

LEXIMANCER TERMS AND CONDITIONS

1. BACKGROUND

- (a) Leximancer provides Leximancer Desktop.
- (b) Leximancer has agreed to grant the Client Access to Leximancer Desktop in accordance with this agreement.

2. NATURE OF AGREEMENT

- (a) These Leximancer Software Terms, the Proposal and any Special Conditions collectively form the entire agreement between Leximancer and the Client and supersede any previous agreements, discussions, representations and understandings.
- (b) In the event of any inconsistency between these Leximancer Software Terms, the Proposal and any Special Conditions, the order of priority in which the agreements are to be read is as follows:
 - (i) firstly, any Special Conditions;
 - (ii) secondly, the provisions of the Proposal (other than Special Conditions); and
 - (iii) lastly, the terms of these Leximancer Software Terms.
- (c) The terms of this agreement may be accepted by the Client by:
 - (i) executing these Leximancer Software Terms;
 - (ii) installing, downloading, accessing or otherwise using the Licensed Software after receiving a copy of these Leximancer Software Terms;
 - (iii) otherwise indicating in writing to Leximancer, whether directly or indirectly (such as by way of continuing instructions), that the Client has accepted the terms of this agreement.

3. TERM

- (a) This agreement will commence on the Agreement Date and will terminate upon expiry of the Term, or as otherwise terminated in accordance with these Leximancer Software Terms.

4. GRANT OF LICENCE

4.1 Grant of Licence

- (a) Subject to the Client's payment of the Fees, where the Particulars designate that the Client is subscribing for an Academic Licence (being an Academic Individual Licence or an Academic Institution Licence as specified in the Proposal), Leximancer grants to the Client for the Term a non-exclusive, non-transferrable Licence to use Leximancer Desktop on the terms and conditions set out in this agreement.
- (b) Subject to the Client's payment of the Fees, where the Particulars designate that the Client is subscribing for a Commercial Licence, Leximancer grants to the Client for the Term a non-exclusive, non-transferrable Licence to use Leximancer Desktop on the terms and conditions set out in this agreement.

4.2 Nature of Academic Licence

The Client acknowledges that the scope of the Academic Licence granted to the Client in accordance with clause 4.1(a) is limited to the non-commercial use of the Licensed Software by the Client for academic research purposes. The scope of the Academic Licence does not extend to the use of the Licensed Software for any Commercial Purpose. For the sake of clarity, consulting work conducted by a Client who is utilising an Academic Licence to perform this work is in breach of the terms of this agreement. The Client acknowledges their obligation to communicate the nature of these Academic Licence terms to all end-users.

5. DELIVERY AND ACCESS

5.1 Access

- (a) Subject to clause 5.2, Leximancer will provide the Client Access to Leximancer Desktop on and from the Commencement Date.
- (b) Subject to clause 5.2, Leximancer will deliver or otherwise make available Leximancer Desktop to the Client, on or before the Commencement Date on a non-exclusive and non-transferable basis.
- (c) Where Leximancer has granted the Client a Licence to use Leximancer Desktop, the Client may provide copies of and access to the Leximancer Desktop to its Authorised Users.
- (d) The Client must procure that any Authorised User complies with the terms of this agreement and is responsible for any breach thereof by an Authorised User.
- (e) Leximancer reserves the right to refuse an Authorised User that has been nominated by the Client access to the Leximancer Desktop where, at its sole discretion, Leximancer deems it reasonable to do so, or necessary in order to protect its rights under this agreement or its rights in the Licensed Software.
- (f) The Client acknowledges that:
 - (i) an Authorised User may be required to accept additional terms of use between the Authorised User and Leximancer in order to access or use the Licensed Software; and
 - (ii) if the Authorised User does not accept such terms or use as or when required, Leximancer may withhold access or use of the Licensed Software to the Authorised User or require that the Client withhold such access or use by the Authorised User.
- (g) Leximancer is not obligated to install Leximancer Desktop or to provide any services or support in respect of installation of Leximancer Desktop.

