

ACCESS AGREEMENT

SAGE PUBLICATIONS, LTD.

AND

[Institution or Consortium Name]

This Access Agreement (the “Agreement”) is effective as of _____ (“Effective Date”) and is entered into by and between SAGE Publications, Ltd located at 1 Oliver’s Yard, 55 City Road, London, EC1Y 1SP, UK (“SAGE”), and **[Institution or Consortium Name]**, a non-profit academic institution with its principal offices located at **[Enter Address]** (“Customer”) (collectively referred to herein as the “Parties”).

RECITALS

A. WHEREAS, SAGE holds a copyright or license to Products (as defined below) and Customer desires to purchase the Products with rights to access and use the Products pursuant to the terms and conditions herein; and

B. WHEREAS, Customer’s purchase of the Products shall entitle Authorized Users (as defined below) certain rights to access and use the Products pursuant to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

The following terms shall have the following meanings:

“**Authorized Users**” shall mean individuals who are authorized by the Customer (which shall include those individuals authorized by the Institutions hereunder) to access the Customer’s information services whether on-site or off-site via Secure Authentication and who are affiliated with the Customer as a current student (undergraduates and postgraduates), employee (whether on a permanent or temporary basis), alumnus or contractor of the Customer. Individuals who are not a current student, alumnus, employee or a contractor of the Customer, but who are permitted to access the Customer’s information services from computer terminals within the physical premises of the Customer (“Walk-In Users”) are also deemed to be Authorized Users, only for the time they are within the physical premises of the Customer. Walk-In Users may not be given means to access the Products when they are not within the physical premises of the Customer.

“**Commercial Use**” shall mean use for the purpose of monetary reward (whether by or for the Customer or an Authorized User) by means of the sale, resale, loan, transfer, hire

or other form of exploitation of the Products. For the avoidance of doubt, neither recovery of direct cost by the Customer from Authorized Users, nor use by the Customer or Authorized Users of the Products in the course of research funded by a commercial organization shall be deemed to constitute Commercial Use.

“Educational Purposes” shall mean for the purpose of education, teaching, distance learning, private study and/or research as described in Section V below.

“Exhibit(s)” shall mean the exhibits attached hereto and incorporated herein that identify and describe the Products purchased and set forth the additional terms and conditions applicable to such Products.

“Fees” shall mean the fees as set out in the applicable Exhibit(s).

“Institutions” shall mean Customer’s participating institutions, if applicable, identified on the applicable Exhibit(s).

“Intellectual Property Rights” shall mean patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

“License” shall mean the non-exclusive, non-transferable right to access and use the Products pursuant to the specific terms and conditions set forth in this Agreement and the applicable Exhibit(s).

“Product(s)” shall mean the products, materials and/or information contained therein that are subject to this Agreement and which are identified in the Exhibits attached hereto.

“Product Initial Term” shall mean the timeframe for the effective dates of the Agreement and the timeframe for hosting services.

“Reasonable Amount” shall mean not more than ten percent (10%) of any individual book or journal issue where these are included in a database, and not more than five percent (5%) of the total database content.

“Schedule(s)” shall mean the schedules attached to Exhibits that provide additional details relating to the Exhibits.

“Secure Authentication” shall mean access to the Products by Internet Protocol (“IP”) ranges or by another means of authentication agreed between SAGE and Customer or the Institutions (if applicable) from time to time.

II. GRANT OF LICENSE

SAGE hereby grants the License to Customer pursuant to the terms of this Agreement and the applicable Exhibit(s).

III. PROPRIETARY RIGHTS IN THE PRODUCTS

On its own behalf and on behalf of the Institutions (if a consortium) and Authorized Users, Customer acknowledges and agrees that (i) the Products and the Intellectual Property Rights are proprietary to SAGE, (ii) the Products and the Intellectual Property Rights shall remain the exclusive property of SAGE, and (iii) the Customer, the Institutions and the Authorized Users shall have no rights in or to the Products and the Intellectual Property Rights other than as set forth herein. The Products are copyrighted by SAGE or third parties and all rights are reserved by SAGE except as set forth in this Agreement. Neither Customer nor the Institutions shall duplicate, distribute, sell, commercially exploit, create derivative works from, or otherwise make available the Products or the materials and/or information contained therein, in any form or medium, to any third party other than Authorized Users or as otherwise specifically authorized by this Agreement.

