These are the terms and conditions under which the “Licensee” is permitted to use the material described in the Schedule (the “Licensed Material”), in the territory described in the Schedule (the “Territory”), as provided by Macquarie Dictionary Publishers Pty Limited (the “Licensor”) of Level 1-3, 15 Claremont St, South Yarra Victoria 3141, ACN 000 555 091.

TERMS

1. INTERPRETATION

1.1 In this Agreement unless the context requires otherwise, the following expressions have the following meanings:

"Authorised User": (a) every member of the teaching, library and research staff employed by or otherwise accredited to the Licensee whether full-time or part time; (b) every student enrolled or accredited to the Licensee for the purposes of full-time or part-time attendance; (c) individual members of the public registered as users of the Licensee's library or information service; and (d) individual members of the public permitted to use the Licensee's library or information services; in each case who are permitted general access to the Network by the Licensee;

"Customer Support": the Helpdesk (as set out in the Schedule providing reasonable e-mail and telephone support

"Commencement Date": as per the date of subscription, set out in the Schedule;

"Licence Fee": as per the non-refundable amount set out in the Schedule;

"Licensed Material": those agreed Macquarie elements indicated on the Schedule;

"Network": the Licensee's local area network system of connected computers at the Site, the IP address for which is set out in the Schedule;

"Site": the premises located at the address (the “Site Address”) set out in the Schedule; and

"Term": as set out in the Schedule or as otherwise extended pursuant to Clause 4.1.

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Licensed Material and supersedes any prior agreement.

1.3 The termination of this Agreement will not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

1.4 The failure of any party to enforce any provision of this Agreement on any one occasion will not affect its right to enforce another provision or the same provision on another occasion.

1.5 Nothing contained in this Agreement will constitute or will be construed as constituting a partnership, joint venture, or contract of employment between the parties.

2. DELIVERY AND GRANT OF RIGHTS

2.1 In consideration of the payments made by the Licensee, and subject to the Licensee observing its obligations under this Agreement, the Licensor grants to the Licensee the following non-exclusive rights (the “Rights”) for the Term:

(a) access via the Network at any time (subject to Clause 6) to the Licensor's server, for the purpose of accessing the Licensed Material for research, teaching and private study purposes by means of workstations located at the Site connected to the Network;

(b) make the Licensed Material accessible directly or remotely via the Network to the Authorised Users for their research, teaching, and private study purposes in accordance with the Licensee's customary policies and practices acceptable to the Licensor;
(c) permit Authorised Users to print and/or download individual articles and other individual items from searches of the Licensed Material for research, teaching, and private study purposes by means of workstations located at the Site connected to the Network;
(d) reproduce single copies of individual articles from the Licensed Material in hard copy print form for distribution without charge in hard copy form (but not electronically) to individual libraries of not for profit, non commercial organisations in accordance with fair usage guidelines. No right or licence is hereby granted to any person provided with such a copy to copy or otherwise deal with that individual article;
(e) create a hypertext link to any part of the Licensed Material provided that no person other than an Authorised User may use such hypertext link; and
(f) make extracts of the Licensed Material available to affiliate libraries of the University one-off basis.

(g) Authorised Users who are members of the Licensee's faculty or staff may download and print out multiple copies of material from Licensed Electronic Products for the purpose of making a multi-source collection of information for classroom use (course-pack) to be distributed to students at the Licensee's institution free of charge or at a cost-based fee. Material from Licensed Electronic Products may also be stored in electronic format in secure electronic data files for access by Authorised Users who are students at the Licensee's institution, as part of their course work.

2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organisations, or to any other related or affiliated organisations. The Licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Licensed Material (including any copies made by or on behalf of the Licensee including by the Authorised Users) is not transferred to the Licensee and remains vested in the Licensor. The Licensee acknowledges that any rights not expressly granted in this Licence are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to and use of the Licensed Material. The Licensor will not issue credits or refunds against charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensor will have no liability to the Licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus or of the Licensee's computer equipment.

3. USAGE RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without the Licensor's prior written consent:

(a) sell, distribute, license, rent or otherwise exploit the Licensed Material, or any element of it, for any commercial purpose;
(b) make the Licensed Material, or any element of it, available by any means to persons other than Authorised Users;
(c) make the Licensed Material, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, File Transfer Protocol or any other means of posting or transmitting material on the Internet, an on-line service or wide area network;
(d) remove or obscure the Licensor's copyright notice from the Licensed Material including hard-copy print-outs;
(e) use the Licensed Material to create any derivative work, product or service, or merge the Licensed Material with any other product, database, or service;
(f) alter, amend, modify, translate, or change the Licensed Material;
(g) undertake any activity that may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing the Licensed Material;
(h) otherwise use the Licensed Material supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it;
(i) make the Licensed Material or any part of it available by remote access to any person other than Authorised Users; or
(j) make mass, automated or systematic extractions from or hard copy storage of the Licensed Material.
4. **TERM AND TERMINATION**

4.1 This Agreement will begin on the Commencement Date and continue for the Term. The Licensor may agree to renew the Term for additional one-year periods, subject to payment of appropriate fees and acceptance thereof by the Licensor.