- (h) From time to time Leximancer may (but is not obligated to) update the Licensed Software with a Minor Release, and where practicable will provide the Client with Notice of any such update. Once the Licensed Software has been updated the licence and provision of the updated software by Leximancer to the Client will be governed in accordance with the terms of this agreement.
- (i) From time-to-time Leximancer may (but is not obligated to) update the Licensed Software with a Major Release. Leximancer may offer the Major Release during the Term to the Client. However, Leximancer is not obligated to make any such offer to the Client. When any such offer is extended to the Client the offer must be in writing by Leximancer and accepted by an authorised officer of the Client. Once the Licensed Software has been updated with a Major Release the licence and provision of the updated software by Leximancer to the Client will be governed in accordance with the terms of this agreement.

5.2 Client Responsibilities

- (a) The grant of Access to the Client to the Licensed Software by Leximancer pursuant to clause 5.1 is conditional upon the Client:
 - (i) ensuring the compliance of all of its Authorised Users with the terms of this agreement; and
 - (ii) payment by the Client of all Fees owing to Leximancer pursuant to this agreement.
- (b) In accessing and using the Licensed Software the Client must:
 - (i) only use the Licensed Software in accordance with this agreement and the Specifications;
 - (ii) comply with all reasonable and lawful directions that Leximancer may give from time to time with respect to the Client's use of the Licensed Software;
 - (iii) only use the Licensed Software in the ordinary operation of its business and must not grant or purport to grant, or convey, any right to any third party, to use or commercialise the Licensed Software; and
 - (iv) cooperate with Leximancer in any remediation of any security, unauthorized use or misuse of the Licensed Software and promptly report to Leximancer all such matters of which the Client becomes aware.
- (c) In accessing and using the Licensed Software the Client must not:
 - (i) allow or engage any third party to work on the Licensed Software without first obtaining Leximancer's written consent which Leximancer may withhold in its sole discretion;
 - (ii) interfere or disrupt the operation of the Licensed Software nor attempt to do the same;
 - (iii) grant access to the Licensed Software to anyone other than its Authorised Users, unless Leximancer has provided the Client with Leximancer's express written consent;
 - (iv) access or use any data other than the Client's own data or data which it has a right to access and use;
 - (v) subject to any right under sections 47B, 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), either directly or indirectly, modify, attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Licensed Software; or
 - (vi) challenge the ownership, registration, or validity, of any Intellectual Property Rights in or to the Licensed Software, or solicit or enable (including by omission) another person to do any of these.

6. TRAINING, SOFTWARE SUPPORT AND MAINTENANCE

- (a) The Client may at any time request that Leximancer provide maintenance, software support and training services (**Additional Services**). The fees for such services will be made available on the Website or otherwise provided by Leximancer upon request.
- (b) For the avoidance of doubt, Leximancer is under no obligation to provide Additional Services, unless otherwise designated in the Proposal or otherwise agreed in writing.
- (c) If Leximancer has agreed to provide Additional Services, it will provide the Additional Services in accordance with the terms of this agreement and in a professional manner with due care, skill and diligence.

7. CLIENT RESPONSIBILITIES

7.1 Data

- (a) The Client acknowledges and agrees the Client will comply with all Laws in connection with the Client Data.
- (b) The Client acknowledges that all Client Data and Leximancer Outputs will be stored locally on the Client's machine and Leximancer will not be responsible for the management or backing up of any Client Data or Leximancer Outputs.
- (c) The Client acknowledges that in order to utilise the Licensed Software the Client Data must conform to the Data Specifications.
- (d) The Client agrees that if the Client Data does not conform with the Data Specifications or the Client does not appropriately configure the project parameters in the Licensed Software:
 - (i) the services available through the Licensed Software may not be able to be provided, or if provided may be adversely affected;
 - (ii) Leximancer may require that the Client alter any Client Data so that it conforms with the Data Specifications; and / or
 - (iii) Leximancer may require the Client to reconfigure the project parameters selected in the Licensed Software.
- (e) Leximancer will not be liable to the Client for any Loss suffered due to:
 - (i) the services available through the Licensed Software not being provided or not being available or effective;
 - (ii) any suspension or termination of access to the Licensed Software;