IV. FEES

Customer shall be invoiced for the Products and shall be liable for payment of the Fees in the attached Exhibit(s) as set forth therein.

All Fees shall be due and payable by Customer within forty-five (45) days from the date of invoice.

Fees for purchased products are non-refundable.

V. AUTHORIZED USE OF PRODUCTS

Customer, the Institutions (if applicable) and Authorized Users may use the Products for Educational Purposes as follows:

Analysis. Authorized Users shall be permitted to extract or use information contained in the Products for Educational Purposes, including, but not limited to, text and data mining, extraction and manipulation of information for the purposes of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Course Packs. Customer, the Institutions and Authorized Users may use a Reasonable Amount of the Products in the preparation of course packs or other educational materials.

Digital Copy. Customer, the Institutions and Authorized Users may download and digitally copy a Reasonable Amount of the Products.

Display. Customer, the Institutions and Authorized Users shall have the right to electronically display the Products to the extent necessary to further the intent and purpose of this Agreement.

Electronic Reserve. Customer, the Institutions and Authorized Users may use a Reasonable Amount of each of the Products in connection with specific courses of instruction offered by Customer.

Inter-Library Loan. The Customer and the Institutions shall be permitted to use Reasonable Amounts of the Content to fulfill occasional requests from other, non participating institutions, a practice commonly called Inter-Library Loan (“ILL”). Customer and the Institutions shall fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, “Limitations on exclusive rights: Reproduction by libraries and archives”) and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works (CONTU).

The electronic form of the Products may be used as a source for ILL. Secure electronic transmission as used by Ariel or Prospero or another approved technology to fulfill ILL requests shall be permitted and fulfillment of Loansome DocR service requests shall be permitted. Customer and the Institutions shall include copyright notices on all ILL transmissions. Notwithstanding anything herein to the contrary, in no event shall any non-secure electronic transmission of files be permitted.

Print Copy. Customer, the Institutions and Authorized Users may print a Reasonable Amount of a Product.

Recover Copying Costs. Customer and the Institutions may charge a reasonable fee to cover costs of copying or printing portions of Products for Authorized Users.

Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, Reasonable Amounts of the Products for personal use, professional use or Educational Purposes but in no event for Commercial Use. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Products in the Authorized User’s own scientific, scholarly and educational works.

Text Mining. Authorized Users may use the licensed material to perform and engage in text mining /data mining activities for legitimate academic research and other educational purposes. Those uses beyond educational use shall require SAGE’s permission.

VI. RESTRICTIONS

Except as provided herein, the Customer and Authorized Users shall not use, alter, decompile, modify, display or distribute the Products as follows:

Alter Identification. Remove, obscure or modify copyright notices, text acknowledging, attributions or other means of identification or disclaimers as they appear.

Alter Products. Alter, decompile, adapt or modify the Products, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. Alteration of words or their order is strictly prohibited.

Commercial Use. No Commercial Use of the Products shall be permitted unless the Customer or an Authorized User has been granted prior written consent by an authorized representative of SAGE. Use of all or any part of the Products for any Commercial Use or for any purpose other than Educational Purposes.

Distribution. Display or distribute any part of the Products on any electronic network, including without limitation, the Internet, and any other distribution medium now in existence or hereinafter created, other than by a Secure Authentication; print and distribute any portion(s) of the Products to persons or entities other than the Customer or Authorized Users.

VII. CONFIDENTIALITY

Customer agrees that, except with the prior written consent of an authorized representative of SAGE, or as required by law or compelled by legal process including any applicable state open record laws, it may only disclose the terms of this Agreement to the Institutions who shall agree to maintain said terms as confidential and only share such information with those who have a legitimate business purpose to receive such information. In the event Customer or any of its authorized representatives or agents are required by law or compelled by legal process to disclose the terms of this Agreement to third-parties other than the Institutions, it shall provide SAGE with prompt written notice of such requirement prior to the actual disclosure so that SAGE may seek an appropriate protective order.

