



LEXISNEXIS LMS/LMCS TERMS AND CONDITIONS

This End User Contract along with LexisNexis' General Terms and Conditions and Terms of Trade, is between Reed International Books Australia Pty Limited ABN 70 001 002 357, trading as LexisNexis ("LexisNexis", "we", "our" or "us") and the individual, company or institution accessing the Product which LexisNexis has agreed to supply ("you", "your" or "User"). Access to or use of the Products and/or Materials signifies your acceptance of the following terms and conditions. If you are accepting these terms on behalf of a business entity, you hereby represent that you have the authority to do so. If you do not agree to these terms and conditions, do not access or use the Product(s).

1 DEFINITIONS

Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010.

Documentation means any materials or information we provide to you in relation to the Products, including any Proposal Specification, Technical Reference Guide and electronic training manuals.

End User Contract or **EUC** means these Terms and Conditions and includes all Schedules to them.

LMS means LexisNexis' learning management system Products.

LMCS means LexisNexis' learning management content system Products adopted by the Prescribing Institution.

Materials means materials and information (in any form, including Webinars) forming part of an LMCS Product and includes any copy, recording or printout (as the case may be) of any such materials or information.

Prescribing Institution means an educational institution which has prescribed a LexisNexis title for coursework.

Products means the LMS and/or LMCS and associated Documentation.

Specification means any specification relating to the Products set out in this EUC or in the Documentation.

Supplemental Terms means additional terms regarding the use of a specified Product to which you and/or a User must agree before accessing that Product.

Term has the meaning given to it in clause 3.1.

User means any authorised lecturers, employees (temporary or permanent), contractors and administrative staff at the Prescribing Institution as well as enrolled full time students and other students of such Prescribing Institution who have purchased the adopted text for which the Product relates.

Webinar has the meaning specified in clause 6.

2 SUPPLY OF PRODUCTS

We will supply the Products and provide any support services for the Products in accordance with this EUC.

3 TERM, RENEWAL AND TERMINATION

3.1 This agreement is for a period of 12 months from the date that you purchase the right to access the Product or until otherwise terminated in accordance with this agreement (**Term**).

3.2 This agreement, including the Supplemental Terms, may be changed from time to time as described below or by written agreement. Unless specified to the contrary, we may amend the terms of this EUC at any time upon 30 days' written notice to you. Other provisions may be changed by us with immediate effect upon notice. Continued use of the Products

following any change made by us constitutes acceptance of the change.

3.3 We may also suspend or discontinue providing the Products to you without notice and pursue any other remedy legally available to us if you fail to comply with any of your obligations under this agreement. This agreement may also be terminated on written notice:

- (a) by either party if the other commits a material breach of an agreement which cannot be remedied or which (in the case of a breach capable of being remedied) has not been remedied within 30 days of a written request to remedy the breach;
- (b) by either party if the other goes into liquidation, or if a receiver, manager or administrator is appointed in respect of the whole or any part of its assets or any similar or analogous insolvency event occurs in relation to the other party in this or any other jurisdiction or if the other party ceases or threatens to cease trading.

3.4 Any termination of the agreement under this clause is without prejudice to any other rights or remedies a party may be entitled to under the agreement or at law. It does not affect any accrued rights or liabilities of either party nor any provision which is expressly or by implication intended to come into force on, or continue in force after, termination.

3.5 If this agreement terminates:

- (a) any licence granted under this EUC terminates immediately;
- (b) we will immediately cease providing any support services in respect of the Product;
- (c) you must immediately cease all use of the Product;
- (d) we may request that you immediately return to us all copies of the Product and Documentation in your possession, custody or control; and
- (e) we may request that you certify to us that no copies of the Product or Documentation have been retained by you.

4 LICENCE

4.1 We grant Users a non-exclusive, non-transferrable, limited licence to access and use the LMS Product and to access, use, attend and participate in the LMCS Products and to access and use the Materials from time to time made available to you for research and educational purposes directly linked to the academic coursework. This licence includes:

- (a) The right to electronically display the Product and Materials to you and Users within the Prescribing Institution;
- (b) The right to obtain and keep a copy, printout, recording or other record of the Materials;
- (c) Subject to any Supplemental Terms, the right to retrieve and store machine-readable copies of Materials, but limited to the retrieval of a single event and/or copy of a reasonable portion of Materials thereof and storage of that copy in machine readable form for no more than 90 days for use by Users only, except to the extent the copy is required to be kept for legal, regulatory or evidential requirement or is for use for internal training purposes for employees, contractors or students of the Prescribing Institution. You may not create your own independently searchable database from any Materials.

