**ORDER FORM FOR** **Samuel McCarthy**

**PRODUCT**

|  |  |  |  |
| --- | --- | --- | --- |
| **Product:** | Lexis® Affinity | **No. of Users:** | 12 |
| **Version Date:** | 13 January 2022 | **Version No.:** | 9.0 or above |
| **Licence and Maintenance Terms:** | The Software and Oracle software is licensed in accordance with the terms set out in Schedule 1. The optional products are licensed in accordance with the terms set out in Schedule 1 together with any additional terms incorporated by reference in the description of such optional products as set forth in Schedule 2, Part C, Schedule 4 and Schedule 5. Maintenance Services are provided in accordance with Schedule 1 to this Order Form. By signing this End User Contract, the customer agrees to those terms. | | |
| **First Maintenance Term:** | 4 | | |
| **Maintenance Services:** | Refer to Schedule 3 | **Commencement Date:** | On the Go Live Milestone. |
| **Optional products chosen: Schedule 2, Part C** | Oracle LicencesAffinity MobileClient PortalSoftdocs IntegrationSettlement Adjuster | **Customer Operating System Requirements:** | Refer to Schedule 2, Part B |

**OPTIONAL SERVICES**

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| --- | --- | --- | --- |
| **Professional Services Terms:** | All Professional Services are provided in accordance with the terms set out in Schedule 1 to this Order Form and the terms set out in LexisNexis' Professional Services Agreement and its schedules. By signing this Order Form, you agree to those terms. | | |
| **Installation Services:** | Refer to Professional Services Agreement Statement of Work | **Training Services:** | Refer to Professional Services Agreement Statement of Work |
| **Other Services:** | Data Migration | | |

**FEES (excluding GST)**

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| --- | --- |
| **Licence and Professional Services Fee:** | $154,350.00The licence fee is determined by the number of Users. If there is an increase to the number of Users during the Term the additional licence fee will be charged. There will be no reductions to the licence fee for a reduction to the number of Users. |
| **Fee Variations:** | We may vary the licence fees and maintenance fees for additional Users at the time that the number of Users increase. We may also vary any Fee after the First Maintenance Term by giving you at least 60 days' notice of any Fee variations. |
| **LexisCare Maintenance Fee:** | $22,047.50This fee is for the First Maintenance Term for the number of Users set out on this Order Form. If there is an increase to the number of Users during the Term the maintenance fee will be adjusted on a pro-rata basis. There will be no reductions to the maintenance fee for a reduction to the number of Users. |
| **Deposit** | A non-refundable, upfront deposit amount of $0.00 plus GST will be payable by you on acceptance of the order by us. |
| **Credit Checks and Payment Terms:** | By executing this Order Form, you authorise us to carry out credit checks with third parties as we may require. You authorise us to make enquiries of, and to disclose any information which you disclose or which we obtain from any third party to, any credit provider or credit reporting agency: a) concerning your credit worthiness; and b) for the purpose of providing or obtaining a reference.We reserve the right to charge you a processing fee or surcharge for payments made by credit card. We reserve the right to make changes to this surcharge from time to time or extend the surcharge to other methods of payment. If we make any such changes, we will notify you in writing before the changes take effect. |
|  | Upfront Payment TermYou must pay us the total cost of the Licence and Professional Service Fee, including any applicable LexisCare Maintenance Fee, within 30 days of the date of our invoice (to be issued upon acceptance by us of the Order Form).  Payment TermExcept for the Deposit (which must be paid as stipulated above), you must pay us the remaining balance, via direct debit, as follows:(a) License and Professional Services Fee to be paid, via equal monthly instalments, over  months commencing 90 days from the Project Plan Delivery Date; and(b) LexisCare Maintenance Fee to be paid, via monthly instalments, over the First Maintenance Term commencing on the Go Live Milestone.We reserve the right to recover any outstanding amounts (including all costs incurred by us) for services performed pursuant to this Order Form. |

**CUSTOMER DETAILS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Company:** |  | **Specification no:** |  |
| **Billing Address:** |  | **ABN: *(mandatory)*** |  |
| **State:** |  | **Postcode:** |  |
| **Contact Name:** |  | **Email:** |  |
| **Phone:** |  | **Facsimile:** |  |

This agreement consists of this Order Form, the LexisNexis End User Contract set forth in Schedule 1 hereto together with any additional terms in respect of optional products incorporated by reference in Schedule 2, Part C (as applicable) and/or the LexisNexis Professional Services Agreement (as applicable) and is between Reed International Books Australia Pty Limited ABN 70 001 002 357, trading as LexisNexis (“LexisNexis”, “we”, “our” or “us”) and the individual or company identified above as the customer to whom LexisNexis has agreed to supply the Product and/or Professional Services (“you”, “your” or “I”).

## We and you will keep confidential all confidential information communicated by, acquired from or disclosed by one to the other, whether before or during the EUC, and shall not without the prior written consent of the other:

### 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 an agreement of which the EUC forms part and provided that such persons comply with the provisions of this clause; or

### use the other party’s confidential information for any purpose other than to perform its obligations under an agreement of which the EUC forms part.

In signing this Order Form, I acknowledge that:

* I am duly authorised to sign on behalf of the Customer.
* The Product and Professional Services will be provided on the terms and conditions set out in this End User Contract, Professional Services Agreement and their respective Schedules, which I have had an opportunity to review.
* Any information I have provided to LexisNexis which is incorporated into this End User Contract or Professional Services Agreement or related document is correct, and I understand LexisNexis will rely on that information in supplying the Product and Professional Services.
* I acknowledge that LexisNexis may receive a financial incentive for referrals to any third party or integrated products and services.

|  |  |  |  |
| --- | --- | --- | --- |
| **LEXISNEXIS** |  | **CUSTOMER** |  |
| **Name:** |  | **Name:** |  |
| **Position:** |  | **Position:** |  |
| **Date:** |  | **Date** |  |

**Once signed, please email to orders@lexisnexis.com.au, fax to Order Processing on 1800 800 122 or post to LexisNexis Order Processing Locked Bag 2222, Chatswood Delivery Centre, CHATSWOOD, NSW 2067**

**Any queries please call your Account Manager**

**SCHEDULE 1 LEXIS AFFINITY TERMS AND CONDITIONS**

**DEFINITIONS**

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

**Commencement Date** means the date so specified in the Order Form.

**Delivery Date** means the date we deliver the Product to the Site.

**Documentation** means any materials or information we provide to you in relation to the Product, including the Proposal Specification and the Technical Reference Guide - Lexis Affinity Operating System Configuration Requirements (as referred to in Schedule 2) and electronic training manuals.

**End User Contract** or **EUC** means these End User Contract Terms and Conditions as updated from time to time and available online at https://www.lexisnexis.com.au/en/terms-and-conditions and includes all Schedules to them.

**Fault** means the failure of the Software to materially provide the functionality contained in the Specification.

**Fees** means the licence fees for the Product, maintenance fees for LexisCare, fees for Professional Services and any other fees as set out in the Order Form and as varied in accordance with this EUC and/or LexisNexis' Professional Services Agreement from time to time.

**First Maintenance Term** means the period set out in the Order Form and if no period is specified such fixed period shall be 12 months from the date of installation.

**First Trial Data Milestone** means the date specified in your project plan, or if not specified, the date upon which the first iteration of your migrated data is delivered to you for review.

**Go Live Milestone** means the date specified in your project plan or, if not specified, the date upon which the Software is in production mode.

**LexisCare** means the maintenance and support services provided by us in respect of the Product, as set out in Schedule 3.

**Product** means the Lexis Affinity practice management system, comprising the Software, any optional products and Documentation.

**Professional Services** means the services other than LexisCare provided by LexisNexis in accordance with LexisNexis' Professional Services Agreement, including:

(a) installation of the Software and Product implementation;

(b) initial Product training; and

(c) post-implementation review,

provided as standard by LexisNexis to all purchasers of the Product, to the level necessary to assist with implementation and use of the Product (as reasonably determined by LexisNexis having regard to your business requirements and the number of Users) as well as other optional or additional services (such as data migration, scoping and additional training) that LexisNexis may agree to provide to you.