VIII. NO WARRANTIES

SAGE IS PROVIDING THE PRODUCTS AND THE SAGE PLATFORM IN AN "AS IS" CONDITION. SAGE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR THE SAGE PLATFORM INCLUDING, WITHOUT LIMITATION, THE USE OR RESULTS TO BE OBTAINED FROM USING THE PRODUCTS OR THE SAGE PLATFORM.

IX. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SAGE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, OR BUSINESS INTERRUPTION, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE PRODUCT(S) AND/OR

THE SAGE PLATFORM (EVEN IF SAGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN ADDITION, SAGE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITY THAT RESULT OR ARISE FROM THE RESULTS OF CUSTOMER'S USE OR INABILITY TO USE THE PRODUCT(S) AND/OR THE SAGE PLATFORM. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. BUT, TO THE EXTENT THE FOREGOING LIMITATIONS OF LIABILITY ARE, IN WHOLE OR IN PART, HELD TO BE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF SAGE FOR ANY REASON AND UPON ANY CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCT(S) AND/OR THE SAGE PLATFORM OR THIS AGREEMENT SHALL BE LIMITED TO CUSTOMER'S DIRECT DAMAGES ACTUALLY INCURRED UP TO THE FEES PAID BY CUSTOMER FOR THE PRODUCT(S) AND ACCESS TO THE SAGE PLATFORM WITHIN THE TWELVE MONTH PERIOD PRECEDING CUSTOMER'S ASSERTION OF LIABILITY. IN ADDITION, IF CUSTOMER IS DOING BUSINESS IN CALIFORNIA, CUSTOMER HEREBY WAIVES CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor*" AND CUSTOMER HEREBY WAIVES ANY AND ALL SIMILAR STATE STATUTES THAT MAY APPLY.

X. ACCESS AND USE

The scope, terms and conditions of Customer's License to access and use the Products and/or the SAGE platform are as set forth in the attached Exhibit(s).

XI. SYSTEM REQUIREMENTS

Customer acknowledges that there are certain system requirements that are necessary in order to use the Products which may be modified from time to time by SAGE during the Term (as defined in Section XIII below) of this Agreement, and Customer and the Institutions are financially and technically responsible for ensuring that these requirements are met. As of the date of this Agreement, the system requirements are: (a) full access to the Internet (TCPIP) and (b) a World Wide Web browser. As of the date of this Agreement, the Products will operate optimally on the following browsers:

For Mac: Current version and previous version of Firefox and Safari; and

For Windows: Firefox and IE versions 8 and 9.

As of the date of this Agreement, other suitable browsers should include support for HTML 4.0, XHTML 1.0, and CSS 1 (Cascading Style-sheets). Use of the Administrative

Profile Module requires support for Javascript 1.5. SAGE recommends using the most current browsers available or other technologies as updated from time to time that can be found in the administrator area of the applicable SAGE platform.

XII. FORCE MAJEURE

SAGE shall not be responsible or liable in any way for any failure to perform, or delay in performance, in whole or in part, due to unforeseen circumstances or circumstances beyond its control including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental laws and regulations imposed after the fact, fire, communication line failures, power failures, earthquakes, floods or other natural disasters.

XIII. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and shall remain in effect unless and until terminated as permitted herein (the "Term"). Notwithstanding the foregoing, each Exhibit attached hereto shall define the term of the license to access and use the Product and/or the SAGE platform described in such Exhibit which may extend beyond the Term of this Agreement in which case the terms and conditions of this Agreement will survive and continue through the expiration date of each respective Exhibit.

SAGE may terminate this Agreement if Customer violates any of the terms and conditions set forth herein, including, without limitation, the Confidentiality provision in Section VII above.