- (d) The right to record and store Webinars in machine readable form on our computer system indefinitely provided that they are not redisplayed to persons other than Users.
- 4.2 Users may also make copies of Materials in accordance with applicable copyright laws.
- 4.3 Except as specifically provided in clauses 4.1 and 4.2, you may not download, store, reproduce, transmit, display, copy, distribute or use the Products or Materials.
- 4.4 Use of the Products is strictly limited to Users.
- 4.5 If you are a Prescribing Institution, you must ensure that each person having access to the Product and Documentation:
- (a) is an authorised User; and
- (b) uses the Product and Materials in accordance with the terms and conditions of this EUC.
- 4.6 All right, title, and interest (including all copyright and other intellectual property rights) in the Products and Materials (in printed and/or machine-readable forms) belong to us or our third party suppliers. You acquire no proprietary interest in the Products, Materials, or any copies of them.
- 4.7 You may not remove or obscure any copyright or other notice contained in the Products or Materials.
- 4.8 Other provisions that govern your use of Products and Materials may be set out in Supplemental Terms all of which are incorporated by reference into the Agreement.
- 4.9 Any information, data or material you transmit or post using Products (for examples during any Webinar) must be non-confidential and belongs to us on submission and may be used by us for any purpose including reproduction, disclosure to third parties, transmission, posting or otherwise at our absolute discretion. You hereby assign to us all intellectual property and other rights of any nature in and to such data, information and material throughout the world including.
- 4.10 Products which allow for the participation of the User in Webinars may only be used or participated in for lawful purposes. You must ensure that participation by Users does not include conduct which is defamatory, which breaches intellectual property or which may harass, cause distress or inconvenience to any person and result in the transmission of obscene, discriminatory or offensive content or interruption of the normal flow of participation within the Product or the interruption of any aspect of the operation of the Product.
- 5 ACCESS TO PRODUCTS**
- 5.1 Subject to clause 5.2 below, only Users authorised by the Prescribing Institution may access and use the Products and Materials.
- 5.2 Users may not use an identification or access number to access the Products or Materials from outside the country for which it was issued.
- 5.3 Your identification number(s) may be restricted from accessing certain Materials otherwise available in the Products.
- 5.4 Materials and features may be added to or withdrawn from the Products and the Products otherwise changed without notice.
- 5.5 You must not:
- (a) store, distribute or transmit any content through the Products that is unlawful, dishonest, fraudulent, libellous, harmful, aggressive, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, or discrimination based on gender, colour, race, religious belief, sexual orientation, disability, or any other illegal activities; or breaches any laws, statute, regulations standards, or codes of practice of any relevant authority;

- (b) attempt to disassemble, reverse engineer or reverse compile, or otherwise reduce to human-perceivable form any of the Products; or
- (c) provide us with any confidential information for the purpose of a query which might (a) identify the parties involved in a particular matter; or (b) breach any legal or professional duty.

6 ADDITIONAL TERMS FOR WEBINARS, BROADCASTS AND OTHER PARTICIPATORY SERVICES ('WEBINARS')

- 6.1 We will send you a link to access live Webinars with confirmation of your request to participate in the specific Webinar. If you book on behalf of other Users, it is your responsibility to distribute the Webinar link to the Users.
- 6.2 Reasonable endeavours will be made for the Webinars to take place on the advertised date and time. In the event that the Webinar does not take place as advertised, an alternative date/time may be substituted. We reserve the right to substitute Webinar speakers. Where any Webinar is altered from its published details (as specified in this clause 6.2) no refund or compensation is payable by us.
- 6.3 We are not liable if any User cannot view any Webinar due to firewalls or other hardware or software within the User's organisation or due to the nature of or failure in any technology used by any User.
- 6.4 A recording of a Webinar will usually be available within two working days of the Webinar live broadcast and will remain available for 6 months thereafter. Failure to attend, or gain access to, any Webinar does not entitle you or any User for additional substituted access or any form of compensation whatsoever.

7 REVERSE LICENCE

- 7.1 Where, as a result of the use of any Product, you or your Users upload, store or post any content, whether by the adaptation or amendments of Materials or otherwise (**Subscriber Materials**), you hereby grant to us a non-exclusive, non-transferable licence to incorporate the Subscriber Materials into the Products and Materials from your use and the use by any Users.
- 7.2 You indemnify us and keep us indemnified, on demand, against any loss, injury, claim, liability or damage of any kind that we suffer or incur as a result of any infringement of a third party's intellectual property rights by the Subscriber Materials or their use as contemplated by this agreement.

