any trade secret, clause 8.2(a) sets forth Customer's sole remedy (and Citadel's sole liability) in connection with a breach by Citadel of this warranty;

- (c) it will use reasonable efforts to ensure that the Subscription Services will not include any Viruses;
- (d) the Support Services will be provided in accordance the standard of performance set out in clause 1.3(b);
- (e) the Citadel Services, and any Service Deliverables provided as part of the Citadel Services, will comply with the requirements for those services and deliverables, as set out in section 4 of the Order Form;
- (f) it will provide the Citadel Services using the level of skill, care and diligence consistent with industry standards, as would be expected of a skilled professional experienced in providing the same or similar services;
- (g) if performing the Citadel Services, it will comply with all applicable Laws (excluding Laws that solely apply to the Customer or to the section of the market to which the Customer belongs;
- (h) the Citadel Services will not infringe upon any Intellectual Property Rights, or misappropriate any trade secret, of any third party ;and
- (i) the Service Deliverables will not include any Viruses.

9.2 Disclaimer

- (a) All express or implied warranties, terms, guarantees, representations or conditions relating to this Agreement, or their subject matter (including implied warranties of merchantability or fitness for purpose, or that the Customer's use of the Subscription Services will be uninterrupted or error-free), not expressly contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by Law.
- (b) If any warranty, term, guarantee, representation or condition is implied into this Agreement or imposed by Law and cannot be excluded (**Non-excludable Item**), and Citadel is able under Law to limit Customer's remedy for a breach of such a Non-excludable Item, then the liability of Citadel for breach of such Non-excludable Item will be limited to one of the following at Citadel's option: (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent

goods, or the payment of the cost of having the goods repaired; or (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

10. Limitations of liability

10.1 Liability cap

- (a) To the maximum extent permitted by Law and subject to the remainder of this clause 10.1, the maximum aggregate liability of a party to the other party under or in connection with this Agreement or its subject matter (whether in contract, in tort (including negligence or otherwise) is limited to an amount equal to the Subscription Fees paid or payable by the Customer under this Agreement in respect of the 12 month period immediately preceding the first event out of which the liability arose.
- (b) Clauses 10.1(a) does not apply in relation to liability arising from: (i) any indemnification obligation under clause 8; (ii) a party's liability for the party's wilful misconduct; (iii) a party's liability for infringement of the other party's Intellectual Property Rights; or (iv) Customer's access and/or use of the Subscription Services in contravention of this Agreement which results in the Customer infringing, or causes the Customer to infringe, LeanIX's Intellectual Property Rights.

10.2 Consequential loss

To the maximum extent permitted by Law, in no event will either party's liability to the other party, howsoever arising and whether for breach of contract, in tort (including negligence) or otherwise, include any liability for:

- (a) indirect, special, incidental, punitive or consequential loss or damage; or
- (b) other loss or damage arising out of or relating to: (i) loss of data, (ii) loss of income, (iii) loss of opportunity, (iv) lost profits; or (v) costs of recovery,

in each case however caused and even if such party or its Affiliates has been advised of the possibility of such loss, liability, damage or expense or if such party or its Affiliates' remedy otherwise fails of its essential purpose.

11. General

11.1 Entire Agreement

This Agreement constitutes the final, complete, and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements on the matters contained in this Agreement are expressly superseded by this Agreement. The provisions of this

Agreement cannot be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in the Special Conditions of an Order Form. For clarity, if Customer issues a purchase order, that purchase order shall be for its internal administrative purposes only and any terms included therein shall have no effect.

11.2 Governing Law

This Agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts having jurisdiction in the State of Victoria and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement.

11.3 Assignment and subcontracting

- (a) A party cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other party unless such assignment is by Citadel: (i) to its Affiliate; or (ii) in connection with a merger, reorganisation, acquisition, other transfer of all or substantially all of such Party's assets.
- (b) Citadel may subcontract any of its obligations under this Agreement to a third party provided that: (i) it will remain fully responsible for the performance of all of its obligations under this Agreement; and (ii) Citadel will be liable for the acts and omissions of its subcontractors as though the acts and omissions of Citadel itself.