- (iii) any error in or corruption of Client Data;
 - (iv) the Leximancer Outputs not being in any particular required form or format or including any particular information;
 - (v) any deletion of Client Data; or
 - (vi) any other act or omission of Leximancer required by operation of any Law.
- (f) Leximancer will not be liable and the Client releases and holds Leximancer harmless from any Loss the Client may suffer as a result of Leximancer exercising its rights in accordance with clause 7.1(d)
- (g) To the extent any Intellectual Property Rights created in Leximancer Outputs vest in the Client, the Client grants Leximancer a perpetual, worldwide, non-exclusive royalty free, transferable (and sub licensable) license and right to use the Leximancer Outputs in accordance with this agreement and for the purpose of giving effect to the Licensed Software, provided Leximancer complies with all of its confidentiality obligations under clause 12.
- (h) Leximancer acknowledges and agrees that:
- (i) it does not obtain ownership of any Intellectual Property Rights in the Client Data; and
 - (ii) where the Client Data is held or stored by Leximancer, it is held on the Client's behalf.

7.2 Client Warranties

The Client represents, warrants and undertakes that:

- (a) the Client owns or has an unrestricted right to use all Client Data;
- (b) the Client has the capacity and authority to enter into and to perform its obligations under this agreement; and
- (c) the terms of this agreement have been accepted by a duly authorised representative of the Client and accordingly the terms of this agreement legally bind the Client.

7.3 Client Acknowledgements

- (a) The Client acknowledges and agrees that:
 - (i) computer services are not fault free and occasional periods of downtime may occur;
 - (ii) Leximancer has not made any representations or warranties that the Licensed Software or any Leximancer Outputs will be error free, free of viruses or available without interruption.
- (b) In addition to any other rights or remedies Leximancer may have, Leximancer may suspend or terminate any Authorised User's access to the Licensed Software at any time and without any liability to the Client in the event the Client or any Authorised User breaches any provision of this agreement or if otherwise necessary to protect the Licensed Software.

8. INTELLECTUAL PROPERTY RIGHTS

- (a) Each Party retains all right, title and interest in and to its pre-existing Intellectual Property Rights.
- (b) Nothing in this agreement is to be construed as effecting an assignment of ownership of Intellectual Property Rights subsisting in Client Data from the Client to Leximancer.
- (c) Nothing in this agreement affects any Moral Rights subsisting with respect to the Licensed Software.
- (d) Leximancer owns all Intellectual Property Rights to the Licensed Software including all improvements to the Licensed Software that are suggested by the Client.
- (e) For the avoidance of doubt nothing in this agreement prohibits Leximancer from using Leximancer's pre-existing Intellectual Property Rights to provide services to third parties, even if such services are the same or substantially the same as those provided to the Client.
- (f) If, notwithstanding clause 5.2(c), the Client asserts or obtains any right, title, or interest in any Intellectual Property Rights in or to the Licensed Software including any adaptations, modifications, or derivatives of the Licensed Software, the Client assigns all present and future right, title and interest (including the right to take action for past infringement) in such Intellectual Property Rights to Leximancer on and from creation. Upon request by Leximancer, the Client will sign all documents and do all other things reasonably required to give effect to this clause.