4.2 Either party may terminate the Term at any time upon written notice to the other if the other party commits a material breach of any term of this Agreement (for the avoidance of doubt non-payment of any fees as they fall due under this Agreement by the Licensee will constitute a material breach). In the case of a remediable breach the termination will become effective, unless the defaulting party has remedied the breach within thirty days of the date of written notice.

4.3 If the Licensee wishes to cancel the subscription, the Licensee must notify Macquarie in writing 30 days prior to the License Renewal Date, otherwise Macquarie will continue to invoice the Licensee and costs will accrue. Macquarie reserves the right to charge a cancellation fee of 7.5% of the Licence Fee.

4.4 Either party may terminate the Term forthwith on notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs.

4.5 On termination (including non-renewal) or expiry of the Term, Licensee will have no rights of any kind to any Licensed Material published after the date of termination.

4.6 Without prejudice to any other rights the Licensor may have, the Licensor may suspend the provision of the Licensed Material to the Licensee with immediate effect on written notice without liability if the Licensor believes the Licensed Material is being used in a manner that contravenes the provisions of this Agreement or in the event of delay or failure to pay in accordance with clause 5.

4.7 On expiry of this Agreement or termination of the Term as a result of notice being given by the Licensor under Clause 4.2 or 4.4 the Licensee will have no further rights of any kind in the Licensed Material and the Licensee agrees to destroy and use its best endeavours to procure that all Authorised Users destroy, all Licensed Material stored on its Network or in CD-Rom or other hard copy form both on paper and in any digital information storage media or other physical media storage, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

4.8 When calculating the reasonable annual Licence Fee payable by the Licensee the Licensor will be entitled to increase such fee on an annual basis including but not limited to reflect any increase in the number of Authorised Users, any change in the business of the Licensee or any increase in supply or other costs incurred by the Licensor.

5. **LICENCE FEE**

5.1 The Licence fee is non-refundable. The Licensee agrees to pay to the Licensor the Licence Fee and any other payments under this Agreement within thirty days of the date of invoice.

5.2 All amounts payable by the Licensee under this Agreement will be inclusive of any sales, use, GST or value added or similar taxes.

5.3 The Licence Fee is calculated on the basis of Authorised Users. The Licensee warrants that its Authorised Users during the 12 months prior to the Commencement Date did not exceed the number of Authorised Users as stated in the Schedule.

5.4 The Licence Fee is assessed on the number of the Licensee’s Authorised Users during the 12 month period prior to the Commencement Date for the initial 12 month period of the Term and for each 12 month period prior to any subsequent 12 month extensions agreed to.
by the Licensor. The Licensee must immediately notify the Licensor if at any time the actual number of Authorised Users exceeds the number of Authorised Users stated in the Schedule. The Licensee acknowledges that in the event that such number of Authorised Users increases during the initial 12 month period of the Term or in any subsequent 12 month extension period agreed to by the Licensor the Licence Fee will be increased in accordance with the Licensee's then applicable charges for any subsequent 12 month extension period agreed to by the Licensor.

6. LICENSEE’S UNDERTAKINGS

6.1 The Licensee will take all reasonable steps to ensure that the Licensed Material is used only in accordance with the terms and conditions of this Agreement and will inform Authorised Users of the permitted use restrictions and other provisions set out in this Agreement.

6.2 The Licensee will put into place reasonable procedures to monitor the compliance with the terms and conditions of this Agreement by the Authorised Users.

6.3 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to co-operate with the Licensor as appropriate to stop further abuse should it occur.

6.4 Subject to Clause 4.7, nothing in this Agreement will make the Licensee liable for breach of the restrictions set out in the terms and conditions of this Agreement by any Authorised User as long as the Licensee complied with the terms of Clauses 5.3, 5.4, 6.1, 6.2 and 6.3 and did not cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor will be entitled to terminate this Agreement.

6.5 The Licensor will be entitled to monitor the use of the Licensed Material through the Licensor's servers, or as the case may be any service provided by an agent on its behalf, so as to monitor compliance with this Agreement.