**Project Plan Delivery Date** means the date we deliver the project plan to you.

**Site/s** means the location/s where the Product is to be installed as agreed with LexisNexis.

**Software** means the Lexis Affinity software any Upgrades, software in any optional products selected from Schedule 2 Part C, and unless stated to the contrary, includes Third Party Software.

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

**Term** has the meaning given to it in clause 3.1.

**Third Party Software** means the software comprised in the Product which is provided by us and is licensed by Oracle.

# **Upgrades** mean enhancements and new versions of the Software released by us after the Commencement Date. Upgrades do not include modules or software which provide new or additional functionality unless they are enhancements to existing modules or software or are replacement modules designed to operate with new technology. Upgrades may, at our discretion, also include third-party software. Upgrades do not include consultancy services.

# **User** means any employees (temporary or permanent), contractors and other persons at your organisation on secondment who can concurrently access the Product.

# **PRODUCT**

This EUC sets out our obligations to supply and maintain the Product.

# **TERM**

## This EUC will commence on the date it is signed by both parties, or when LexisNexis issues the Customer with an acceptance letter (whichever is earlier) and will continue until the expiry of the First Maintenance Term, unless notified earlier in accordance with its terms or extended under clause 3.2 (“**Term**”).

## The term of the maintenance of which this EUC forms a part will automatically renew for further one year terms at the then applicable annual maintenance fee, unless you advise us that you do not wish to renew the maintenance part of the EUC at least 30 days prior to the expiry of the First Maintenance Term or renewal date.

## We may from time to time advise you of a projected release or availability date for the Product. However, we shall not be held liable for delay or failure to comply with projected availability dates regardless of cause.

# **LICENCE**

## In return for the licence fee, we grant you a non-exclusive licence to use the Product at the Site solely for your own internal business purposes. The licence granted under this clause is non-transferable, subject to clause 23.3.

## Use of the Product is strictly limited to the number of concurrent Users set out in this EUC, or as otherwise amended from time to time.

## You must ensure that each person having access to the Product and Documentation:

### is an authorised User; and

### uses the Product and Documentation in accordance with the terms and conditions of this EUC.

## The licence granted in clause 4.1 will apply to any workarounds and fixes, any new releases or Upgrades and any additional software which may be supplied to you by us from time to time pursuant to this EUC during the Term.

## The title to and copyright in software produced in the course of providing Professional Services under a Professional Services Agreement shall remain the absolute property of us, and the licence to use it shall be governed by the terms of this EUC.

## You may make a single copy of the Software in electronic form for archive and back up purposes. You will ensure that the copy is an exact copy of the version as delivered by us, and all copyright and proprietary notices contained on the Software must appear on any copy made. You will, upon our request, supply a written record of the whereabouts of any copies of Software made and will allow us from time to time to verify the same, including for up to twelve (12) months after the expiration or termination of any agreement of which this EUC forms a part.

## You have no right to resell, sublicense, rent, timeshare, host, outsource, decompile, disassemble, reverse engineer, copy, adapt or modify the Product, except as permitted by law or by this EUC. You must not use the Product to operate a service bureau, subscription service or to process data for or make available to a third party.

# **DOCUMENTATION**

## We will give you a reasonable number of copies of the Documentation. The Documentation will explain the functionality of the Software and the Product.

## You may make one copy of the Documentation for each Site at which you are licensed to use the Software. An electronic version of the Documentation may be made available to you upon request.

## Additional copies of Documentation may be obtained from us upon payment of our standard price for such Documentation.

## 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.

# **THIRD PARTY SOFTWARE**

## You acknowledge that the Software utilises Third Party Software. Third Party Software is subject to the terms and conditions of this End User Contract and the appropriate third party licensor’s end user terms and conditions, as exist from time to time.

## In addition to the terms and conditions under this End User Contract, you acknowledge that:

### Oracle or its licensor retains all ownership and intellectual property rights to the Third Party Software;

### you will not assign, give, or transfer the Third Party Software and/or services ordered or an interest in them to another individual or entity;

### use of the Third Party Software is restricted to the legal entity that executed this End User Contract;

### to the extent permitted by law, Oracle’s liability is disclaimed for (i) any damages, whether direct, indirect, incidental, special, punitive or consequential; and (ii) any loss of profits, revenue, data or data use, arising from the use of the programs;

### you shall not publish any results of benchmark tests run on the Third Party Software;

### you do not require Oracle to perform any obligations or incur any liability not previously agreed;

### to the extent permitted by law, Oracle may be designated as a third party beneficiary of this EUC;

### some programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of the relevant end user licence agreement; and

### third party technology may be appropriate or necessary for use with the Third Party Software. Such third party technology is licensed to you only for use with the application package.

# **DELIVERY**

## We will use reasonable endeavours to deliver the Software to you at the Site and at a time which has been agreed in advance with you.

## Risk in any software licences (including the Software) and incidentals pass to you on the Delivery Date.

# **FAULTS**

## If at any time after installation during the Term you discover any Fault, then:

### your employees who have been trained in operating the Software shall use their best endeavours to resolve the Fault; and

### only if the issue cannot be resolved by your qualified employees, you must as soon as is reasonably practicable (and in any event within 14 days of such discovery), notify us of the Fault.

## Upon receipt of notification of the Fault (the category of Fault being reasonably determined by us), we shall use reasonable endeavours to correct the Fault (at our cost) within a reasonable time.

## For the avoidance of doubt, Faults do not include:

### errors caused by alterations or modifications of the Software not made by us;

### errors caused by use of the Software other than in the operating environment recommended by us;

### errors caused by failure or destruction of your equipment, electrical power or unusual physical or electrical stress or causes external to the Software; or

### errors which are not reproducible by us.

# **LEXISCARE MAINTENANCE**

## In return for the maintenance fee, we will provide you with LexisCare in respect of the Product during the Term.

## As part of LexisCare, we will provide you with any Upgrades that we make to the Product, at no additional cost.

## LexisNexis may vary the features of LexisCare on reasonable prior notice to you.

## To the extent you require maintenance or support in relation to Third Party Software, we will provide such maintenance and support in accordance with the third party’s then standard terms (if permitted by the third party) and as supplied by the third party to us.

# **PAYMENT**

## You must pay us the applicable Fees in accordance with the payment terms selected on the Order Form. If we do not receive full payment within 30 days of any due date, interest will accrue at the rate of 1.5% per month without prejudice to our rights to (i) suspend or cease any further work or services under the EUC; or (ii) submit your account to a collection agency. If we do submit the account to a collection agency, you agree that we may recover the outstanding amount specified in the invoice including interest, our legal costs, bank fees and charges and other expenses incurred in attempting to recover the debt and any fees and commissions or other amounts we pay to any collection agency to act on our behalf.

## We may vary the Fees as specified in the Order Form. If you do not agree with a Fee variation, you may elect not to renew the agreement of which this EUC forms part under clause 3.1 by providing 30 days written notice from the date you were notified of the Fee Variation.

## If GST is imposed on any supply under this EUC, you must pay, in addition to any consideration payable or to be provided by you, an additional amount calculated by multiplying the prevailing GST rate by the consideration payable or to be provided, provided always that we will issue a valid tax invoice to you, no later than the time at which the consideration payable must be provided.

## You must pay us all applicable Fees and any other amounts owing to us without set-off or deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges or fees. For the avoidance of doubt, any finance arrangement you may enter into is your responsibility and will not affect the enforceability of this agreement, nor the rights and obligations of the parties including your obligation to pay us the Fees.

## Any fees or other amounts you pay us under an agreement of which this EUC forms part are non-refundable, except as otherwise provided herein, even if your circumstances change.

## Hardware manufacturers or their authorised agents or distributors may provide discounts and/or commissions to us for testing, approving or marketing their hardware. We may (but are not obliged to) pass on such discounts or commissions to you.