SAGE may terminate access and use to a particular Institution if it or one of its Authorized Users violates any of the terms and conditions set forth herein. Any Institution that has had its License terminated due to breach shall not be entitled to receive or access the Product(s) or any portion thereof and/or the SAGE platform after such termination. Termination of access and use with regard to one Institution shall not affect the rights of the other Institutions to continue to have access and use of the Product(s) and/or the SAGE platform hereunder.

Notwithstanding anything herein to the contrary, SAGE may terminate this Agreement at any time for any reason or no reason upon thirty (30) days' written notice to Customer.

XIV. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed, construed and enforced in accordance with the Laws of England and Wales. The parties agree that any claim or dispute arising out of or relating to this Agreement shall be determined by binding arbitration, before one (1) arbitrator, administered by the International Chamber of Commerce under its then current Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The place of arbitration shall be London, England. The arbitrator shall apply the substantive law of England and Wales applicable to the claims asserted. The arbitrator shall determine how the fees will be

allocated between the parties and may award the prevailing party all or part of its costs and reasonable attorney fees. The arbitration award shall be final and binding on the parties and judgment upon any award may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, the parties specifically reserve the right to seek provisional remedies, injunctive relief, or other equitable remedy in a court of competent jurisdiction, without waiving any right to arbitration.

XV. ENTIRE AGREEMENT

This Agreement along with the attached Schedules and Exhibits constitute the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. In the event of a conflict between a provision of this Agreement and a Schedule or Exhibit, the specific provision of this Agreement shall govern unless expressly stated to the contrary in the Schedule or Exhibit.

XVI. AMENDMENT

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of all the Parties hereto.

XVII. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XVIII. WAIVER

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XIX. CONSENT TO COMMUNICATIONS

Customer hereby provides its express consent for SAGE, its affiliates and their respective designees to contact including, without limitation, via e-mail, Customer (including its personnel and other contacts made by SAGE during the course of its business dealings with Customer) in connection with this Agreement and/or in connection with any promotional, marketing, sales and/or any other business communication, correspondence or matter related to SAGE or its affiliates.

XX. NOTICES

All notices given pursuant to this Agreement shall be in writing and may be hand

delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. Either party may from time to time change its notice address by written notice to the other party.

If to SAGE:

SAGE Publications, Ltd.
1 Oliver's Yard
55 City Road
London
EC1Y 1SP
UK
Attention: Mark Walford
Executive Director

If to Customer:

[enter customer name, address, personal contact and title]

XXI. ASSIGNMENT

Customer shall not assign its rights and duties under this Agreement without the prior written consent of SAGE which shall not be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon each party and its respective successors and permitted assigns.

XXII. SURVIVING OBLIGATIONS

The Parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement including, without limitation, Sections V and VI above shall survive such expiration or termination of this Agreement as required herein or in the applicable Exhibit(s).

XXIII. ELECTRONIC SIGNATURE AUTHORIZATION

Customer and SAGE agree that this transaction may be conducted by electronic means and the Parties authorize that their electronic signatures act as their legal signatures of this Agreement. This Agreement will be considered signed by a party when his/her/its electronic signature is transmitted. Such signature shall be treated in all respects as having the same effect as an original handwritten signature. A Customer is not required to conduct this transaction by electronic means or use an electronic signature, but if he/she/it does so, then his/her/its authorization is hereby given pursuant to this Section.

XXIV. COUNTERPARTS

This Agreement may be executed in counterparts, which together constitute one and the

same agreement. If a party sends a signed copy of this Agreement via digital transmission, such party, will upon request by the other party, provide an originally signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective, duly authorized representatives on the dates written below.

SAGE Publications, Ltd.:

BY: _____ DATE: _____
Mark Walford
Executive Director

Customer:

BY: _____ DATE: _____

EXHIBIT __
TO THE ACCESS AGREEMENT

SAGE KNOWLEDGE PRODUCT
PURCHASE TERMS AND CONDITIONS

SAGE hereby grants to Customer a non-exclusive perpetual right to use the Product in a manner consistent with the Agreement. Such use shall be in accordance with the provisions of the Agreement, which provisions shall survive any termination of the Agreement.