9. FEES, CHARGES AND PAYMENTS

9.1 Fees

- (a) In consideration of Leximancer granting the Client the Licence in accordance with clause 4, the Client will pay to Leximancer the Fee.
- (b) The Fee must be paid by the Client to Leximancer in the manner directed by Leximancer in the Proposal or otherwise agreed in writing by the parties in the case of Fees for Additional Services.
- (c) Leximancer will issue Tax Invoices to the Client for the payment of the Fees and the Client must attend to payment of such Tax Invoices in the manner specified in the Proposal, or as otherwise expressly stated in the Tax Invoice, without set-off, counterclaim, holding or deduction.
- (d) The Client acknowledges and agrees that Leximancer may increase the Fees from time to time.
- (e) Where Leximancer is increasing the Fees in accordance with clause 9.1(d) Leximancer will provide the Client with at least thirty (30) days' Notice of the fee increase.
- (f) If the Client does not agree to the increase in Fees proposed by Leximancer, the Client may terminate this Agreement as at the effective date of the proposed increase and in accordance with clause 12.1 of these Leximancer Software Terms.

- (g) Where the Client has requested and Leximancer has agreed to provide Additional Services, Leximancer must provide the Client with an estimate of costs prior to providing such Additional Services. The Client must pay to Leximancer the additional fees for those services in the manner directed by Leximancer.

9.2 Expenses

Any costs and reasonable out-of-pocket expenses which are necessary to provide Access to the Licensed Software or Additional Services (**Expenses**) will be paid or reimbursed (as the case may be) by the Client where Leximancer has received prior written approval from the Client regarding the incurring of the Expenses and will submit documentation as evidence as is reasonably required by the Client to verify the Expenses that have been incurred.

9.3 Disputed Fee

- (a) If the Client disputes any part of a Tax Invoice it must pay the portion not in dispute and provide Notice to Leximancer within seven (7) days of receiving the Tax Invoice of the Client's reasons for the dispute.
- (b) Within a reasonable time of receiving the notice, Leximancer will address the Client's reasons of dispute, to enable a prompt and amicable resolution.
- (c) If the dispute cannot be resolved within seven (7) days of Leximancer providing a written response to the notice received under paragraph 9.3(a), then the dispute must be referred to the dispute resolution procedure contained in clause 15.

9.4 Late Payment

If the Client fails to pay any Fees, charges or other payment within the time required under this agreement Leximancer may:

- (a) charge interest on the overdue amount at the Default Rate as from the first day that payment is overdue; and
- (b) charge the Client for all costs and expenses incurred by Leximancer in recovering Leximancer's outstanding Fees from the Client, including legal fees (on a solicitor and own client basis) and court costs, which the Client must pay upon demand.

9.5 GST

Unless otherwise expressly stated, all amounts under this agreement are exclusive of all GST and other taxes, duties and customs. If any GST or other taxes, duties or customs are imposed on any supply made under or in accordance with this engagement and such taxes, duties or customs have not been accounted for in determining the consideration payable for the supply, then Leximancer may recover from the Client an amount on account of those taxes, duties or customs.

10. REPRESENTATIVES

10.1 Authorised Representative

The Client must:

- (a) appoint an Authorised Representative who will be responsible for the oversight of this agreement (**Representatives' Purpose**);
- (b) ensure its Authorised Representative co-operates with any request made by Leximancer in respect of anything related to this agreement; and
- (c) give Leximancer Notice any time that the Authorised Representative is replaced or their details change.

10.2 Authority

The Client:

- (a) covenants that the Authorised Representative has full authority to act on the Client's behalf in any way relating to the Representatives' Purpose;
- (b) acknowledges and agrees that Leximancer may rely on any written representation, direction or communication made by the Authorised Representative that relates to the Representative's Purpose, as if the Authorised Representative were the Client; and
- (c) must release and hold Leximancer harmless from Leximancer relying upon or following all and any such direction or representation.

11. CONFIDENTIALITY AND RESTRICTIONS

11.1 Recipient must keep Confidential Information confidential

Each party must keep confidential all Confidential Information of the other party and only use any such Confidential Information for the purpose of giving effect to and utilising the Licensed Software in the manner contemplated by this agreement.