## We may receive financial incentives from third parties in relation to referrals to them for integrated services. We will disclose the existence of such arrangements to you prior to making such referrals.

## If you obtain LexisCare from us, we may offer you preferential rates determined by us at our discretion, for certain Professional Services.

## You acknowledge that you may have to pay the difference in our standard charges as your use of the Product increases through the addition of Users. No refund will be given by us if the number of Users is reduced by you or if the use of the Product is discontinued or reduced by us for any reason.

## We are entitled to withhold supply and performance of services, and to retake possession of hardware, software or goods supplied by us if you are in material breach of clause 10.

# **YOUR OBLIGATIONS**

## In summary, and without limitation, you will:

### pay the applicable Fees in the amounts and on the terms set out in the Order Form;

### prepare the Site to a standard we deem suitable for the installation and operation of the Product;

### provide all necessary equipment, materials and facilities (such as electricity and telecommunication facilities) to enable us to perform our obligations under the EUC;

### 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;

### report any Fault in the Product to the help desk as soon as practicable;

### not undertake system integration or introduce system modifications that will write to Software without our written consent. (We reserve the right to charge you Fees at our then standard rates for Professional Services for any time spent by us considering your request for integration, customisation or interface to third party systems or other software or systems); and

### 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 installed at the Site.

## You must make suitable arrangements with us for access to the Site and/or your premises outside of normal business hours if required by us in order to perform our obligations under the EUC.

# **WARRANTIES AND GUARANTEES**

## We warrant that:

### to the best of our knowledge we are the sole owner of the Software (excluding Third Party Software) and the Software (excluding Third Party Software) does not infringe the intellectual property rights of any person in Australia; and

### the Professional Services will be performed with reasonable care and skill.

## You must give us notice as soon as reasonably practicable upon becoming aware of a breach of a warranty in clause 12.1 during the Term. Our sole liability and obligations in relation to a breach a warranty in clause 12.1 shall be to (at our cost) remedy, repair or replace the Product or to re-supply LexisCare or the Professional Services or engage a third party to re-supply LexisCare or the Professional Services (or the failing parts thereof), within a reasonable period. The warranty in clause 12.1 will not apply in the event:

### you or any third party other than LexisNexis make an alteration to, or permit any alteration to be made to, the Product;

### you fail to give us written notice within the warranty period; or

### you do not take reasonable care in relation to the Product (such as keeping full back up copies of your data, software or database configuration in accordance with good business practice or failing to use firewalls and virus protection programs).

## 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 described in clause 8.2 and clause 12.2.

## *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 8.2 and clause 12.2 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:* [*customersupport@lexisnexis.com.au*](mailto:customersupport@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 12.4.

## 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.

## Subject to clause 12.4 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:

### that the operation of the Product (including any procedure in the Software) will be uninterrupted or error free; or

### that the Software will operate on your existing computer hardware or computer hardware that you may acquire in the future; or

### that the Software is compatible with other computer programs apart from the Third Party Software (unless otherwise stated in this EUC); or

### that the running of other software or processes on your hardware, or interfaced with the Software (excluding Third Party Software) will not adversely affect the functioning of the Product (unless otherwise stated in this EUC); or

### that the Product will have the same functionality or perform as any existing product or other product used or contemplated for use by you.

# **LIABILITY**

## The Fees are determined on the basis of the limitation and exclusions of liability in this EUC. 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.

## Subject to clause 12.4 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 shall be limited at our option to any one or more of the following, as may be appropriate:

### rectification or replacement of the Product;

### supply of Professional Services to provide rectification of the issue;

### refund of all money paid by you to us under this EUC within the 12 months preceding notification of the claim.

## Any claim under clause 13.2 must be notified to us within 12 months of the cause of action arising.

## Subject to clause 12.4 and 13.1 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 (without prejudice to your liability to pay the Fees), 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 12.4 and to the maximum extent permitted by law, we will not be liable for:

### any loss or corruption of data, software or database configuration held by you (whether before or after termination of any agreement of which the EUC forms part), or any problems of any nature arising from the use of the Product for purposes for which it was not designed (the purposes for which it was designed being apparent from the Specification and any user instructions supplied with the Third Party Software) 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;

### any adverse impact, loss or corruption of data, software or database configuration held by you arising from any data rectification works (including, but not limited to, any back-end data editing rectification works) performed by us where such rectification works are done at your request or as agreed under this agreement;

### any defects or failures which arise in whole or in part from accident, neglect or misuse of the Product;

### defects caused by products, equipment or computer programs not provided by us, including integrated third party products and software ;

### failure of electrical power or circuitry or network outside the Product;

### unusual stress or storage, transportation, handling or repairing by you; or

### operation or interference of the Product by your employees or any third party other than LexisNexis who are not properly trained.

## Our liability to you under this clause 13 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.

## This clause 13 has continuing effect after termination of any agreement of which the EUC forms part.

# **TERMINATION**

## We may terminate any agreement of which this EUC forms part in whole or in part, upon 90 days written notice to you, in the event that we cease providing the Product or LexisCare. If we terminate an agreement under this clause, we will provide you with a refund of any applicable prepaid maintenance fees on a pro rata basis, taking into account the period of time the fee covers and the period of time left in the term in respect of all money paid by you to us under that agreement within the preceding 12 months.

## Otherwise, an agreement of which this EUC form part may be terminated by notice in writing with immediate effect:

### by us if you fail to pay any part of the applicable Fees within 30 days of the due date;

### 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;

### 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.

## Any termination of an 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.

# **POST TERMINATION**

## The licence to the Product granted in clause 4 is perpetual in nature, and survives the termination of the EUC unless:

### we terminate the EUC under clause 14.2 or otherwise as a consequence of your breach, in which case the licence terminates immediately; or

### the licence was terminated in accordance with clause 17.6(c).

## If the licence to the Product survives termination of this EUC, you must comply with the conditions of the licence as set out in clause 4, and we may terminate the licence if you breach any of these conditions.

## If your licence to the Product is terminated, whether during or after the Term:

### any licence granted under this EUC shall terminate (including the licence in clause 4.1);

### we will immediately cease providing LexisCare in respect of the Product and any Professional Services;

### you must immediately cease all use of the Product;

### you will immediately return to us all copies of the Product and Documentation, in good condition and working order; and

### you must certify to us that no copies of the Product or Documentation have been retained by you or your employees.

# **CONFIDENTIALITY & PRIVACY**

## We and you will keep confidential all confidential information communicated by, acquired from or disclosed by one to the other, whether before or during the EUC, and shall not without the prior written consent of the other:

### 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 an agreement of which the EUC forms part and provided that such persons comply with the provisions of this clause; or

### use the other party’s confidential information for any purpose other than to perform its obligations under an agreement of which the EUC forms part.

## You acknowledge that any Documentation and computer code provided by us to you in relation to the Product are our confidential information.

## The obligations set out in clause 16.1 do not apply to any information which:

### is generally known to the public in Australia other than as a result of a breach of this clause;

### is lawfully obtained by a party free of any duty of confidentiality otherwise than directly or indirectly from the other party;

### 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;

### a party is required to disclose by order of a court of competent jurisdiction or pursuant to a statutory or regulatory obligation.

## If, as a result of an agreement of which this EUC forms part, we are able to access any information about identifiable individuals, we agree to comply with the applicable privacy and data protection laws that 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.

## The provisions of this clause 16 survive termination of an agreement of which the EUC forms part.

# **INTELLECTUAL PROPERTY**

## 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.

## All right, title, and interest (including all copyrights and other intellectual property rights) in the Product and Documentation (in both print and machine-readable 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 Product, Software or Documentation or materials provided as part of any Professional Services, including any copies thereof.

## Any intellectual property rights in any software or application owned or created by you shall remain with you. You grant us a royalty free, worldwide license to use such software or application in connection with the performance of our obligations under this EUC.

## Any new features, functionality or performance of the Product suggested by you that we subsequently incorporate into any Upgrade or the Product (including the intellectual property rights therein) shall be the sole and exclusive property of us.