A. PRODUCT TERM FOR ACCESS AND USE

This Exhibit shall commence on _____ and remain in effect through December 31, ____ (the “Product Initial Term”). The Product Initial Term may be extended upon SAGE’s receipt of payment of the renewal hosting fee for an additional twelve (12) month period (each a “Product Renewal Term”) which shall be due within forty-five (45) days of the date of the invoice. The Product Initial Term and any Product Renewal Term shall collectively be referred to herein as the “Product Term”. On completion of the Product Term, SAGE’s obligations set forth in the Agreement and this Exhibit shall automatically cease.

Notwithstanding the foregoing, the Parties may terminate this Exhibit as follows:

1. Either party may terminate upon thirty (30) days’ written notice prior to the end of any Product Term (i.e., the Product Initial Term or any Product Renewal Term); and
2. SAGE may terminate if payment for a Product Renewal Term is not received within forty-five (45) days of the date of invoice.

Upon expiration or termination of this Exhibit, Customer’s right to access and use the Product(s) on the SAGE platform as set forth herein shall immediately cease. Notwithstanding the foregoing, Customer will have the continued right to use the Product(s) (e.g., on its own platform or on the platform of a third party) on a perpetual basis subject to the terms of the Agreement.

Moreover, upon the effective date of expiration or termination of this Exhibit (excluding termination due to Customer’s breach), at no penalty or charge, the Customer may request in writing and SAGE shall deliver a digital copy of the Product(s)’ content in a form and format designated by SAGE and the perpetual use of the Product(s) shall remain governed by the terms of the Agreement.

B. GRANT OF LICENSE

<<Single Institution>>

SAGE hereby grants to Customer on its own behalf, a License pursuant to the terms of the Agreement and this Exhibit.

C. PERPETUAL ACCESS AND USE

For as long as SAGE provides a service of hosting the Product(s) on its platform, and subject to payment by Customer of all Fees due under the Agreement and this Exhibit, Customer, the Institutions (if applicable) and Authorized Users shall have unlimited perpetual access to the Product(s), 24 hours/day, seven days/week subject to the terms of the Agreement and this Exhibit (the “Hosting Service”). Notwithstanding the foregoing, SAGE reserves the right to interrupt the Hosting Service without prior notice to resolve any technical issues that may arise at any time as determined in SAGE’s sole and absolute discretion. Customer’s use of the Product(s) shall be subject to the terms of the Agreement and this Exhibit.

SAGE shall have the right at any time as determined in its sole discretion to cease providing the Hosting Service. In the event SAGE elects to cease providing the Hosting Service, Customer shall have the right to self-host the Product(s) or engage a third party at no cost to SAGE to host the Product(s) in which case upon written request by Customer, SAGE shall supply Customer with a digital copy of the Product(s)’ content in a form and format designated by SAGE. Customer acknowledges and agrees that in the event of such self-hosting or third-party hosting, Customer’s perpetual use of the Product(s) shall continue to be governed by the terms of the Agreement.

D. INSTITUTIONS

The Customer’s participating Institutions (including their respective IP addresses) are listed in **Schedule 1**, attached hereto and incorporated herein by this reference. Schedule 1 may be updated during the Product Term upon mutual written agreement of the parties.

E. PRODUCTS

The Products governed by this Exhibit are listed in **Schedule 3** which may be modified from time to time by SAGE in its sole discretion.

F. HOSTING FEE AND PRICING

Customer shall pay SAGE the following annual hosting fee in accordance with the terms of the Agreement.

Hosting Fee for Product Initial Term: £ _____

Hosting Fee for Product Renewal Term of [insert time period/dates]:

£ _____

Additional pricing terms, if any, are as set forth in **Schedule 2**, attached hereto and incorporated herein by this reference.

The Parties have executed this Exhibit by their respective, duly authorized representatives on the dates written below.

SAGE Publications, Ltd.:

BY: _____

Mark Walford
Executive Director

DATE: _____

Customer:

BY: _____

DATE: _____