

**SAGE PUBLICATIONS, INC.**

**AND**

**University of California San Diego**

**SAGE eReference Purchase Agreement**

This eReference Purchase Agreement (the "Purchase Agreement") is effective as of December 18, 2008 (the "Effective Date") and is entered into by and between SAGE Publications, Inc., a Delaware Corporation, located at [REDACTED] ("SAGE"), and **University of California San Diego**, an academic institution with its principal offices located at [REDACTED] ("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:

**"Content"** shall mean the electronic versions of reference encyclopedias and handbooks published by SAGE as set forth on Exhibit 1 attached hereto and incorporated herein by reference.

**"Purchase Agreement"** shall mean the non-exclusive, non-transferable right to continuing functional online access and use of the Content via SAGE eReference platform (or its successor hosting service as SAGE may designate in its sole discretion).

**"Authorized Users"** shall mean individuals who are authorized 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) or contractor of the Purchaser. Persons who are not a current student, member of staff 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 Authorized 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.

**"Commercial Use"** shall mean use for the purpose of monetary reward (whether by or for the Purchaser or an Authorized 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 Authorized Users, nor use by the Purchaser or Authorized 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.

**"Fees"** shall mean the fees as set out in Exhibits 2 and 3.

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

## **II. GRANT OF PURCHASE AGREEMENT**

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

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

## **III. PROPRIETARY RIGHTS IN THE CONTENT**

On its own behalf and on behalf of the Authorized 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 Authorized 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 all rights are reserved. Purchaser shall not duplicate, distribute, sell, 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 except as authorized in Section V of this license

## **IV. FEES**

SAGE shall charge Purchaser a one-time Purchase Agreement fee for perpetual access for the Content as set forth in Exhibit 2.

SAGE shall charge Purchaser an annual maintenance fee as set forth in Exhibit 3. All fees are due and payable by Purchaser in accordance with the terms and conditions set for in Exhibits 2 and 3.

## **V. AUTHORIZED USE OF CONTENT**

Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with

the Fair Use Provisions of United States and international copyright laws. In addition, Purchaser and Authorized Users may use the Content for purposes of research, education or other non-commercial use as follows:

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

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

Print Copy. Purchaser and Authorized 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 Authorized Users.

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

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

Analysis. Authorized 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.

Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Content for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Content in the Authorized User's own scientific, scholarly and educational works.

Inter-Library Loan ("ILL"). Purchaser shall be permitted to use Reasonable Amounts of the Content to fulfill occasional requests from other institutions, a practice commonly called Inter-Library Loan. Customer agrees to 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 Content may be used as a source for ILL. Secure electronic transmission as used by Ariel or Prospero to fulfill ILL requests is permitted. Participating Libraries agree that copyright notices will be sent on all ILL transmissions. Fulfillment of Loansome DocR service requests is permitted. Non-secure electronic transmission of files is not permitted.

## VI. RESTRICTIONS

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

Commercial Use. Sell or resell of the Content unless the Purchaser or an Authorized 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 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 Agreement for any reason.

## VII. CONFIDENTIALITY

This Clause is intentionally deleted.

## VIII. WARRANTIES

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

**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 REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTENT AND, IN PARTICULAR, SAGE DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF**

**MERCHANTABILITY, ACCURACY, NONINTERFERENCE, NONINFRINGEMENT, INFORMATIONAL CONTENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE CONTENT.**

**IX. LIMITATIONS TO WARRANTIES**

**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. WITHOUT LIMITING THE FOREGOING, THE AGGREGATE LIABILITY OF SAGE, IF ANY, SHALL BE LIMITED TO THE PURCHASE AGREEMENT FEE PAID BY THE PURCHASER FOR THE CONTENT.**

**X. INDEMNIFICATION**

The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

**XI. ACCESS AND USE**

Purchaser and Authorized Users shall have continuing unlimited access to the Content, 24 hours/day, seven days/week, subject to shut downs of SAGE eReference Platform (or successor hosting service) as required to resolve any technical issues that may arise at any time.

**XII. SYSTEM REQUIREMENTS**

Purchaser acknowledges that there are certain system requirements that are necessary in order to use SAGE E-Reference, and Purchaser is 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 Firefox or Microsoft Internet Explorer (Version 5.5 or higher) (c) Javascript 1.5 . Other suitable browsers should include support for HTML 4.0, XHTML 1.0, and CSS 1 (Cascading Style-sheets).

### **XIII. LICENSOR PERFORMANCE OBLIGATIONS**

**Quality of Service.** Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

**Usage Statistics.** Licensor must provide both composite use data for the system-wide CDL and itemized data for individual campuses, on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of journals. Providers should follow the International Coalition of Library Consortia (ICOLC) "Guidelines for Statistical Measures of Usage of Web-Based Information Resources" or provide information in compliance with COUNTER or other recognized international standard.

### **XIV. 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.

### **XV. TERM AND TERMINATION**

Subject to the following paragraph, this Agreement shall commence on the effective date and shall remain in effect until Purchaser wishes to terminate the Agreement (the "Term") and, in such event, Purchaser shall provide to SAGE sixty (60) days written notice of such intent prior to the actual date of termination. Upon the effective date of the termination, SAGE shall deliver to

Purchaser a copy of the Content in XML format, or successor digital file format if the technology used for storage or access changes, and the use of the Content shall remain governed by the terms of this Agreement.