11.4 Force Majeure

Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (other than an obligation to pay money) if the delay or failure results from any cause beyond such party's reasonable control (a **Force Majeure Event**). The party whose performance is affected by the Force Majeure Event must promptly notify the other party upon the occurrence of a Force Majeure Event and resume performance without undue delay upon cessation of the Force Majeure Event. Each party will use commercially reasonable efforts to mitigate the effect of a Force Majeure Event.

11.5 Export Control Laws

The Customer must comply with all export and import control regulations and sanctions Laws, including but not limited to those of the Commonwealth of Australia, the Federal Republic of Germany, the European Union, the United Kingdom and the United States of America (**Export Control Laws**). Citadel will not be required to perform, or procure the performance of, a Service to the extent the performance of that Service would breach an Export Control Law, or expose Citadel or its Affiliates or licensors (including LeanIX) to any risk of

enforcement action, punitive or restrictive measures or other adverse action under Export Control Laws.

11.6 Notices

All notices, demands or other communications under this Agreement will be in writing and delivered to the receiving party at the respective addresses specified section 1 of the Order Form, either in person, by email, by prepaid overnight courier, or by registered/certified mail.

11.7 Waiver

The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion will not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. A waiver given by a party is only effective and binding on that party if it is given or confirmed by that party in writing. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

11.8 Severance

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

11.9 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.

11.10 Amendments

Any provision of this Agreement may only be varied by a document signed by or on behalf of both of the parties.

11.11 Interpretation

The parties agree that this Agreement will not be construed adversely to a party just because that party prepared it.

12. Dictionary

In this Agreement:

Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity (including joint ventures, limited liability companies and partnerships). **Control** for the purposes of this definition, means the power to direct the management and policies of the entity, by contract or otherwise;

Agreement has the meaning given to that term in the Order Form;

Citadel means the entity named in section 1 of the Order Form;

Citadel Services means the applicable services described at section 4 of the Order Form and, for clarity, does not include the LeanIX Services;

Confidential Information means any and all information (whether written, otherwise recorded or oral) of a party that the disclosing party designates as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes: (a) non-public information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third party information that the disclosing party is obligated to keep confidential; (c) the terms included in the Order Form; and (d) any non-public information relating to any activities conducted hereunder. Confidential Information does not include any information or documentation that was: (e) already in the possession of the receiving party without an obligation of confidentiality; (f) independently developed by the receiving party without reference to or use of the Confidential Information of the disclosing party, as demonstrated by the receiving party; (g) obtained from a source other than the disclosing party without an obligation of confidentiality; (h) publicly available when received or thereafter became publicly available (other than through any unauthorised disclosure by, through, or on behalf of the receiving party); or (i) approved for disclosure by the disclosing party;

Configuration Functionalities means the functionalities of the Subscription Services that allow configuration activities via the user interface;

Corporations Act means the *Corporations Act 2001* (Cth);

Customer has the meaning given to that term in the Order Form;

Customer Data means electronic data and information submitted by or for Customer to the Subscription Services. Customer Data is Customer's Confidential Information;

Data Processing Document means the terms on which LeanIX (and its subcontractors and service providers) process Customer Data, as set out at in the Data Processing Exhibit accessible at <<https://www.leanix.net/en/legal/commercial>> (or any replacement landing page notified by Citadel to Customer);

Data Security Document means the terms on which LeanIX keep Customer Data secure, as set out in the Data Security Exhibit accessible at <<https://www.leanix.net/en/legal/commercial>> (or any

replacement landing page notified by Citadel to Customer).