## In the event that the normal use or possession of the Software (excluding Third Party Software) by you in accordance with this EUC infringes the intellectual property rights of any third party in Australia, we shall 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:

### you promptly notify us of any such claims;

### we are exclusively entitled to contest, defend or settle any such claims;

### you provide us with all reasonable assistance and make no admissions prejudicial to the defence of any such claims;

### we are entitled to retain all costs, expenses, damages or other compensation awarded in connection with the resolution or settlement of any such claims;

### 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;

### the indemnity is subject to your duty to mitigate all damages, liabilities, costs and expenses arising out of any such claims.

## In the event that a claim as contemplated by this clause 17 is made or in our opinion is likely to be made, we may at our option and cost:

### procure the right for you to continue to use the Software affected;

### change or replace all or any part of the Software;

### only where we have used reasonable endeavours to achieve clauses 17.6(a) and (b) and failed to do so on reasonably commercial terms, may we terminate an agreement of which the EUC forms part immediately on written notice in respect of the affected Software and provide you with a pro rata refund of applicable pre-paid licence fees and maintenance fees paid for the Product taking into account the period of prior use of the Product by you.

# **NO POACHING**

## During the Term and for a period of 12 months after its termination or expiry, you must not, directly or indirectly, take any action to hire or solicit for employment or engagement any person who is an officer, employee or contractor of LexisNexis or its related entities who has knowledge of the Product or Software, without our prior written consent.

# **AUDIT**

# LexisNexis has the right to audit your use of the Product. You agree to provide reasonable assistance and access to information in the course of such audit and permit LexisNexis to:

### report the audit results to Oracle;

### assign its rights to audit your use of the Third Party Software component to Oracle.

### Each party will be responsible for its own costs in relation to the audit under this clause.

# **FORCE MAJEURE**

## 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 an agreement of which the EUC forms part on written notice to the other. Neither party shall have any further liability to the other in respect of termination of an agreement of which the EUC forms part as a result, but without prejudice to the accrued rights of the parties at the date of termination.

# **DISPUTES**

## Where either party disputes any matter with the other which cannot be agreed, before any legal action is taken, the parties must comply with this clause.

## The dispute will first be referred to our Relationship Manager and your Project Manager, who must meet within 14 days of a request being issued by either party. If these parties are unable to reach agreement within 7 days of the meeting, the matter will be referred to each party’s managing directors, with a meeting to be held within 14 days of the referral. If the managing directors do not resolve the dispute within 7 days of their meeting, either party may take such legal action as is open to them.

# **AMENDING THE EUC**

## Unless specified to the contrary (such as clause 10.2), we may amend the terms of this EUC at any time, however changes detrimental to you may only take effect at the next renewal of your subscription for Maintenance Services. All other provisions may be changed by us within 7 days of giving notice to you. If the change has an adverse impact on you, you may terminate the agreement of which this EUC forms part by written notice to us within the 30-day notice period by written notice. We will provide you with a refund of any applicable prepaid maintenance fees on a pro rata basis, taking into account the period of time the fee covers and the period of time left in the Term in respect of all money paid by you to us under this EUC within the preceding 12 months.

# **MISCELLANEOUS**

## If any provisions of this EUC or any document made in connection with this EUC is determined by any court to be wholly or partly unenforceable, that unenforceability shall not affect the rest of the EUC.

## 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 EUC is not a waiver of that right.

## Except as otherwise provided herein, all notices and other communications to you hereunder shall be in writing or displayed electronically at https://www.lexisnexis.com.au/en/terms-and-conditions. Notices to you will be deemed to have been properly given on the date mailed, emailed or displayed online, as applicable; or on the date received, if delivered in any other manner. Notices to us should be sent by email to [customersupport@lexisnexis.com.au](mailto:customersupport@lexisnexis.com.au). Notices to you, if sent by email or by post, shall be sent to the postal address or email address LexisNexis has on record.

## You may not assign, sublicense, novate, transfer, mortgage, charge or otherwise dispose of or encumber an agreement of which this EUC forms part, or any of your rights or obligations under it, without our prior written consent.

## Any agreement of which this EUC forms part contains all the terms which the parties have agreed in relation to the subject matter of the EUC, and supersedes any prior written or oral agreements, representations or understandings between the parties whether express or implied.

## You acknowledge that an agreement of which this EUC forms part 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.

## The terms of an agreement of which this EUC forms part shall include any addendum signed by both parties. Terms defined in this EUC shall have the same meaning in any addendum.

## Each agreement of which this EUC forms part 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.

**SCHEDULE 2 PRODUCT DESCRIPTION & DETAILS**

**PART A - INTRODUCTION**

Please refer to the Proposal Specification document previously provided by us, for information about the Product.

We may from time to time provide you with specifications of the Product, and samples of forms and reports produced by us and other descriptive material. Such material is indicative only. You acknowledge that these specifications and materials may be varied by us without notice.

## **PART B - CUSTOMER OPERATING SYSTEM REQUIREMENTS**

Please refer to the Technical Reference Guide - Lexis® Affinity Operating System Configuration Requirements (**OSCR**) document previously provided by us, for information on customer operating system requirements.

## **PART C - OPTIONAL PRODUCTS**

The following additional products are available for use with Lexis® Affinity, upon payment by you of the relevant fee as set out in LexisNexis current price list and subject to the terms contained in the End User Contract and any additional terms incorporated by reference in the product description, or otherwise notified to you, in respect of such product or products.

**Affinity Mobile**

A web application powered by Affinity Gateway which enables authorised law firm Users to access and interact with Affinity via a browser (either on a desktop machine or a mobile device). Use of Affinity Mobile is subject to the Addendum: Affinity Mobile Licence Agreement set out in Schedule 4 Part A.

**Affinity Client Portal**

A web application powered by Affinity Gateway enabling users authorised by the law firm to interact with Affinity data and documents using a range of browser software, via a secure web portal hosted and managed by the law firm. Use of Affinity Client Portal is subject to the Addendum: Affinity Client Portal Licence Agreement set out in Schedule 4 Part B.

**CliNet**

A secure, web enabled application, which can be used to allow your clients access to information and documents contained in Lexis® Affinity.

**emPower precedents**

This product provides access to off the shelf precedents and enables you to develop precedents, which can then be stored within and accessed via the Product.

**IntegrITy Server**

A combination of advanced support software and hardware, that provides system maintenance, back-up and reporting to ensure the fast, reliable and consistent performance of your practice management system. Lexis IntegrITy Server automates daily maintenance tasks and sends a health report via electronic mail to advise you and the Lexis Affinity support team, of your practice management systems well-being.

**LexisDirect Stationery**

A range of storage materials, cheques and receipts, which are in conformity with the standards of professional bodies and their regulations.

**Lexis Draft**

Lexis Draft enables you to verify case names and commonly used phrases. This optional functionality is subject to the *General Terms and Conditions and Terms of Trade* set out in a separate *Subscription Agreement*.

**LexisNexis AU or Lexis Advance**

Lexis Affinity offers you the unique capability of integrating with Australia's most comprehensive and trusted online research solutions, LexisNexis AU or Lexis Advance. This means that tracking the time you spend on legal research is easier, faster and more accurate. With our comprehensive range of information resources your firm will also have a tailored legal library available at its fingertips. Use of LexisNexis AU or Lexis Advance is subject to the *General Terms and Conditions and Terms of Trade* set out in a separate *Subscription Agreement*.

**Lexis Smart Forms & Precedents**

Part of the Smart Office suite, this module enables you to access a contract generation tool using LexisNexis Forms and Precedent library. Use of this Module is subject to the Professional Services Agreement and a separate addendum being entered into.

**Lexis® Smart Developer**

Enables you to create your own smart precedents and templates through the contract generation tool. Use of this Module is subject to the Professional Services Agreement and a separate addendum being entered into.

**Macquarie Bank Limited API\***

Access to an application interface for customers who have an account with Macquarie Bank Limited. This interface will enable you to reconcile invoices, office and trust accounts with Affinity. Use of the Macquarie Bank Limited is subject to Schedule 1 and the terms and conditions of Macquarie Bank Limited.