8 DOCUMENTATION

- 8.1 We may give you a reasonable number of copies of and/or access to the Documentation. The Documentation will explain the functionality of the Product.
- 8.2 Additional copies of Documentation may be obtained from us upon payment of our standard price for such Documentation.
- 8.3 You may not provide any Documentation to a person or entity outside of your organisation for any purpose. Documentation cannot be used in association with training to be conducted offsite without our prior written consent.

9 YOUR OBLIGATIONS

- 9.1 In summary, and without limitation, you will:
- (a) be responsible for the condition and maintenance of your existing hardware and its replacement should it be defective in any way that would affect performance of the Product;
- (b) report any fault in the Product to the help desk as soon as practicable; and
- (c) notify us in writing prior to any change to your system configuration that may have potential to impact upon the efficient operation of the Product.

10 WARRANTIES AND GUARANTEES

- 10.1 We represent and warrant that we have the right and authority to make the Products and Materials available pursuant to the Agreement.

- 10.2 We will use reasonable endeavours to update Materials within a reasonable time of Materials becoming outdated as a result of any changes in law from time to time. However, we are unable to specify a timeframe within which Materials will be updated as the nature of the change may require a substantial amendment, rewriting and cross-referencing by learned and expert authors.
- 10.3 Materials are provided for reference purposes only and are not intended, nor should they be used, as a substitute for professional advice or judgement or to provide legal advice with respect to particular circumstances. No information provided, for example during a Webinar may be taken as advice upon which reliance can be placed and we accept no liability for any damages resulting from such reliance.
- 10.4 EXCEPT AS OTHERWISE PROVIDED IN THIS CLAUSE 11, THE PRODUCTS AND MATERIALS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND WE AND EACH THIRD PARTY SUPPLIER OF MATERIALS EXPRESSLY EXCLUDES ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU AGREE THAT YOU PLACE RELIANCE UPON THE CONTENT OF THE PRODUCTS AND MATERIALS AT YOUR OWN RISK.
- 10.5 We are not responsible for the availability or content of any third party contributor or website. Where you decide to visit any linked site, or use a Product to access or use your own or any third party material Users do so at your and their own risk. It is also your responsibility to take all protective measures to guard against viruses or other destructive elements. We do not endorse and are not responsible or liable for the views of third parties, participants, any content, advertising, products, services or information on (or available from) any third party and/or their websites or material. We are not responsible for any damage, loss or offence caused by or, in connection with, any third party content, advertising, products, services or contribution or information accessed via the Products. Any terms, conditions, warranties or representations associated with such dealings, are solely between you and the relevant provider of the content or service. No Materials are to be construed to the effect that we endorse or are affiliated or associated with any material accessed, or are legally authorised to use any third party trade mark, trade name, logo or copyright symbol displayed, or that any linked site is authorised to use any trade mark, trade name, logo or copyright symbol of ours or any of our affiliates in the absence of express written confirmation from us.
- 10.6 You agree to indemnify us and keep us indemnified from and against all claims, damages, expenses, costs and liabilities arising in any manner from your access to, participation in and use of the Products and Materials other than in accordance with this agreement.
- 10.7 You must give us notice as soon as reasonably practicable upon becoming aware of a breach of a warranty in clause 10.1 during the Term. Our sole liability and obligations in relation to a breach a warranty in clause 10.1 will be (at our cost) to remedy, repair or replace the Product or Materials or to re-supply any support services or engage a third party to re-supply support services (or the failing parts thereof), within a reasonable period. The warranty in clause 10.1 will not apply in the event:
- (a) you or any third party make an alteration to, or permit any alteration to be made to, the Products or Materials;
 - (b) you fail to give us written notice within the warranty period; or
 - (c) you use the Products or Materials other than in accordance with this agreement or do not take reasonable care in relation to the Product or Materials.
- 10.8 If you are a "consumer" for the purposes of the Australian Consumer Law, we are required to include the following statement as a result of the undertakings in clause 10.7.
- Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Under the Australian Consumer Law, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The benefits to you described in clause 10.7 are in addition to other rights and remedies you have under the Australian Consumer Law and other laws. Our warranties are provided by Reed International Books Australia Pty Limited trading as LexisNexis, Address: Tower 2, 475 Victoria Avenue, Chatswood NSW 2067, Telephone Number: 1800 999 906, Email: customer.relations@lexisnexis.com.au.*
- However, please be aware that the Australian Consumer Law permits us to limit our liability in respect of the guarantees referred to above in accordance with the limitation in clause 10.9.
- 10.9 If you are a "consumer" for the purposes of the Australian Consumer Law, certain guarantees may be conferred on you and certain rights and remedies may be conferred on you which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law, our liability to you for breach of any such guarantee is limited at our option to: (a) in the case of goods, replacement or repair of the goods or payment of the cost of replacing or repairing the goods; and (b) in the case of services, resupply of the services or payment of the cost of re-supplying the services.
- 10.10 Subject to clause 10.9 and to the maximum extent permitted by law, we hereby exclude all other conditions, warranties, guarantees or representations, express or implied, by statute, trade or otherwise, including without limitation:
- (a) that the operation of the Product will be uninterrupted or error free or that Materials will be error free; or
 - (b) that the Products or Materials will operate on or be accessible from your existing computer hardware or computer hardware that you may acquire in the future; or
 - (c) that the Products and Materials are compatible with other computer programs or systems; or
 - (d) that the running of other software or processes on your hardware will not adversely affect the functioning of the Product or Materials; or
 - (e) that the Product or Materials will have the same functionality or perform or have the same characteristics as any existing or other product or materials used or contemplated for use by you.
- 11 LIABILITY**
- 11.1 You agree that the limitations and exclusions are reasonable. Nothing in this EUC is intended to exclude or limit either party's liability to the other for liabilities which cannot be limited or excluded by law.
- 11.2 Subject to clause 10.9 and to the maximum extent permitted by law, our total liability under this EUC whether for breach of this agreement, in tort (including negligence), or for any other common law or statutory cause of action is limited to rectification or replacement of the Product or Materials within the 12 months preceding notification of the claim.
- 11.3 Any claim under clause 11.2 must be notified to us within 12 months of the cause of action arising.
- 11.4 Subject to clause 10.9 and 11.1 and to the maximum extent permitted by law, neither party shall in any event be liable to the other for any indirect or consequential loss, loss of profits, contracts, business, revenue, goodwill or anticipated savings (whether in each case direct or indirect), or any other indirect, consequential or special losses or damages howsoever caused.

