

## SAGE PUBLICATIONS, LTD.

AND

[Bayerische Staatsbibliothek]

## Backfile Purchase Agreement

[Vertragsauszug]

This Backfile Purchase Agreement (the "Purchase Agreement") is effective as of 1 January 2008 (the "Effective Date") and is entered into by and between SAGE Publications, Ltd., located at 1 Oliver's Yard, 55 City Road, London EC1Y 1SP ("SAGE"), and Bayerische Staatsbibliothek, an academic institution with its principal offices located at Ludwigstrasse 16, 80539 München ("Purchaser") (collectively referred to herein as the "Parties").

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:

**"Authorised Users"** shall mean individuals who are authorised by the Purchaser to access the Purchaser's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Purchaser as a current student (undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis), library user or contractor of the Purchaser. Persons who are not a current student, member of staff, library user or a contractor of the Purchaser, but who are permitted to access the Purchaser's information services from computer terminals within the physical premises of the Purchaser ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Purchaser. Walk-In Users may not be given means to access the Content when they are not within the physical premises of the Purchaser.

**"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.

**"Reasonable Amount"** shall mean an amount of the Content consistent with enabling the Purchaser or an Authorised User to make efficient non-commercial use of the Content.

**"Commercial Use"** shall mean use for the purpose of monetary reward (whether by or for the Purchaser or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of any Content. For the avoidance of doubt, neither recovery of direct cost by the Purchaser from Authorised Users, nor use by the Purchaser or Authorised Users of the Content in the course of research funded by a commercial organization is deemed to constitute Commercial Use.

**"Educational Purposes"** shall mean for the purpose of education, teaching, distance learning, private study and/or research.

[...]

**"Secure Authentication"** shall mean access to the Content by Internet Protocol ("IP") ranges or by another means of authentication agreed between the SAGE and Purchaser from time to time.

**"Usage Statistics"** Sage agrees to supply Counter compliant usage statistics on an institutional level on an agreed basis.

**"Shibboleth Standard"** Although Shibboleth is not currently supported at this time, SAGE and HighWire are closely monitoring developments and will adopt Open Athens, that contains support for Shibboleth, in 2008. Sage Journals Online is a HighWire based platform. HighWire supports Athens and Open Athens, who have indicated they will be an early adopter of Shibboleth.

**"Metadata"** Metadata shall be licensed and delivered at no extra costs for non-commercial use by

-- local catalogues

-- union catalogues

-- any other library and information system (including but not limited to search machines)

## II. GRANT OF PURCHASE AGREEMENT

Subject to the terms and conditions of this Purchase Agreement, SAGE hereby grants to Purchaser the right to access and use the Content in a manner consistent with this Purchase Agreement.

This Purchase Agreement extends to the Purchaser's Authorised Users. The Content may be networked throughout the geographic areas of the Purchaser and may also be made available remotely through secure access procedures the Purchaser establishes.

## III. PROPRIETARY RIGHTS IN THE CONTENT

On its own behalf and on behalf of the Authorised Users, Purchaser acknowledges and agrees that (i) the Content is proprietary to SAGE, (ii) the Content shall remain the exclusive property of SAGE, and (iii) the Purchaser and the Authorised Users have no rights in or to the Content other than as set forth herein. The Content is copyrighted by SAGE or its licensors and title, ownership rights and intellectual property rights in and to the Content will be retained by SAGE and its licensors. SAGE and its licensors reserve all rights not expressly granted to Purchaser in this Purchase Agreement, including without limitation copyright and other intellectual property rights. Purchaser shall not duplicate, distribute, sell, lease, rent, commercially exploit, create derivative works from, or otherwise make available the Content or information contained therein, in any form or medium, to any third party.

[...]

## V. AUTHORISED USE OF CONTENT

Purchaser and Authorised Users may use the Content for purposes of research, education or other non-commercial use as follows:

**Display.** Purchaser and Authorised Users shall have the right to electronically display the Content.

**Digitally Copy.** Purchaser and Authorised Users may download and digitally copy a Reasonable Amount of the Content.

**Print Copy.** Purchaser and Authorised Users may print a Reasonable Amount of the Content.

**Recover Copying Costs.** Purchaser may charge a reasonable fee to cover costs of copying or printing portions of Content for Authorised Users.