**Settlement Adjuster**

This software assists in creating settlement statements and adjustments for conveyancing matters.

**SoftDocs InterConnect**

A mechanism that allows integration between SoftDocs’ range of precedent libraries and Lexis® Affinity.

\* We may receive a financial incentive from indicated partners for referring you to them.

**SCHEDULE 3 LEXISCARE MAINTENANCE SERVICES**

LexisNexis provides maintenance services for Products under the banner of LexisCare. LexisCare will be available from installation of the Product, unless on a payment plan. LexisCare for customers on a payment plan will commence on signature of this Agreement. LexisCare provides:

*Software Upgrades*

When LexisNexis creates an Upgrade to the Product (or any aspect of the Product), LexisNexis will provide it to the Client. LexisNexis may charge for any services required to perform an Upgrade. However, this does not oblige LexisNexis to develop Upgrades to the Product.

Assistance with the installation of an Upgrade is subject to professional services fees. Therefore, if the Client requires assistance with the installation of an Upgrade then the Client agrees to pay the applicable professional services fees.

*Helpline support*

Unless otherwise notified to you, LexisNexis will provide Product Helpline support from 8am to 6pm, Monday to Friday AEST (excluding Public Holidays). Limited support is available between 6pm to 8pm Monday to Friday AEST (excluding Public Holidays).

Helpline support provides assistance and advice to users who have been trained to use the Product. The Helpline will not provide training for users who have not received prior training, or advice in relation to technical problems existing outside the Product.

The Product Helpline is designed to provide a basic level of support in relation to use of the Product. If the Client requires support which LexisNexis deems to exceed a basic level of support (whether because of the subject matter, or the amount of time the Client spends using the Product Helpline), LexisNexis may charge the Client for such additional use.

LexisNexis will have the right to limit or suspend support and maintenance services if, in LexisNexis' reasonable opinion, the services are being used for trivial and/or frivolous requests which can or ought to be reasonably dealt with by the Client or where the demands on the services made by the Client are having a detrimental effect on the services provided to LexisNexis' other clients.

To assist in the resolution of issues logged with the Product Helpline it may be necessary for LexisNexis to connect to the Client's network. The Client agrees to allow LexisNexis to remotely access the Client's network to resolve issues as necessary.

*Versions supported*

LexisNexis will only provide support for the current version of the Product and the two previous releases of the Product. For details on the actual versions being supported by LexisNexis at any one time, please refer to the LexisNexis Customer Service Centre.

*Further Information*

Please refer to the Guidelines to Practice Management Support document previously provided by LexisNexis, for further details of support services.

**SCHEDULE 4 AFFINITY MOBILE AND/OR AFFINITY CLIENT PORTAL: ADDITIONAL TERMS AND CONDITIONS**

If you have chosen to include the Affinity Mobile and/or Affinity Client Portal optional products in your Affinity End User Contract the following additional terms and conditions apply to your use of those products, respectively, in addition to the terms and conditions in the End User Agreement.

**PART A – ADDENDUM: AFFINITY MOBILE LICENCE AGREEMENT**

**ADDENDUM: AFFINITY MOBILE LICENCE AGREEMENT ("AGREEMENT")**

This addendum is supplemental to the End User Contract ("EUC") that You entered into with Reed International Books Australia Pty Ltd (“LexisNexis”) for the LexisNexis Affinity practice management system (“Lexis Affinity”). Except as stated otherwise herein, all other terms of the EUC continue to apply unamended and, in respect of Affinity Mobile, in addition to the terms of this Agreement.

Your execution of this Agreement, by signing the Affinity Order Form including the Affinity Mobile software or Affinity Mobile order form, as applicable ("Addendum Order Form"), and/or your access to or use of Affinity Mobile signifies your acceptance of the following terms and conditions. In accepting these terms on behalf of a business entity, You hereby represent that You have the authority to do so and that the authorised users under that EUC comply with the following terms. If You do not agree to these terms and conditions, do not access or use Affinity Gateway or Affinity Mobile.

In this Agreement capitalised words and phrases have the same meaning as in the EUC, unless expressly stated otherwise.

**Definitions**

**Affinity Client Portal:** the LexisNexis web application enabling Your authorised Users and clients of the firm to interact with Lexis Affinity data and documents using a range of web browser software, via a secure web portal hosted and managed by You.

**Affinity Gateway:** a collection of software components which support the Affinity Client Portal and Affinity Mobile, providing user authentication and data access to Lexis Affinity.

**Affinity Mobile**: a web application which enables Your authorised employees to access and interact with Lexis Affinity via the Affinity Mobile App and includes Affinity Gateway.

**Affinity Mobile App**: a LexisNexis software application that facilitates remote access to your Lexis Affinity database as described in the OSCR.

**Affinity Mobile Licence Fee:** the licence fee for Affinity Mobile as set out in the Addendum Order Form. The definition of Fees in the EUC is hereby amended to include the Affinity Mobile Licence Fee.

**Operating System Configuration Requirements ("OSCR")**: a document published and maintained by LexisNexis, detailing technical requirements for operating Lexis Affinity and its optional add-ons.

IT IS AGREED AND ACCEPTED BY YOU THAT:

1. Access to and use of Affinity Mobile is licensed, not sold, to You for use only under the terms of the EUC and this Agreement. LexisNexis reserves all rights not expressly granted to You.
2. **Scope of licence:** In return for the Affinity Licence Fee, We grant You a non-transferable licence to use Affinity Mobile for the Term to connect with a single Lexis Affinity database. This licence is limited to the number of active user licences purchased by You under the EUC.
3. **LexisCare Maintenance:** In return for the maintenance fee, which from the date of this Agreement shall be increased by the amount set out in the Addendum Order Form, We will provide you with the additional LexisCare services described in the Addendum Order Form in respect of Affinity Mobile.
4. **Additional fees:**  The Fees will be increased by the Affinity Mobile Licence Fee and the additional LexisCare maintenance fees set forth in the Addendum Order Form and will be payable in accordance with the EUC. The additional LexisCare maintenance fees payable will be prorated for the period from the date of this Agreement to the anniversary of the EUC, and after the first anniversary of the EUC following the date of this Agreement, the full annual additional LexisCare maintenance fees will be payable by You.
5. **Appropriate resources:** You acknowledge that Affinity Mobile enables You to access Your Lexis Affinity instance, and the documents and data contained in the Affinity Library as part thereof. You acknowledge and agree that You must operate Affinity Mobile using Your own equipment, materials and facilities including electrical and telecommunications facilities and including any technical or other requirements notified to you in the OSCR (***Resources***). You acknowledge and agree to provide, maintain and update, where necessary, Your own Resources in order to operate and maintain Affinity Mobile in accordance with and as described in the OSCR.
6. **Availability:** Pursuant to clause (4) above, You acknowledge that access to and use of Affinity using Affinity Mobile is subject to Your provision and maintenance of the Resources. LexisNexis makes no warranties or guarantees in respect of up-time and availability of Affinity Mobile, or accessibility of Your Lexis Affinity content or any other content, and we do not warrant that use of Affinity Mobile will be uninterrupted or error-free. LexisNexis will not be held liable for any loss due to the unavailability of Affinity Mobile or due to any unauthorised access to, loss of or damage to, business information or data in connection with your use of Affinity Mobile or Affinity Gateway.
7. **System backup and maintenance:** You are responsible for Your use of Affinity Mobile including keeping full back up copies of all associated files, data, software and database configuration in accordance with good business practice. We are not responsible for backing up, or for any damage or corruption to, or loss of, documents, data or other Lexis Affinity or Affinity Mobile content or any other data or content, accessed through Affinity Mobile by You or Your authorised users.
8. **Acceptable use:** You accept all responsibility for the use of Affinity Mobile by all Users and authorised client users of Your law firm. It is Your responsibility to authenticate access to your Lexis Affinity database through Affinity Mobile, and we accept no responsibility or liability for any loss or damage in connection with any unauthorised access to Affinity Mobile or your Lexis Affinity instance and data.
9. **Consent to use of data:** You agree that LexisNexis may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to Affinity Mobile. LexisNexis may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.
10. **Termination:**
    1. Subject to the terms of this Agreement and the EUC, Your Affinity Mobile licence is effective from the date that you sign this Agreement and will be effective for so long as the licence granted under clause 4 of the EUC subsists or until terminated in accordance with this Agreement, whichever is the earlier.
    2. This Agreement may be terminated in accordance with clause 14 (Termination) of the EUC, or for convenience by LexisNexis or You upon 90 days' written notice to the other party.
    3. Termination of this Agreement will not affect the EUC or your licence to use Lexis Affinity or any licence granted to you to pursuant to the Affinity Client Portal addendum. Termination of the EUC will automatically terminate this Agreement, and, subject to clause 15 (Post Termination) of the EUC, terminates your licence to use Affinity Mobile.
    4. Your rights under this Agreement will terminate automatically without notice from LexisNexis if You fail to comply with any term(s) of this Agreement or the EUC. Upon termination of the licence in accordance with this clause 10.d, You shall cease all use of Affinity Mobile, and destroy all copies, full or partial, of Affinity Mobile.
11. **Post termination**: The licence to use Affinity Mobile is perpetual in nature and survives termination of this Agreement subject to the provisions in clause 15 (*Post Termination*) of the EUC. The licence to use Affinity Mobile does not survive termination of this Agreement by You in accordance with clause 10.c of this Agreement or termination in accordance with clause 10.d). Following termination of this Agreement, the LexisCare services will be automatically amended to remove any services related to Affinity Mobile and the LexisCare maintenance fee shall be reduced by the sum notified to You by Us.
12. **Internet access and data usage:** In addition to clause 4 of this Agreement, use of Affinity Mobile will require internet access and additional charges for data access or downloads as may be required by Your carrier or other third party providers are your sole responsibility. It is your responsibility to arrange and maintain internet access with your carrier. You acknowledge and agree that You are solely responsible for all fees and charges applicable to all use of Affinity Mobile including emailing, messaging, roaming connections and telephonic transactions made or received by You using Affinity Mobile.
13. You understand that by using Affinity Mobile, You may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search may return objectionable material. Nevertheless, You agree to use Affinity Mobile at Your sole risk and LexisNexis shall not have any liability to You for content that may be found to be offensive, indecent, or objectionable to the extent that LexisNexis is not responsible for such materials and to the extent of exclusion of liability permitted by law. LexisNexis is not liable to You for the accuracy or completeness of any content available through Affinity Mobile.
14. **Third Party Materials**: Affinity Mobile may display, include or make available content, data, information, applications or materials from third parties (**“Third Party Materials”**) or provide links to certain third party web sites. In order for certain features to work. You will be required to purchase Third Party Materials such as the SSL certificate required to be installed on the DMZ server for the use of the oAuth layer. By using Affinity Mobile, You acknowledge and agree that LexisNexis is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. LexisNexis does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any third-party services, Third Party Materials or third party web sites, or for any other materials, products, or services of third parties to the maximum extent permitted by law. Third Party Materials and links to other web sites are provided solely as a convenience to You.
15. Third Party Materials that may be accessed from, displayed on or linked to from any device using Affinity Mobile are not available in all languages or in all countries. LexisNexis makes no representation that such Third Party Materials are appropriate or available for use in any particular location. To the extent You choose to access such Third Party Materials, You do so at Your own risk and are responsible for compliance with any applicable laws, including but not limited to applicable local laws.
16. LexisNexis, and its licensors, reserve the right to change, suspend, remove, or disable access to Affinity Mobile or any other product at any time without notice. In no event will LexisNexis be liable for the removal of or disabling of access to any product. LexisNexis may also impose limits on the use of or access to certain LexisNexis products, in any case and without notice or liability. LexisNexis is not liable for providing the Product, including Affinity Mobile consistent with the professional conduct standards in your jurisdiction.
17. **Client confidentiality**: In addition to the obligation of confidentiality set forth in Clause 16 of the EUC, You agree that if you are an attorney, you are solely responsible for compliance with applicable rules of professional responsibility and ethical obligations to your clients and potential clients arising from your use of Affinity Mobile in connection with their respective matters including maintaining any required levels of confidentiality of any material in Lexis Affinity. LexisNexis accepts no responsibility for loss, or damage for any breach of confidentiality or data security, arising from Your use of Affinity Mobile.
18. The laws of the jurisdiction set forth in clause 23.7 (*Miscellaneous*) of the EUC govern this Agreement and your use of Affinity Mobile. The Courts of the jurisdiction set forth in clause 23.7 (*Miscellaneous)* of the EUC will have sole jurisdiction concerning any dispute related to this Agreement.
19. Use of Affinity Mobile and Third Party Materials are further subject to the terms and conditions of use which were accepted at the time you completed your purchase of the Products and/or Third Party Materials (for example, from the App Store).

**PART B – ADDENDUM: AFFINITY CLIENT PORTAL LICENCE AGREEMENT**

**ADDENDUM: AFFINITY CLIENT PORTAL LICENCE AGREEMENT ("AGREEMENT")**

**This addendum is supplemental to the End User Contract** **("EUC") that You entered into with Reed International Books Australia Pty Ltd (“LexisNexis”) for the LexisNexis Affinity practice management system (“Lexis Affinity”). Except as stated otherwise herein, all other terms of the EUC continue to apply unamended and, in respect of Affinity Client Portal, in addition to the terms of this Agreement.**

**Your execution of this Agreement, by signing the Affinity Order Form including the Affinity Client Portal or Affinity Client Portal order form, as applicable ("Addendum Order Form"), and/or Your access to or use of, including access by a third party authorised by You, Affinity Client Portal signifies Your acceptance of the following terms and conditions. In accepting these terms on behalf of a business entity, You hereby represent that You have the authority to do so and that the authorised users under that EUC comply with the following terms. If You do not agree to these terms and conditions, do not access or use Affinity Gateway or Affinity Client Portal.**

**In this Agreement capitalised words and phrases have the same meaning as in the EUC, unless expressly stated otherwise.**

**Definitions**

**Affinity Client Portal:** the LexisNexis web application enabling Your authorised Users and clients of the firm to interact with Lexis Affinity data and documents using a range of web browser software, via a secure web portal hosted and managed by You.

**Affinity Gateway:** a collection of software components which support the Affinity Client Portal and Affinity Mobile, providing user authentication and data access to Lexis Affinity.

**Affinity Mobile**: a web application which enables Your authorised employees to access and interact with Lexis Affinity via the Affinity Mobile App and includes Affinity Gateway.

**Affinity Mobile App**: a LexisNexis software application that facilitates remote access to your Lexis Affinity database as described in the OSCR.

**Affinity Client Portal Licence Fee:** the licence fee for Affinity Client Portal as set out in the Addendum Order Form. The definition of Fees in the EUC is hereby amended to include the Affinity Client Portal Licence Fee.

**Operating System Configuration Requirements ("OSCR")**: a document published and maintained by LexisNexis, detailing technical requirements for operating Lexis Affinity and its optional add-ons.