- Subject to clause 10.9 and to the maximum extent permitted by law, we will not be liable for:
- (a) any loss or corruption of data, software or database configuration held by you (whether before or after termination of this agreement), or any problems of any nature arising from the use of the Products or Materials for purposes for which they were not designed (in accordance with the Specification) even if we have been advised of the possibility of such damages or loss, and whether such claim is made in contract, tort (including negligence), statute or under any other legal claim;
 - (b) any defects or failures which arise in whole or in part from accident, neglect or misuse of the Products or Materials;
 - (c) defects caused by products, equipment or computer programs not provided or approved by us;
 - (d) failure of electrical power or circuitry or network outside the Products;
 - (e) unusual stress or storage, transportation, handling or repairing by you; or
 - (f) operation of or interference with the Products or Materials by Users or any third party who are not properly trained.
- 11.5 Our liability to you under this clause 11 will be reduced to the extent that the event giving rise to such liability is caused or contributed to by any act or omission of you.
- 11.6 This clause 11 has continuing effect after termination of the agreement.
- 12 CONFIDENTIALITY & PRIVACY**
- 12.1 We and you will keep confidential all confidential information communicated by, acquired from or disclosed by one to the other, whether before or during this agreement, and shall not without the prior written consent of the other:
- (a) disclose the same to any third party save to those of its officers, employees or sub-contractors who need to know for the purposes of this agreement and provided that such persons comply with the provisions of this clause; or
 - (b) use the other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 12.2 You acknowledge that any Documentation and computer code provided by us to you in relation to the Product are our confidential information.
- 12.3 The obligations set out in clause 12.1 do not apply to any information which:
- (a) is generally known to the public in Australia other than as a result of a breach of this clause;
 - (b) is lawfully obtained by a party free of any duty of confidentiality otherwise than directly or indirectly from the other party;
 - (c) is disclosed to the professional advisers, lawyers, auditors and bankers of each party under terms of confidentiality and those professional advisers, lawyers, auditors and bankers are bound by a duty of confidence;
 - (d) a party is required to disclose by order of a court of competent jurisdiction or pursuant to a statutory or regulatory obligation.
- 12.4 If, as a result of this agreement we are able to access any information about identifiable individuals, we agree to comply with the Privacy Act 1988 (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws.
- 12.5 You agree that LN may collect and use technical data and related information, including but not limited to technical information about your device, system, application software, peripherals and usage of the Product that is gathered periodically to facilitate the provision of updates, product support and other services to you (if any) related to the Product or Materials.
- 12.6 We will use personal information collected about Users for the purposes of (a) providing access to and use of the Product to Authorised Users, (b) providing support services and other similar activities related to the Products, (c) keeping Users informed about products, services, offers and upcoming events and to improve our services; and (d) the purposes set out in this clause 12.
- 12.7 You agree that we may also provide personal information about Users to third parties for the purposes (a) set out in this clause 12; (b) of providing the Prescribing Institution with usage reports, results and other data relating to your use of the Products; and (c) of providing Users with direct marketing offers which we think may be of interest. If you do not wish to receive information about other products, services, offers and events, please notify us in writing.
- 12.8 The provisions of this clause 12 survive termination of this agreement.
- 13 INTELLECTUAL PROPERTY**
- 13.1 In this clause, "intellectual property rights" means rights conferred under statute, common law and equity in relation to inventions, innovations, patents, designs, trade marks, trade names, logos and get-up, circuit layouts, confidential information and copyright, existing anywhere in the world, and for the duration of those rights.
- 13.2 All right, title, and interest (including all copyrights and other intellectual property rights) in the Products and Materials (in all forms) belong to us or our third party suppliers. You acquire no ownership of copyright or other intellectual property rights or proprietary interest in the Products or Materials including any copies.
- 13.3 Any new features, functionality or performance of the Products or Materials suggested by you that we subsequently incorporate into any the Products or Materials (including intellectual property rights in them) is our sole and exclusive property and you assign all intellectual property rights in those things to us on creation.
- 13.4 In the event that the normal use or possession of the Products or Materials by you in accordance with this EUC infringes the intellectual property rights of any third party in Australia, we indemnify you against any damages finally awarded against you in respect of such claim, and any reasonable cost and expenses incurred by you provided that:
- (a) you promptly notify us of any such claims;
 - (b) we are exclusively entitled to contest, defend or settle any such claims;
 - (c) you provide us with all reasonable assistance and make no admissions prejudicial to the defence of any such claims;
 - (d) we are entitled to retain all costs, expenses, damages or other compensation awarded in connection with the resolution or settlement of any such claims;
 - (e) the indemnity shall not apply to the extent that such claims are attributable to the breach by you of any of your obligations or warranties under this EUC;
 - (f) the indemnity is subject to your duty to mitigate all damages, liabilities, costs and expenses arising out of any such claims.
- 13.5 In the event that a claim as contemplated by this clause 13 is made or in our opinion is likely to be made, we may at our option and cost:
- (a) procure the right for you to continue to use the Products or Materials affected;