11.2 Disclosure exceptions

The obligations in clause 11.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law (including the rules of any stock exchange);
- (b) to the extent necessary to enable a party to perform its obligations under this agreement (provided that any further person to whom the other party's Confidential Information is disclosed is themselves under an obligation of confidentiality);
- (c) to any disclosure agreed in writing between the parties;
- (d) to information independently created by a party other than in reliance on the other party's Confidential Information; or
- (e) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this agreement.

12. TERMINATION

12.1 Termination Generally

- (a) The Client may terminate this agreement by Notice to Leximancer in the event the Client does not agree with a proposed Fee increase by Leximancer.
- (b) Termination in accordance with clause 12.1(a) becomes effective upon the implementation date of the proposed increase and the Client remains bound by all of its obligations under this agreement, including its obligations to pay to Leximancer the Fees, up until the termination date being the date of implementation of the increased fees.

- (c) Leximancer may terminate this agreement where the Client has subscribed for an Academic Licence and the Client has not purchased academic maintenance services.

12.2 Termination for breach

Either Party may, without prejudice to its other rights or remedies, terminate this agreement with immediate effect by written notice to the other party, in the event of:

- (a) any material breach of the agreement by the other party which is not remedied within 30 days after the service on the party in default of a written Notice specifying the nature of the breach and requiring that the same be remedied;
- (b) subject to Law, the other party becoming Insolvent; or
- (c) the other party becoming subject to a Change of Control.

12.3 Effect of termination

Upon termination or expiry of this agreement:

- (a) the Client must pay all outstanding Fees and any other payments due to Leximancer under this agreement;
- (b) each party must, upon request from the other party, destroy or permanently delete the other party's Confidential Information received pursuant to this agreement (unless this agreement expressly provides such Confidential Information can be retained post termination or such Confidential Information must be retained for regulatory or legal compliance) and certify such destruction in writing. The Client acknowledges that back-up and disaster recovery information is stored in multiple data centres and that Leximancer cannot destroy archival copies immediately upon request. However, such back-up and disaster recovery information will be deleted as a matter of course; and
- (c) any accrued rights or liabilities of either Party or any provision of the agreement which is expressly or by implication intended to come into or continue in force on or after such termination will not be affected.

13. INDEMNITY

13.1 Client indemnity

- (a) The Client agrees to indemnify Leximancer and keep Leximancer indemnified against any Loss that may be incurred by Leximancer arising from or in connection with:
 - (i) any breach or default by the Client of this agreement (including any breach of warranty);
 - (ii) a negligent act or omission by the Client or by a party the Client is responsible for;
 - (iii) the Client's failure to comply with any Law;
 - (iv) the Client's failure to comply with its contractual obligations to any third party insofar as such obligations arise or relate to the use by the Client of the Licensed Software;
 - (v) the failure of a party the Client is responsible for (including any Authorised User) in complying with any Law;
 - (vi) any Claim made against Leximancer by any third party who provides software or services to Leximancer in connection with the provision of the Services, as a result of an act or omission by the Client; or
 - (vii) any act of Leximancer in order to prevent any breach of any applicable Law where such breach arose, or in Leximancer's reasonable opinion was likely to arise, as a result of an act or omission of the Client or any party for whom the Client is responsible (including Authorised User) which itself breaches any Law.
- (b) The indemnity provided to Leximancer by the Client in accordance with clause 13.1 will be reduced proportionately to the extent that any Loss incurred by Leximancer is contributed to by the negligent acts or omissions of Leximancer.

13.2 Exclusion of liability

To the maximum extent permitted by Law, Leximancer will not be liable for any ordinary, incidental, consequential or special loss or damage (including but not limited to loss of profits, loss of revenue, loss of anticipated profit, loss of opportunity, loss or corruption of data, and loss of personnel) arising out of this agreement or the use of the Licensed Software even if Leximancer were appraised of the likelihood of such loss or damage occurring.