Defects means any failure in the Subscription Services to materially confirm to the Service Description;

Derived Data means new, anonymous, aggregated information generated through analysis and other processing of Customer Data and information generated through monitoring or other observation of Customer's and Permitted User's use of the Subscription Services. Derived Data is not Customer Data or Confidential Information and does not contain any Personal Information;

Documentation means online manuals, functional specifications, usage guides and policies produced by LeanIX, as updated from time to time, made available on docs.leanix.net or any successor website;

Export Control Laws has the meaning given to that term in clause 11.5;

Fees mean the fees for the Services, initially being the fees specified at section 5 of the Order Form, subject to change as provided for in clause 2.4(a) based on the Customer's usage of the Subscription Services and Support Services and as provided for in clause 2.2 in respect of a Subscription Renewal Period;

Force Majeure Event has the meaning given to that term in clause 11.4;

Initial Subscription Term has the meaning given to that term in the Order Form;

Insolvency Event means if the relevant party: (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts; (b) is insolvent within the meaning of section 95A of the Corporations Act; (c) would be presumed insolvent by a court by reason of section 459C(2) of the Corporations Act; (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand; (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken; (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or (g) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting or an application to a court or has other steps taken for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;

Intellectual Property Rights includes all rights, title, and interests in and to all intellectual property of any kind, throughout the world, including all present and future rights in relation to copyright, trademarks, trade names, designs, patents or other proprietary rights,

moral rights, or any rights to registration of such rights, whether created before or after the date of this Agreement, and whether existing in Australia or otherwise;

IP Claim means a third-party claim alleging that aspects of the Subscription Services infringe a valid Australian patent, copyright or trademark, or other intellectual proprietary right;

Laws means any applicable law, rule, decision, order, regulation, judgment, and requirement of any government authority having jurisdiction;

LeanIX means LeanIX GmbH;

LeanIX Services means the Subscription Services and the Support Services;

Licensed Volume means the maximum usage of the Subscription Services based on the "Number of Applications" (as that term is defined in the Service Description, except each reference to "Customer" and "Subscription Services" shall refer to the Customer and Subscription Services the subject of the Order Form). The initial Licensed Volume is specified at section 3 of the Order Form, and that amount may increase as provided for in clause 2.4;

Loss includes all losses or liabilities (whether actual, contingent or prospective), damages, outgoings, costs (including legal costs on a full indemnity basis) and expenses of whatever description, however it arises and whether present, unascertained, immediate, future or contingent;

Order Form means the order form made between Citadel and the named customer on that order form for the provision of certain specified services;

Permitted Users are limited to Customer's or its Affiliate's employees, consultants, subcontractors, agents, and business partners who are directly involved in the utilisation of the Subscription Services;

Personal Information has the meaning given to that term in the Privacy Laws;

Privacy Laws means the *Privacy Act 1988* (Cth) and the binding rules and regulations made pursuant to that Act;

Renewal Subscription Period has the meaning given to that term in the Order Form;

Service Class means either the "Comfort", "Premium" or "Platinum" level of Support Services that the Customer has signed up to, as specified at section 3 of the Order Form and described in the Support Services Document;

Service Deliverables means any works, work products, documents or other materials created or modified as part of the Citadel Services, but excluding the Subscription Services or any copy, modification or

derivative of the Subscription Services referred to in clause 7.1;

Service Description has the meaning given to that term in the Order Form;

Services means the LeanIX Services and the Citadel Services;

Subscription Commencement Date has the meaning given to that term in the Order Form;

Subscription Services means the services described at section 3 of the Order Form, excluding the Support Services;

Subscription Term means the Initial Subscription Term and each Renewal Subscription Period, unless this Agreement is terminated earlier in accordance with its terms;

Support Services means the applicable support services to be provided to the Customer under this Agreement, which will be based on the applicable Service Class specified on an Order Form, as described in the Support Services Document;

Support Services Document has the meaning given to that term in the Order Form;

Taxes all taxes, charges, duties, levies, withholdings, fees and other government imposts;

Terms and Conditions means this document titled "Terms and Conditions"; and

Virus means any malicious code, malware, worms, other software agents or similar items.