SAGE may terminate this Agreement if: (a) Purchaser violates any of the terms and conditions set forth herein, including the Confidentiality provision in Section (VI), or (b) Content ceases to be delivered via SAGE eReference Platform or any SAGE designated successor hosting service. In the event of termination due to subparagraph (b), SAGE will provide Purchaser with a copy of the Content in XML format, or successor digital file format if the technology used for storage or access changes, and the use of the content shall remain governed by the terms of this Agreement. The terms and conditions of paragraphs 2, 5, 6 and 10 shall survive termination of this Agreement.

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

#### **XVI. PERPETUAL LICENSE**

Notwithstanding anything else in this Agreement, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

#### **XVII. GOVERNING LAW**

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

#### **XVIII. DISPUTE RESOLUTION**

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties cannot by exercise of their best efforts resolve the

dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

**Arbitration.** Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

#### **XIX. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

#### **XX. 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.

#### **XXI. 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.

#### XXII. ACCESS AND USE

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.

#### XXIII. 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. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

##### **If to SAGE:**

SAGE Publications, Inc.  
[REDACTED]

Attention: Alison Mudditt  
Executive Vice President, HEG

##### **If to Purchaser:**

University of California, San Diego  
Electronic Resources, Acq Dept  
Geisel Library  
[REDACTED]

#### XXIV. Notice of the Use of Digital Rights Management Technology

In the event that Licensor utilizes any type of digital rights management technology to control the access or the usage of Licensed Product, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized, the name, contact information and any technical specifications for the digital rights management technology utilized.

#### XXV. Notice of the Use of Digital Watermarking Technology

If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Product, Licensor agrees that watermarks will not be visible to the human eye and will not

degrade image quality. These watermarks shall not contain user-related information such as account number or IP address. If digital watermarking technology is used, Licensor agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**SAGE Publications, Inc.:** 

BY: \_\_\_\_\_  
Rolf Janke, Vice President and Publisher

DATE: 12/18/08

**PURCHASER:** 

BY: \_\_\_\_\_  
Tony Harvell Head. Acquisitions Dept., UCSD Libraries

DATE: 12/18/08

**Exhibit 1**  
**CONTENT**  
**eReference List**

978-1-4129-5626-0	Kolb	Encyclopedia of Business Ethics and Society
978-1-4129-5624-6	Clegg	International Encyclopedia of Organization Studies

**Exhibit 2**

**Purchase Fee and IP Range**

**Purchase Fee (one-time fee):**

<b>eReference Titles</b>	<b>Amount</b>
Encyclopedia of Business Ethics and Society	\$ [REDACTED]
International Encyclopedia of Organization Studies	\$ [REDACTED]
<b>Total:</b>	\$ [REDACTED]

**Exhibit 3**

**Annual Hosting Fee:**

- \$ [REDACTED] per title per year up to a maximum of \$ [REDACTED]
- \$ [REDACTED] per year for the purchase of the total catalogue
- [REDACTED]
- **Hosting fees shall be invoiced in December of each year.**

**AMENDMENT TO LICENSE AGREEMENT  
BETWEEN  
University of California San Diego  
AND  
SAGE PUBLICATIONS, INC.**

**THIS AMENDMENT** is effective as of June 5, 2009 (the "effective date"), by and between the University of California San Diego, an academic institution with its principal offices located at [REDACTED] ("Purchaser") (collectively referred to herein as the "Parties") and Sage Publications, Inc., a Delaware corporation with principal offices at [REDACTED] ("SAGE").

Licensee and SAGE entered into a certain Agreement dated June 2008 (the "Agreement"), and now desire to amend the Agreement in accordance with the terms and conditions set forth in this Amendment. For good and valuable consideration, the parties agree as follows:

1. Any capitalized terms used in this Amendment shall have the same meaning given them in the Agreement unless otherwise defined or amended herein. Except as expressly modified by this Amendment, all terms and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control. This Amendment shall be effective as of the date first above written. Upon execution of this Amendment by the parties, any subsequent reference to the Agreement between the parties shall mean the Agreement as amended by this Amendment.
2. The following content titles shall be added to the University of California San Diego 2008 Reference Online Agreement dated September 2008. *see Exhibit I*
3. The following fees shall apply for the purchase of SAGE Reference Online titles:

University of California San Diego	Amount
Encyclopedia of Survey Research Methods, 2008	\$ [REDACTED]
Encyclopedia of Qualitative Research Methods, 2008	\$ [REDACTED]
Encyclopedia of Journalism, 2009	\$ [REDACTED]
<b>Total</b>	<b>\$ [REDACTED]</b>

4. The following hosting fee shall be charged on an annual basis and shall be invoiced in December of each year:
  - o \$ [REDACTED] per title per year up to a maximum of \$ [REDACTED]
  - o \$ [REDACTED] per year for the total catalogue
  - o Note that the Reference Online hosting fees shall be waived for 5 years; invoicing shall begin in year 6 after the date of purchase.