7. WARRANTIES, UNDERTAKINGS AND INDEMNITIES

7.1 The Licensor warrants to the Licensee that it has full right and authority to grant the Rights to the Licensee and that the use by the Licensee of the Licensed Material in accordance with this Agreement will not infringe the rights of any third party.

7.2 The Licensor will indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 7.1 provided that the Licensee must inform the Licensor immediately upon becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to the Licensor who will be entitled to assume sole conduct of any defence and will have the right at its option:
(a) to procure the right for the Licensee to continue using the Licensed Material;
(b) to make such alterations, modifications or adjustments to the Licensed Material that it becomes non-infringing without incurring a material reduction in performance or function; or
(c) to replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

7.3 The Licensor will not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Material regardless of how caused. The Licensor does not warrant that access to the Licensed Material will be free from errors or faults. In the event of a fault, the Licensee will notify the Licensor of the same by telephone, electronic mail or in writing.

7.4 Without prejudice to the generality of the foregoing, the Licensor will not be liable for any claim arising from:
(a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with the User Documentation or any other misuse or abuse of the Licensed Materials;
(b) the failure by the Licensee to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Material; or
(c) the decompilation or modification of the Licensed Material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the Licensed Material by any person other than the Licensor or its authorised agent; or
(d) the Licensee or any Authorised User being unable to exercise the Rights due to the Licensed material being unavailable as a result of any act or omission of the Licensor.

7.5 The Licensee will use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this Agreement, and proprietary rights of the Licensor.

7.6 The licensed material is provided "as is." Neither the licensor nor anyone else makes any warranties of any kind, either express or implied, including, but not limited to, warranties of satisfactory quality, accuracy or fitness for a particular purpose except as otherwise expressly provided in this clause 7 and clause 11, all conditions, warranties, terms, representations, and undertakings express or implied, statutory or otherwise in respect of the licensed material are to the fullest extent permitted by law expressly excluded. No oral or written information or advice given by any representative of the licensor or by anyone else will create any warranties.

7.7 The content of the Licensed Material is subject to change without notice.

8. USAGE STATISTICS

The Licensor confirms to the Licensee that usage statistics covering the online usage of Macquarie Dictionary covered by this Agreement will be provided. These statistics are strictly for the Licensee's private internal use and the Licensor will not be required to disclose any information to the Licensee which it is prohibited from disclosing to the Licensee due to any legal or regulatory constraint imposed upon it including without limitation any applicable privacy or data protection legislation or regulations or contractual obligations.

9. FORCE MAJEURE

9.1 Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, floods, terrorist event, governmental restrictions, power failures, or damage or destruction of any network facilities or services, will not be deemed a breach of this Agreement.

9.2 If any event set out in Clause 9.1 will continue for a period in excess of thirty days either party will be entitled to terminate this Agreement forthwith by written notice to the other.

10. NOTICE

Any notice to be served on either party by the other made under this Agreement will be in writing sent by prepaid recorded delivery or registered post to the address set out in the Schedule or to such other address as notified by either party to the other as its address for service of notices and all such notices will be deemed to have been received within 48 hours after posting.

11. LIABILITY

11.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is prohibited by law.

Updated 25 October, 2011
11.2 Except as provided for in Clause 11.1 above, the liability of the Licensor in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this Agreement is limited in respect of each event or series of connected events to an amount equal to the fees paid under this Agreement.

11.3 Except as provided for in Clause 11.1, notwithstanding anything else contained in this Agreement, in no event will the Licensor be liable to the Licensee for:
(a) loss of profits, business, revenue, goodwill, anticipated savings; and/or
(b) indirect, special, incidental or consequential loss or damage; and
(c) any inaccuracy in the Licensed Material.

12. GOVERNING LAW

The Agreement is governed by and construed in accordance with Australian Law and the parties agree to submit to the exclusive jurisdiction of the Australian courts.

13. SEVERABILITY

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

14. WAIVERS

No provision of this Agreement or breach thereof may be waived except in a writing signed by the party against whom the waiver is sought to be enforced.

The parties each agree to the terms of this Agreement:

Signed by: 
For and on behalf of

MACQUARIE DICTIONARY
PUBLISHERS PTY LIMITED

--- Victoria Nash ---
Name of Authorised Representative

Dated: __________________

Updated 25 October, 2011
SCHEDULE

Commencement Date

__________________

Term
12 months, ongoing

Territory
Australia

Licence Fee
AU$ ____ (plus GST) or as per current CAUL offer

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the Licensee.

Site Address

Network
IP Address of Network:

Authorised Users
Licensee’s number of staff and students during the 12 month period prior to the
Commencement Date:

Customer Support
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Email: support@macquarieonline.com.au

Macquarie Contact Person: University Contact Person:
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