IT IS AGREED AND ACCEPTED BY YOU THAT:

1. Access to and use of Affinity Client Portal is licensed, not sold, to You for use only under the terms of the EUC and this Agreement. LexisNexis reserves all rights not expressly granted to You.
2. **Scope of licence:** In return for the Affinity Client Portal Licence Fee, We grant You a non-transferable licence to use Affinity Client Portal for the Term to connect with a single Lexis Affinity database.
3. **LexisCare Maintenance:** In return for the maintenance fee, which from the date of this Agreement shall be increased by the amount set out in the Addendum Order Form, We will provide you with the additional LexisCare services described in the Addendum Order Form in respect of Affinity Client Portal.
4. **Additional fees:**  The Fees will be increased by the Affinity Client Portal Licence Fee and the additional LexisCare maintenance fees set forth in the Addendum Order Form and will be payable in accordance with the EUC. The additional LexisCare maintenance fees payable will be prorated for the period from the date of this Agreement to the anniversary of the EUC, and after the first anniversary of the EUC following the date of this Agreement, the full annual additional LexisCare maintenance fees will be payable by You.
5. **Appropriate resources:** You acknowledge that Affinity Client Portal enables You, and any third parties authorised by You, to access Your Lexis Affinity instance, and the documents and data contained in the Affinity Library as part thereof. You acknowledge and agree that You must operate Affinity Client Portal using Your own equipment, materials and facilities including electrical and telecommunications facilities and including any technical or other requirements notified to you in the OSCR (***Resources***). You acknowledge and agree to provide, maintain and update, where necessary, Your own Resources in order to operate and maintain Affinity Client Portal in accordance with and as described in the OSCR.
6. **Availability:** Pursuant to clause (4) above, You acknowledge that access to and use of Affinity using Affinity Client Portal is subject to Your provision and maintenance of the Resources. LexisNexis makes no warranties or guarantees in respect of up-time and availability of Affinity Client Portal, or accessibility of Your Lexis Affinity content or any other content, and we do not warrant that use of Affinity Client Portal will be uninterrupted or error-free. LexisNexis will not be held liable for any loss due to the unavailability of Affinity Client Portal or due to any unauthorised access to, loss of or damage to, business information or data in connection with your use of Affinity Client Portal or Affinity Gateway.
7. **System backup and maintenance:** You are responsible for Your use of Affinity Client Portal including keeping full back up copies of all associated files, data, software and database configuration in accordance with good business practice. We are not responsible for backing up, or for any damage or corruption to, or loss of, documents, data or other Lexis Affinity or Affinity Client Portal content or any other data or content, accessed through Affinity Client Portal by You or Your authorised users, including client users.
8. **Acceptable use:** You accept all responsibility for the use of Affinity Client Portal by all Users and authorised client users of Your law firm. It is Your responsibility to authenticate access to your Lexis Affinity database through Affinity Client Portal, and we accept no responsibility or liability for any loss or damage in connection with any unauthorised access to Affinity Client Portal or your Lexis Affinity instance and data.
9. **Consent to use of data:** You agree that LexisNexis may collect and use technical data and related information, including but not limited to: session information relating to session length, frequency of use, pages accessed and time spent on individual pages, as well as technical information about Your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to Affinity Client Portal. LexisNexis may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.
10. **Termination:**
    1. Subject to the terms of this Agreement and the EUC, Your Affinity Client Portal licence is effective from the date that you sign this Agreement and will be effective for so long as the licence granted under clause 4 of the EUC subsists or until terminated in accordance with this Agreement, whichever is the earlier.
    2. This Agreement may be terminated in accordance with clause 14 (Termination) of the EUC, or for convenience by LexisNexis or You upon 90 days' written notice to the other party.
    3. Termination of this Agreement will not affect the EUC or your licence to use Lexis Affinity or any licence granted to you to pursuant to the Affinity Mobile addendum. Termination of the EUC will automatically terminate this Agreement, and, subject to clause 15 (Post Termination) of the EUC, terminates your licence to use Affinity Mobile.
    4. Your rights under this Agreement will terminate automatically without notice from LexisNexis if You fail to comply with any term(s) of this Agreement or the EUC. Upon termination of the licence in accordance with this clause 13), You shall cease all use of Affinity Client Portal, and destroy all copies, full or partial, of Affinity Client Portal.
11. **Post termination**: The licence to use Affinity Client Portal is perpetual in nature and survives termination of this Agreement subject to the provisions in clause 15 (*Post Termination*) of the EUC. The licence to use Affinity Client Portal does not survive termination of this Agreement by You in accordance with clause 12 of this Agreement or termination in accordance with clause 13). Following termination of this Agreement, the LexisCare services will be automatically amended to remove any services related to Affinity Client Portal and the LexisCare maintenance fee shall be reduced by the sum notified to You by Us.
12. **Internet access and data usage:** In addition to clause 4 of this Agreement, use of Affinity Client Portal will require internet access and additional charges for data access or downloads as may be required by Your carrier or other third party providers are your sole responsibility. It is Your, or Your authorised client user's, responsibility to arrange and maintain internet access with your carrier. You acknowledge and agree that You are solely responsible for all fees and charges applicable to all use of Affinity Client Portal including emailing, messaging, roaming connections and telephonic transactions made or received by You using Affinity Client Portal.
13. You understand that by using Affinity Client Portal, You may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search may return objectionable material. Nevertheless, You agree to use Affinity Client Portal at Your sole risk and LexisNexis shall not have any liability to You for content that may be found to be offensive, indecent, or objectionable to the extent that LexisNexis is not responsible for such materials and to the extent of exclusion of liability permitted by law. LexisNexis is not liable to You for the accuracy or completeness of any content available through Affinity Client Portal.
14. **Third Party Materials**:
    1. Affinity Client Portal may display, include or make available content, data, information, applications or materials from third parties (“Third Party Materials”) or provide links to certain third party web sites. In order for certain features to work. You will be required to purchase Third Party Materials such as the SSL certificate required to be installed on the DMZ server for the use of the oAuth layer. By using Affinity Client Portal, You acknowledge and agree that LexisNexis is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. LexisNexis does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any third-party services, Third Party Materials or third party web sites, or for any other materials, products, or services of third parties to the maximum extent permitted by law. Third Party Materials and links to other web sites are provided solely as a convenience to You.
    2. Third Party Materials that may be accessed from, displayed on or linked to from any device using Affinity Client Portal are not available in all languages or in all countries. LexisNexis makes no representation that such Third Party Materials are appropriate or available for use in any particular location. To the extent You choose to access such Third Party Materials, You do so at Your own risk and are responsible for compliance with any applicable laws, including but not limited to applicable local laws.
15. **Authorised users:**
    1. You agree that You will require all of Your authorised users of the Affinity Client Portal to accept terms and conditions of use which are no less onerous than the terms of, and which offer Us equivalent protection as contained in, this Agreement and the EUC (**Third Party Terms**).
    2. You indemnify and hold LexisNexis harmless against any claim whatsoever for any loss or damage in connection with:
       1. any unauthorised access to Affinity Client Portal or Your Lexis Affinity instance and data; and,
       2. any breach by a third party of the Third Party Terms.
    3. LexisNexis, and its licensors, reserve the right to change, suspend, remove, or disable access to Affinity Client Portal or any other product at any time without notice. In no event will LexisNexis be liable for the removal of or disabling of access to any product. LexisNexis may also impose limits on the use of or access to certain LexisNexis products, in any case and without notice or liability. LexisNexis is not liable for providing the Product, including Affinity Client Portal consistent with the professional conduct standards in your jurisdiction.
16. **Client confidentiality**: In addition to the obligation of confidentiality set forth in Clause 16 of the EUC, You agree that if you are an attorney, you are solely responsible for compliance with applicable rules of professional responsibility and ethical obligations to your clients and potential clients arising from your use of Affinity Client Portal in connection with their respective matters including maintaining any required levels of confidentiality of any material in Lexis Affinity. LexisNexis accepts no responsibility for loss, or damage for any breach of confidentiality or data security, arising from Your use of Affinity Client Portal.
17. The laws of the jurisdiction set forth in clause 23.7 (*Miscellaneous*) of the EUC govern this Agreement and your use of Affinity Client Portal. The Courts of the jurisdiction set forth in clause 23.7 (*Miscellaneous)* of the EUC will have sole jurisdiction concerning any dispute related to this Agreement.
18. Use of Affinity Client Portal and Third Party Materials are further subject to the terms and conditions of use which were accepted at the time you completed your purchase of the Products and/or Third Party Materials (for example, from the App Store).