13.3 Limit of liability

- (a) Except as expressly provided by this agreement, the Licensed Software is provided on an "as is" basis without any representation, warranty or guarantee as to quality, condition or fitness for purpose and Leximancer does not warrant that the Licensed Software will be free of defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation.
- (b) Leximancer's liability in damages in respect of any act or omission of Leximancer in connection with the Licensed Software, or its obligations under this agreement will not exceed the total Fees received by Leximancer from the Client in the immediately preceding six (6) months from when the cause of action arose.
- (c) Leximancer has no responsibility or liability whatsoever as a consequence of any Loss suffered by the Client as result of:
 - (i) any of the Client Data or Leximancer Outputs being lost, destroyed or damaged by the Licensed Software;
 - (ii) any Client Data or Leximancer Outputs being lost, destroyed or damaged as a result of the Client failing to back-up its Client Data and Leximancer Outputs;
 - (iii) any third party software malfunctions; or
 - (iv) malfunctions in the Licensed Software caused as a result of interference with third party software.

13.4 Exclusion of other Terms

- (a) Subject to clause 13.4(b), any condition, guarantee or warranty which would otherwise be implied in this agreement is hereby excluded.
- (b) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at Leximancer's election) to Leximancer providing the Licensed Software again or the payment of the cost of having the Licensed Software supplied again.

14. NOTICES

Any notices given under or in connection with this agreement:

- (a) must be in legible writing and in English;
- (b) must be, in the case of Leximancer, sent by email to contact@leximancer.com, or as otherwise notified by Leximancer to the Client;
- (c) must be, in the case of the Client:
 - (i) delivered to the party's address as specified in the Proposal;
 - (ii) sent by email to that party's email address (as specified in the Particulars or otherwise provided to Leximancer);
- (d) will be deemed to be received by the addressee:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by post (to and from any place in Australia), on the third Business Day after the day on which it is posted, the first Business Day being the day of posting;
 - (iii) if sent by post (to or from any place outside of Australia), on the tenth Business Day after the day on which it is posted via prepaid airmail, the first Business Day being the day of posting;
 - (iv) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth); or provided that, if a notice is received after 4.00pm on a Business Day, it is deemed to be received at 9.00am on the following Business Day.

15. DISPUTES

- (a) If a dispute arises out of or relates to this agreement (**Dispute**) a party to the agreement may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.
- (b) A party claiming that a Dispute has arisen must give a Notice (**Dispute Notice**) to the other party or parties to this agreement specifying the nature of the Dispute. The parties must then negotiate in good faith to resolve the Dispute expeditiously.
- (c) If the Parties do not resolve the Dispute within fourteen (14) days of receipt of the Dispute Notice (or such further period as agreed in writing by them) any party to the Dispute may refer the Dispute to mediation by a mediator nominated by the President or the nominee of the President for the time being of the Queensland Law Society.
- (d) Each party must bear its own costs in connection with resolving the Dispute and the parties must bear equally the costs of any mediator engaged.
- (e) Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the Dispute.
- (f) If the parties do not resolve the Dispute within fourteen (14) days following the date of the mediation, a party may terminate the Dispute resolution process under this clause by notice in writing to the other party.
- (g) If a party does not comply with this clause, the other party need not comply with this clause.

16. PRIVACY

16.1 Consent

The Client consents to:

- (i) Leximancer using, disclosing and otherwise handling the Client's personal information in accordance with the Privacy Policy; and
- (ii) the disclosure of the Client's personal information outside of Australia on the understanding that:
 - A. if overseas recipients handle the personal information in breach of the Australian Privacy Principles as prescribed by the Privacy Act, the entity will not be accountable under the Privacy Act, and the Client will not be able to seek redress under the Act;
 - B. the overseas recipient may not be subject to privacy obligations or any principles similar to the Australian Privacy Principles; and
 - C. individuals may not be able to seek redress in some overseas jurisdictions, and overseas recipients may be subject to a foreign law that could compel the disclosure of personal information to a third party such as an overseas authority.