**Course Packs.** Purchaser and Authorised Users may use a Reasonable Amount of the Content in the preparation of Course Packs or other educational materials.

Electronic Reserve. Purchaser and Authorised Users may use a Reasonable Amount of the Content for use in connection with specific courses of instruction offered by Purchaser.

Analysis. Authorised Users shall be permitted to extract or use information contained in the Content for educational, scientific, or research purposes, including but not limited to extraction and manipulation of information for the purposes of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

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For the avoidance of doubt, the Content may not be used by the Purchaser or Authorized Users in any form of activity competitive with SAGE.

## VI. RESTRICTIONS

Except as provided herein, the Purchaser and Authorised Users shall not use the Content as follows:

Commercial Use. Sell or resell of the Content unless the Purchaser or an Authorised User has been granted prior written consent by SAGE. Use of all or any part of the Content for any Commercial Use or for any purpose other than Educational Purposes;

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

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

Distribution. Display or distribute any part of the Content on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;

This Clause shall survive termination of this Purchase Agreement for any reason.

[...]

## VIII. NO WARRANTIES

**SAGE IS PROVIDING THE CONTENT IN AN "AS IS" CONDITION. SAGE DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING THE ACCURACY, COMPLETENESS, CORRECTNESS, RELIABILITY, CURRENCY OR OTHERWISE, OF ANY PORTION OF THE CONTENT OR THE USE OR RESULTS TO BE OBTAINED FROM USING THE CONTENT OR THE INFORMATION CONTAINED THEREIN, OR ANY RELATED DOCUMENTATION OR WRITTEN MATERIALS. SAGE DOES NOT MAKE ANY**

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#### **IX. LIMITATION OF LIABILITY**

**SAGE SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, INCLUDING LOST PROFITS, LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, CAUSED TO ANY PERSON AS A RESULT OF THE USE OF THE CONTENT OR THE INFORMATION CONTAINED THEREIN REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES WAS FORSEEABLE. [...]**

Nothing in this Agreement shall make the Licensee or any participating institution liable for breach of the terms of this Agreement by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

#### **X. ACCESS AND USE**

Licensee, the Institutions and Authorised Users shall have unlimited access to the Licensed Materials, 24 hours/day, seven days/week. Notwithstanding the foregoing, SAGE reserves the right to shut down SJO without prior notice to resolve any technical issues that may arise at any time as determined in SAGE's sole and absolute discretion. For the avoidance of doubt, SAGE will endeavour to inform its customers in advance where possible of any shutting down of SJO and will endeavour to keep down-time to a minimum.

#### **XI. SYSTEM REQUIREMENTS**

Licensee acknowledges that there are certain system requirements that are necessary in order to use SJO, and Licensee and the Institutions are financially and technically responsible for ensuring that these requirements are met. These system requirements are: (a) full access to the Internet (TCPIP) and (b) a World Wide Web browser, either Netscape (version 6.0 or higher) or Microsoft Internet Explorer (Version 5.0 or higher).

This does not exclude other browser technology, including, but not restricted to Firefox, but SAGE is not liable for non-compatibility outside the given range of browsers. SAGE will in general support standard, up-to-date technology.

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.

#### **XII. FORCE MAJEURE**

SAGE shall not be responsible for any failure to perform, or delay in performance, in whole or in part, due to unforeseen circumstances or circumstances beyond its control

#### **XIII. TERM AND TERMINATION**

SAGE may terminate this Purchase Agreement if: (a) Purchaser violates any of the terms and conditions set forth herein, including the Confidentiality provision in Section (VI), [...] Termination due to subparagraph (a) with regard to one Institution shall not affect the rights of the other Institutions to continue to have access to the Licensed Materials pursuant hereto. Where possible Sage at its sole discretion retains the right to give any such Institution notice of breach and the opportunity to remedy its violation of the terms of this agreement.

[...]