**SCHEDULE 5 LEXIS SMART FORMS AND PRECEDENTS: ADDITIONAL TERMS AND CONDITIONS**

If you have chosen to include the Lexis Smart Forms and Precedents optional products in your Affinity End User Contract the following additional terms and conditions apply to your use of those products, respectively, in addition to the terms and conditions in the End User Agreement.

This addendum (“Addendum”) supplements the terms of the End User Contract and the Professional Services Agreement either previously or simultaneously executed between Reed International Books Australia Pty Limited trading as LexisNexis (“LexisNexis”) and You (“Customer”) (the " Agreement"). This Addendum relates to the Lexis® Smart product selected by Customer in the Order Form (“Module”). References to “Order Form” herein are deemed to be references to the customer order form above.

1. **Term.**

The term of this Addendum will begin on the day this Addendum is executed by Customer and will continue for the duration of the subscription term set forth above (the "Term") and subsequent renewals are governed by Section 5 below. Although the Term of this Addendum will start upon execution, Customer will not have access to the Module product ordered above until the conditions set forth in Section 2 below are met. Access to the Module shall be limited to the number of Users set forth above. The term “User” shall have the same meaning as in the Agreement.

1. **Technical Requirements.**

The Module includes various third party tools licensed to LexisNexis under the terms and conditions herein. In order to use the selected Modules, the Customer must (a) subscribe to a Module by ticking the applicable check box on the Order Form and (b) meet the other system operating and other requirements as reasonably required by LexisNexis for the proper operation of the Module (collectively, the “Technical Requirements”).

1. **License.**

Upon payment of the Fee specified above, LexisNexis grants Customer a personal, limited, non-exclusive, non-transferable right to access and use the Module indicated in the Order Form above, during the Term, subject to:

1. the End User Contract;
2. LexisNexis (or its third party licensor(s)) retaining all right, title, and interest in and to the Module, and any intellectual property embodied therein. All access to and use of the materials in the Module shall be subject to the terms set forth in http://www.lexisnexis.com.au/pdf/terms-of-trade.pdf.
3. The Customer agrees that it will not and will procure that its Users do not:
   1. install or use on any site other than the location of the site where the Module is installed;
   2. use, copy, publish, distribute, communicate, commercialise, import, export or publicly display all or part of the original or any copy of the Module (electronically or otherwise), except as expressly authorised by this Addendum;
   3. make any enhancements or other modifications, or create any derivative works of the same;
   4. reverse engineer, decompile, disassemble or otherwise translate the services or attempt to derive the source code or underlying ideas, structure, organisation, processes or algorithms of the services, except and only to the extent that such activities cannot be restricted under applicable law;
   5. use or access all or part of the services to the extent the Customer or its Users become or plan to become a competitor of the services, or an employee, contractor or agent of a competitor to the services;
   6. permit any competitor of the services to access or use any services or materials for any purpose, including but not limited to providing any type of consultancy, support or other services to the Customer either directly or indirectly;
   7. use the services in any manner that is for unlawful purposes or other purposes not permitted by this Addendum or which may involve risk of death, personal injury, property damage or environmental damage or in any life support application, device or system;
4. The Customer may copy, revise, customise and use any material contained in any Module for the purposes of any matter on which its Users are advising; and make available to clients, potential clients and others copies of such materials on a reasonable, non-systematic basis that is not commercially prejudicial to LexisNexis, subject to crediting third parties where such material is attributed to them.
5. **Additional license terms – Lexis Smart Developer.**

In addition to the licence terms set out in Section 3, Customers of any Lexis Smart Developer product are subject to the following terms:

1. Any professional and consulting services are subject to the Professional Services Agreement;
2. The Customer warrants that any documents that the Customer uploads to the Module:
   1. are the property of the Customer or it has the right to use material in the manner contemplated by this Addendum;
   2. can be used by LexisNexis in order to provide the Customer with the transactions contemplated by this Addendum;
   3. the material will not infringe a third party’s intellectual property rights and in the event of such claim the Customer agrees to hold LexisNexis harmless against such claim; and
   4. the Customer will not hold LexisNexis liable in anyway whatsoever for the maintenance, protection or security of such material.
3. LexisNexis reiterates that the Customer is responsible for keeping its own backup copies of all associated files, data, software and database configuration in accordance with good business practice. For the avoidance of doubt, LexisNexis shall not be liable for loss of Customer documents whatsoever.
4. The Customer acknowledges that the Module utilises Amazon Web Services (“AWS”) with servers based in Sydney, Australia to provide cloud infrastructure and hosting to its Australian customers of Lexis® Smart Developer. By purchasing the Lexis Smart Developer product, Customer agrees to the terms and conditions of AWS located at <https://aws.amazon.com/agreement/> which are deemed to be incorporated as part of this Addendum.
5. Upon expiry or termination of this Addendum for any reason, the Customer may still have access to the some parts of the Module however the Customer will not be able to access the content and materials which would otherwise be available had the Customer had an active and valid subscription.
6. **Renewal, Pricing & Termination**
   1. This agreement will automatically renew on the date following the expiration of the Term (“Renewal”) for additional 12 month terms unless a party provides a notice of termination in accordance with clause 5.1. The price payable for the Modules in subsequent Terms will be the price payable in the immediately preceding Term, plus an annual adjustment (or actual usage level for the preceding year, whichever is the higher). A pre-determined annual adjustment may be specified in your written agreement with LexisNexis or customer order form or, if not, will be notified to you by the Renewal date.
   2. If there is a change to the Renewal Fee which is unacceptable to the Customer, LexisNexis must receive a written notice of termination within 30 days of the date of the notice otherwise the Renewal will proceed. Otherwise, either party may terminate the subscription for access to the Module by providing at least 90 days’ written notice to the other to expire the day before the anniversary of the commencement date or last day of the period set forth in the Term (whichever is the later).
7. **Confidentiality.**
   1. In the event that LexisNexis comes into contact with Customer’s Confidential Information in the performance of its obligations under this Addendum, LexisNexis will use the Confidential Information within its organisation on a “need to know” basis and as necessary to perform its obligations under this Addendum, and will protect the Confidential Information from disclosure to any third party. For purposes of this Addendum, “Confidential Information” shall include client or customer names, financial information, work product and other information.
   2. Notwithstanding Section 6.1, LexisNexis may disclose Confidential Information to a third party as follows: (a) when disclosure is required under applicable law, provided LexisNexis gives Customer notice of the required disclosure and cooperates with Customer, at Customer’s expense, in seeking reasonable protective arrangements (however, LexisNexis is not required to act in a manner contrary to its legal obligation to disclose or which would result in sanctions or other penalties); and (b) to persons who are advisers or subcontractors to LexisNexis to the extent such persons are subject to confidentiality obligations with LexisNexis that protect Customer’s Confidential Information to an extent comparable with this Addendum and have a need to know the Confidential Information. At Customer’s written request, LexisNexis shall return Customer’s Confidential Information to Customer or destroy it and certify its destruction.
   3. LexisNexis and Customer agree that Confidential Information shall not include information that (i) is already rightfully known to LexisNexis at the time it is obtained from Customer, free from any obligation to keep such information confidential; (ii) is or becomes publicly known or available through no wrongful act of LexisNexis; (iii) is rightfully received from a third party without restriction and without breach of this Addendum; (iv) is contained in, or is capable of being discovered through examination of, publicly available records or products; or (v) is developed by LexisNexis without the use of any proprietary, non-public information provided by Customer under this Addendum.
   4. Customer agrees that any pricing information and the terms and conditions herein are deemed confidential and must not be shared with any other party.
   5. The outputs of the Modules are provided for reference purposes only and are not intended, nor should they be used, as a substitute for professional advice or judgment or to provide legal advice with respect to particular circumstances.
8. **Miscellaneous.**
   1. In the event of any conflict between the terms of this Addendum and the Agreement incorporated herein, the terms of this Addendum shall prevail. This Addendum, Agreement including all schedules hereto constitutes the entire agreement between the parties and supersedes all earlier oral and written communications between the parties relating to this subject matter.
   2. This Addendum may not be modified or otherwise changed unless mutually agreed to by both parties in writing