16.2 Notifiable data breach

If Leximancer reasonably believes that a notifiable data breach (as defined in the Privacy Act) has occurred and which affects or may affect the Client:

- (i) Leximancer will investigate the data breach and inform the Client of the breach and the outcome of Leximancer's investigation;
- (ii) the Client must comply with any directions provided by Leximancer in respect of the notifiable data breach, including any notice requirements; and
- (iii) Leximancer will provide the Client with reasonable assistance to comply with clause 16.2(ii).

17. GENERAL MATTERS

17.1 Essential terms

Clauses 7.1, 9, 11 and 16 are essential terms of this agreement.

17.2 Amendments

This agreement may only be varied by a further written agreement signed by or on behalf of each of the parties.

17.3 Force Majeure

Neither party will be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay is due to Force Majeure. If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate this agreement by providing Notice to the other party.

17.4 Assignment

- (a) Leximancer may, upon Notice in writing to the Client, assign or otherwise transfer the benefit of all or any part of this agreement to any other person or entity.
- (b) No rights, benefits or liabilities relating to this agreement may be assigned, novated or otherwise transferred by the Client without Leximancer's prior consent.

17.5 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he is not aware of any fact or circumstance that might affect his authority to do so under that power of attorney.

17.6 Consents

Unless this agreement expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this agreement. To be effective any consent under this agreement must be in writing.

17.7 Costs

Each party will pay their respective costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement.

17.8 Counterparts

The parties agree this Agreement may be executed in one or more counterparts and all counterparts taken together constitute one instrument.

17.9 Entire Agreement

This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect. The Client warrants that it has not relied on any representation made by Leximancer which has not been stated expressly in this agreement.

17.10 Further acts

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.

17.11 Jurisdiction

This agreement is governed by the law in force in the State of Queensland, Australia and each party submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this agreement.

17.12 No Merger

No right or obligation of any party will merge on completion of any transaction contemplated by this agreement.

17.13 Severability

Any provision of this agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this agreement which shall remain in force.

17.14 Survival

Clauses 7.2, 8, 9, 12.3, 13, 15, 16, 17 and 18 of these Leximancer Software Terms survive the expiration or earlier termination of this agreement.

17.15 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party and no waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.

18. DEFINITIONS AND INTERPRETATION

18.1 Definitions

In this agreement:

Academic Institutional Licence means an Academic Licence that is granted by Leximancer to an institution, including but not limited to universities or other research organisations, on the basis indicated in the Proposal or otherwise agreed to in writing by Leximancer.

Academic Individual Licence means an Academic Licence that is granted by Leximancer to an individual researcher on the basis indicated in the Proposal or otherwise agreed to in writing by Leximancer.

Academic Licence means a licence granted by Leximancer to the Client to utilise the Licensed Software in accordance with the terms of this agreement and only for academic research purposes and not for any Commercial Purpose.

Access means a grant of access to the Client for it to use the Licensed Software on the terms specified in these Leximancer Software Terms.

Additional Services has the meaning given to that term in clause 6(a).

Agreement Date means the date this agreement is first accepted by the Client in accordance with clause 2(c).

Annual Licence Maintenance Fee means the fee owing every annum on the anniversary of the Commencement Date as described in the Particulars and/or Proposal.

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

Authorised Representative means the person appointed by the Client to oversee this agreement in accordance with clause 10.1 of these Leximancer Software Terms.

Authorised Users means any person that is a director, officer or employee of the Client and to whom the Client has provided access to the Licensed Software in accordance with these Leximancer Software Terms.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Brisbane, Queensland, Australia.

Change of Control means a change of a controlling interest of a party including as a result of a change in majority shareholding of a party.

Claim includes a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Client means the licensee under this agreement.

Client Data means the textual documents and other data belonging to the Client to be loaded into Leximancer Desktop.

Commencement Date means the date on which the Licence commences as specified in the Particulars.

Commercial Licence means a licence granted by Leximancer to the Client to utilise the Licensed Software for Commercial Purposes and in accordance with the terms of this agreement.

