INSTITUTIONAL LICENCE
TERMS & CONDITIONS

1. Definitions

1.1. “Agreement” refers to any signed Term Sheet, any approved Purchase Order, Invoice, these Terms and Conditions, and any signed addendums. Any terms and conditions purported to be introduced in any Purchase Order shall not apply unless they have been approved in writing, signed and returned by a representative of the Publisher. In the event of a conflict between documents, the order of precedence shall prevail as follows: Term Sheet, Signed Addendums, Terms and Conditions, Invoice, approved Purchase Order.

1.2. “School” means the institution which has signed a Term Sheet or has been invoiced for Products from the Publisher.

1.3. “Products” means access codes for the Jacaranda digital products purchased by the School.

1.4. “Publisher” means John Wiley & Sons Australia, Ltd ABN: 67 009 673 081.

1.5. “Licensed Users” means all students, staff or other individuals who have been provided with an individual access code for the Products. Licensed Users shall include both Licensed Students and Licensed Staff.

1.6. “Licensed Uses” are the ways in which the Product is permitted to be used as set out in the Term Sheet and as per the Product terms and conditions or as otherwise agreed in writing by the Publisher.

1.7. “Licence Term” means the term set out on the Term Sheet, or as set out on the Invoice, or if not specified then for a period of 12 months from the date of initial access of the Product;

1.8. “Year Level” means the year level of the Licensed Students or Licensed Staff for which the Products have been purchased for use as set out in the Invoice description of the Products (i.e. Year 7, Year 8).

2. Licence and Term

2.1. In consideration of the fee charged to the School, the Publisher agrees to provide access codes for the School to redeem, which upon redemption shall grant a non-exclusive, non-transferable licence to access the Products to the School’s Licensed Users and agrees to provide the Services to the School for the duration of the Licence Term on the terms set out in this Agreement.

2.2. The licence for the Products is only for the utilisation of the Products in accordance with the Licensed Uses. No other uses of the Products are licensed or authorised.

2.3. Where access is provided earlier than the start date of the Licence Term by the Publisher in its sole discretion, the Licence Term shall be deemed to begin on the date any of the School’s Licensed Users are first granted access to the Products.

2.4. The use of the Products by a Licensed User is granted subject to each Licensed User accepting the terms and conditions of the individual digital licence agreement. The terms of each Product’s digital licence agreement is set out at http://www.jacplus.com.au/jsp/general-nav/terms/terms.jsp and the Publisher reserves the right to revise, amend and update any individual Product digital licence agreement at any time effective on the date of posting amended terms to the JacPLUS site. Nothing in these conditions affects the right of the Publisher to exclude access to the Products to an individual Licensed Student, where that Licensed Student is in breach of the individual Product digital licence agreement with the Publisher and all exclusions shall be notified to the School within a reasonable time before such exclusion, unless it is a material breach which threatens the safety and security of the platform.

3. School obligations

In addition to any other obligations set out in this Agreement, the School agrees to:

3.1. take all reasonable measures to inform Licensed Users of the terms and conditions of use governing access to the Products on the School’s system and to emphasise to such Licensed Users the need to comply with all restrictions on access, use, reproduction and transmission as required under the terms of this Agreement;

3.2. if access is made available to Licensed Users through the School’s network or any other network, ensure that the network is secure and undertake reasonable measures within its control to prevent access to and improper use of the Products by any unauthorised persons (other than the School’s own information technology personnel who may require access for administration purposes or other staff or persons notified to and approved by the Publisher); and take responsibility for terminating any unauthorised access of which it has actual notice or knowledge;

3.3. if access is made available to Licensed Users through the provision of a portable device or computer pre-loaded with the Product, ensure that reasonable measures within its control are undertaken to prevent access to and improper use of the Products by unauthorised persons, which shall include but shall not be limited to providing individual student and staff
with individual personal log-ins; and take responsibility for terminating any unauthorised access of which it has actual notice or knowledge;

3.4. promptly notify the Publisher of any copyright infringement or unauthorised usage of the Products, which comes to the School’s attention; co-operate with the Publisher in the investigation of such infringement or unauthorised use and in any action, which the Publisher takes to enforce its copyright, at the Publisher’s expense. Notwithstanding the above, the School shall not be responsible for such unauthorised use which is without the express or implied consent of the School, provided that the School has taken reasonable steps to prevent such misuse and, upon learning of it, notifies the Publisher promptly of any breach or infringement; and

3.5. On the expiry of the Licence Term of this Agreement, the School shall ensure that the School and its staff delete all offline digital content or versions of the Product that may have been saved in any server, computer or other device, including student devices or portable computers and shall instruct its students to do the same. However, legitimate versions which are required for backup or archival purposes of the School are permitted to be retained, provided that all versions retained for such back-up or archival purposes shall remain subject to the terms of this Agreement although the uses shall be limited to access only for this purpose and not for any educational or teaching purposes.