- (b) change or replace all or any part of the Products or Materials;
- (c) only where we have used reasonable endeavours to achieve clauses 13.5(a) and (b) and failed to do so on reasonably commercial terms, may we terminate this agreement immediately on written notice in respect of the affected Products or Materials.

14 AUDIT

We have the right to audit your use of the Products and Materials. You agree to provide reasonable assistance and access to information in the course of such audit. Each party will be responsible for its own costs in relation to the audit under this clause.

15 FORCE MAJEURE

- 15.1 Neither party will be liable under the EUC for any breach of its obligations resulting from an event outside of its reasonable control. Where such an event continues for 3 months or longer, the party not affected may terminate this agreement on written notice to the other. Neither party shall have any further liability to the other in respect of termination of this agreement as a result, but without prejudice to the accrued rights of the parties at the date of termination.

16 MISCELLANEOUS

- 16.1 If any provision or part of this agreement is determined by any court to be wholly or partly unenforceable, that unenforceability shall not affect the rest of the agreement.
- 16.2 The failure or delay by either party to exercise or enforce any of its rights or to enforce any obligation which the other party is in breach of under this agreement is not a waiver of that right.
- 16.3 You may not assign, sublicense, novate, transfer, mortgage, charge or otherwise dispose of or encumber this agreement, or any of your rights or obligations under it, without our prior written consent.
- 16.4 This agreement contains all the terms which the parties have agreed in relation to its subject matter and supersedes any prior written or oral agreements, representations or understandings between the parties whether express or implied.
- 16.5 You acknowledge that this agreement has not been entered into wholly or partly in reliance of any warranty, statement, promise or representation made by or on our behalf other than as expressly set out in the agreement.
- 16.6 The terms of this agreement include any addendum signed by both parties. Terms defined in this EUC shall have the same meaning in any addendum.
- 16.7 This agreement is governed by the laws in force in New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales for determining any dispute concerning any such agreement.

BY DOWNLOADING, INSTALLING AND/OR USING THE PRODUCT YOU ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS.