Commercial Purpose means to use the Licensed Software to obtain a commercial benefit (whether monetary in nature or for some other form of consideration) in connection or relation to the business of the Client, or any other undertaking of the Client intended for profit.

Confidential Information means information that is by its nature confidential, or is designated by a party as confidential, or that a party knows or ought to know is confidential, other than information which is or becomes public knowledge otherwise than by breach of this agreement or any other confidentiality obligation.

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

Default Rate means the compound interest rate accruing on a daily basis from and including the date that payment is one day overdue and ceasing to accrue on the date Leximancer receives payment in full of all overdue Fees.

Fees mean the fees payable to Leximancer under this agreement for the provision of Access to the Licensed Software as specified in the Particulars and the Proposal and any fees payable to Leximancer for the provision of any Additional Services as specified in the Proposal or otherwise agreed by the parties in writing. These fees include the Upfront Licence Fee and the Annual Licence Maintenance Fee

Force Majeure means any cause beyond the reasonable control of a party and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost, including an act of God, fire, earthquake, storm or flood, and the failure of third-party equipment, software, technology or other services necessary for the performance of a party's obligations under this agreement.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Development Services Tax) Act 1999* (Cth).

Insolvent means if a person is insolvent or an insolvent under administration, or has a controller appointed (each as defined in the Corporations Act), are in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction whilst solvent) or otherwise unable to pay debts when they fall due.

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) copyright, future copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights or a similar nature to any of the rights in paragraphs (a) and (b) which may subsist,
- (d) whether or not such rights are registered or capable of being registered.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

Leximancer Desktop means Leximancer's software program to be installed on the desktop of the Client.

Leximancer Outputs means any source text, documents, information or other content created or generated howsoever by the Licensed Software from the Client Data.

Leximancer Software Terms means this document and any annexure, schedule and appendix to it.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Licence means either the non-exclusive, non-transferable Academic Licence or Commercial Licence granted by Leximancer to the Client to use Leximancer Desktop as specified in the Particulars and Proposal.

Licensed Software means Leximancer Desktop.

Licence Term means the duration of the Academic Licence or Commercial Licence granted by Leximancer to the Client for use of the Licensed Software as specified in the Particulars and the Proposal.

Major Release means a new version of Software that may include changes to the architecture and / or adds new features and functionality in addition to the original functional characteristics of the preceding software release. These releases are identified by a full integer change in the numbering, such as from 4.0 to 5.0.

Minor Release means software service packs, patches or minor changes that provide maintenance fixes, correct deficiencies or add minor enhancements. Such releases are identified by a change in the second or following digit in the release number (e.g. version 4.0 to 4.1 or from 4.1.1 to 4.1.2).

Moral Rights means moral rights as defined in the *Copyright Act 1968* (Cth).

Notice means a notice given under or in connection with this agreement that adheres to the requirements in clause 15.

Particulars means the particulars on the first page of these Leximancer Software Terms;

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Policy means Leximancer's privacy policy as published from time to time on the Website.

Proposal means the written document provided to the Client by Leximancer (if any) containing at least the:

- (a) Client details;
- (b) The relevant Licence type (i.e. Academic Licence or Commercial Licence);
- (c) Fees for the License of the Licensed Software;
- (d) number of Licenses to be provided to the Client;
- (e) Licence Term, including Commencement Date; and
- (f) any Special Conditions.

Special Conditions means the special conditions of the Agreement set out in the Proposal (if any).

Specifications means any document or material provided to the Client or made available on the Website by Leximancer prior to the Commencement Date, or as updated from time to time, containing technical information regarding the use of the Licensed Software.

Tax Invoice means an invoice issued by Leximancer for payments required under this agreement.

Term means the period commencing upon the Commencement Date and expiring upon the final day of the Licence Term granted by Leximancer to the Client.

Upfront Licence Fee means the licence fee described in the Particulars and / or the Proposal

Website means the Leximancer website located at <<https://www.leximancer.com/>>.