4. Access

4.1. The School and all Licensed Users must take their own precautions to ensure that that the process used for accessing the Products on the Publisher’s website does not expose the User or the School to the risk of viruses, trojan horses or other malicious computer code that may damage the system or data. No responsibility is accepted by the Publisher for any loss or damage caused by the School’s or any Licensed User’s access to the Products.

4.2. The School acknowledges that third party software may be required or recommended to access or use a particular feature of the Products (for example, Adobe Acrobat Reader). The Publisher may provide links to third party sites where such software may be downloaded; however the Publisher provides no warranties or assurances as to the safety, suitability or any other aspect of any such third party websites or software. The School acknowledges that it will be solely responsible for any damage or loss of data that may result from accessing any third party website linked from this website or downloading or using any third party software or files to the School’s computers from any third party links and that the School undertakes all such actions at the School’s own risk.

5. Privacy and Data Collection

5.1. Personal information received under this Agreement shall be treated in accordance with the Publisher’s privacy policy, unless as expressly set out in this Licence in clause 5.2 below – the Publisher’s privacy policy is found here http://www.jacplus.com.au/sp/general-nav/copyright/privacy_policy.jsp. The School warrants that it has all necessary consents and/or authority to provide access to all personal information provided to the Publisher pursuant to this Agreement.

5.2. In addition to the above, the School acknowledges:

5.2.1. For Knowledge Quest Products, the first name of the Licensed Student and their School name may be displayed on the ‘High Score Leaderboard’ which is accessible to all other users of that Product and via the Knowledge Quest internet site visible to the public, where the student has achieved a high score, unless the School has chosen to opt all its Licensed Students out of this feature. Licensed Students can choose to opt out of this feature and remain anonymous in their discretion.

5.2.2. For MyWorld Atlas Products, the first and last name of the Licensed Student may be displayed on the MyWorld Atlas home page which is accessible on the internet, in connection with any submitted case studies by the Licensed Student which have passed the moderation process of the Publisher. Other submitted case studies may be visible to other Licensed Users of the Product. The Licensed Student shall be informed prior to the submission of the case study that their name and case study will be displayed in this manner before they agree to submit the case study. Case studies can be taken down by request by the School or Licensed Student at any time by contacting the School’s Digital Account Manager.

5.2.3. For the Digital Citizenship (powered by Cyberpass) Products, this Product is provided and hosted by a third party Roar Educate Pty Ltd. In accessing this product, personal information in relation to Licensed Users shall be transferred to Roar Educate Pty Ltd and all such information shall be treated in accordance with its privacy policy - https://thecyberpass.com/privacy

6. Intellectual Property

6.1. All rights (including without limitation copyrights, patents and trademarks) in the Products (including without limitation the content, images, structure, sequence, organisation, flow, logic, source code, object code and all means and forms of operation of the Products) are the sole and exclusive property of the Publisher, and/or its licensors.
6.2. In the event that the Products allow Licensed Users to upload content ("User Generated Content") the User Generated Content shall remain the copyright of the user who contributed the User Generated Content or the School, as the case may be, and the Publisher will be granted a non-exclusive, perpetual, royalty free, worldwide licence to display, reproduce and communicate to the public the User Generated Content as part of the Product and on Wiley websites or in other Wiley materials, for the necessary operation of the Product and all Wiley promotional purposes and all other internal backup and operational purposes.

6.3. The School agrees not to allow or encourage any students or staff to share access to the Products and to use reasonable endeavours to protect the Products from unauthorised use, reproduction or distribution.

7. Moderation

The Publisher only provides moderation of User Generated Content for MyWorld Atlas Product case studies which are accepted for publication on the MyWorld Atlas internet home page visible on the internet to the public. In all other circumstances, the School agrees and acknowledges that the Publisher does not moderate any User Generated Content and is in no way liable for any loss or damage caused by any offensive, discriminatory or otherwise unlawful or infringing material being posted or uploaded by Licensed Users. Licensed Students are not able to post User Generated Content until they are connected to a Licensed Staff user and such User Generated Content is only visible to the School’s Licensed Users. Licensed Staff users are able to flag any inappropriate content for removal by the Publisher in a timely fashion.

8. Payment Terms

8.1. Payment terms and processes shall be as set out in the Term Sheet or Invoice, but if not specified shall be payable within 30 days of the date of Invoice.

8.2. In the event that the School does not pay any amount due within the agreed due date for payment of the Invoice, the Publisher shall have the right to restrict all user access to the Products until such payment is made.

8.3. All Products are non-refundable, other than as required in accordance with any applicable consumer or other laws.

9. Copyright Agency Limited & the statutory licence

9.1. Where the School is using the Product in one of the Licensed Uses, this Licence replaces and goes beyond the statutory licence scheme in Part VB of the Copyright Act 1968 (Cth) and other rights administered by Copyright Agency Limited that allows the School to use the Product in certain circumstances.

9.2. Amongst other things, this means the School can include this resource in the “Register of Licences” supplied to Copyright Agency Limited by Survey Managers if the School is being sampled for the purposes of Part VB. The Publisher (or other rights holder) will not be entitled to receive income from Copyright Agency Limited for such uses. The amount of the Licence Fee takes this into account.

9.3. However if the School uses the Product in any other manner not allowed under this Agreement (such as providing photocopies to students who are not Licensed Students), the School can use the Products in the manner only in accordance with the limits as permitted pursuant to the statutory licences set out in Part VB of the Copyright Act and must include such uses on any survey undertaken on behalf of the Copyright Agency Limited.

10. Warranty

The School warrants that it will not use the Products other than in accordance with these terms and that it will comply with the terms of this Agreement.

11. Termination

11.1. The Publisher may terminate this Agreement in whole or in part on 14 days’ notice if there is a breach of the terms, if notice has been given by the Publisher of the breach and the School has not remedied such breach within 14 days of notification.

11.2. In the event that the Publisher continues to provide online access to the Products following the expiry of the Licence Term or termination of this Agreement, the School acknowledges that any continued access remains on the terms and conditions of this Agreement and that the Publisher may cease this continued access at any time.

11.3. In any event, on the expiry of this Agreement, the School agrees to ensure that the School and its staff delete all offline digital content or versions of the Product that may have been saved in any server, computer or other device and shall instruct its students to do the same.

12. Limitation of liability

12.1. To the maximum extent permitted by law, save for the express written terms in this Agreement, all express or implied terms, conditions, warranties, statements, assurances and representations in relation to the Product(s) are expressly
excluded. The School acknowledges and accepts that access to the Product(s) may be intermittently available due to repair and maintenance and other events outside of the Publisher’s control. Although efforts are made by the Publisher to maintain accurate and up to date information in the Products, the Publisher does not warrant that the content is accurate, adequate or complete.

12.2. If any of the exclusions or limitations set out in this clause are declared illegal or void or if there has been a breach of a term, condition, warranty, statement or assurance which cannot be excluded by law, then, to the extent permitted by law, our entire liability and your exclusive remedy is limited to, at our discretion, the replacement of the Products or the supply of equivalent Products or Services.

12.3. In no event will the Publisher, including its agents, licensors, employees or contractors, be liable for any direct, indirect or consequential loss (even if the Publisher is or was aware of the possibility of such loss or if such loss was otherwise foreseeable), including, but not limited to, loss of profits, production, data, opportunity or goodwill; or business interruption, however caused and on any theory of liability, including without limitation, contract or tort (including negligence or otherwise) arising during and/or as a result of any performance or non-performance of the Product(s) or of the Publisher.

12.4. To the maximum extent permitted by law, the Publisher’s maximum cumulative liability under this Agreement shall not exceed an amount greater than the amount the School paid for the relevant Product.

13. General

13.1. If any provision of this Agreement is held to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect.

13.2. If the Publisher waives its rights on any given occasion, this does not mean that there has been a waiver of the Publisher’s rights in future.

13.3. This Agreement, including the Term Sheet and Annexures and any properly executed amendments constitute the entire agreement between the parties and supersedes all other prior written or oral agreements and negotiations between the parties regarding this transaction.

13.4. The construction, validity and performance of this Agreement is governed in all respects by the law of Victoria and the parties unconditionally submit to the jurisdiction of the courts of Victoria.