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NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

SAGE Publications Ltd. Provider Licence / Agreement

For the

**NICE Electronic and Print Content
Framework Agreement**

**LOT 2**

**FOR THE PROVISION OF**

*Print and Electronic Journals*

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1. Introduction

This Provider Licence / Agreement must be used when placing an Order for the supply of Print and Electronic Journals under Lot 2 of the NICE Electronic and Print Content Framework Agreement.

The Provider Licence / Agreement is specific to SAGE Publications Ltd.’s supply of Print and Electronic Journals under Lot 2. It must be used in conjunction with the “Order Terms & Conditions” and any Annexes to form the whole Agreement.

All terms in this Provider Licence / Agreement must not be altered and are non-negotiable. Where additional terms are agreed these should be set out in Annex SEVEN: “Additional Terms” of the “Order Terms & Conditions”. These additional terms must not conflict with, or materially change, the terms in:

* + 1. the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”; AND
		2. the “Order Terms & Conditions” and any Annexes, AND
		3. this Provider Licence / Agreement.
1. Defined Terms

In this Agreement the words and expressions below will be interpreted to have the meanings adjacent to them. The following definitions should be read in conjunction with those set out in the “Order Terms & Conditions”:

“Existing Holdings” shall mean all institutional subscriptions to journals included in the Licensed Materials and held by the Purchasing Authority in the year prior to the signature of this Agreement, or the year of signature of any predecessor agreement between the Parties which licensed substantially the same content for the same purpose as this Agreement.

 “Licensed Materials” shall mean the materials that are subject to this Agreement and shall consist solely of the electronic information published by Provider as set forth in ANNEX ONE of the “Order Terms & Conditions and incorporated herein by reference. “Licensed Materials” does not include any additional journals, publications, or other content not identified in ANNEX ONE.

 “Licence” shall mean the non-exclusive, non-transferable licence to access and use the Licenced Materials and all updates related thereto via SAGE Journals(“SJ”), Provider’s online delivery platform.

 “Reasonable Amount” shall mean an amount of the Licensed Materials consistent with enabling the Purchasing Authority or an Authorised User to make efficient non-commercial use of the Licensed Materials.

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

 “Incident” shall mean a Service or quality Incident that results in the loss of availability of the Service and/or the Licensed Materials as set out in clause 5.

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

 "Secure Authentication” shall mean access to the Licensed Materials by Internet Protocol (“IP”) ranges and/or by another means of authentication agreed between the Provider and the Purchasing Authority such as Access and Identity Management System (“AIMS”).

“Excused Downtime” shall mean any unavailability caused by planned downtime (for which the Provider shall make good faith efforts to give at least 5 business days’ notice via email and or other means including the client facing area of the SJ website), circumstances beyond the Provider’s reasonable control including without limitation a Force Majeure event, strike or other labour problems, computer, telecommunications ISP or other hosting facility failures or delays involving hardware software or power systems not within Provider’s possession or reasonable control and denial of service attacks.

 “Application Services” for the purposes of our Service Availability Calculation shall mean the SAGE Journals platform.

“Third Party Systems” online services utilised by Authorised Users to discover and access the Licensed Materials.

1. Contact Details

Name: Zahra Hills

 Job Title: Sales Manager, Special Libraries

Address: SAGE Publications Ltd., 1 Oliver’s Yard, 55 City Road, London EC1Y 1SP

 Telephone: 0207 324 5146

 Facsimile

 Email: Zahra.hills@sagepub.co.uk

1. Service Usage

Usage terms apply to the e-access element for both print and electronic subscriptions. Authorised Users may, in accordance with the terms of this Licence:

* + 1. search, view, retrieve and display the Licensed Materials;
		2. electronically save individual (where relevant for content type) articles, pages or chapters, short passages, figures and/or tables from or items of the Licensed Materials for personal use for as long as required;
		3. electronically export to reference management software individual Bibliographic Data and / or Abstracts of the Licensed Materials for personal use only;
		4. print off an individual copy, or parts of (where relevant for content type) single articles, topics, pages or chapters from the Licensed Materials;
		5. distribute parts of the Licensed Materials in print or electronic form to other Authorised Users. For the avoidance of doubt, this shall include the distribution of a copy for teaching purposes to each individual Authorised User at the Authorised User’s institution;
		6. copy, paste and publish the Bibliographic Data and Abstracts of the Licensed Material(s) for non-authenticated access for Authorised Users. Each item copied and published shall carry appropriate acknowledgement of the source, listing title and copyright owner;
		7. Subject to any restrictions provided by the publisher(s) and specified in the Licensed Materials, the Purchasing Authority or Authorised Users may, subject to any prohibited uses set out in this Agreement fulfil occasional requests from non-commercial libraries to supply to an Authorised User of another library within the same country as the Purchasing Authority a copy of an individual document being part of the Licensed Materials for inter library loans (“ILL”). Such supply by the requesting non-commercial library must be for the purposes of research or private study and not for Commercial Use. For the avoidance of doubt, requests for ILL is deemed to be where the loan is not carried out in a manner or magnitude that would replace the recipients’ own subscription to the Licensed Materials;
		8. Purchasing Authority agrees to fulfil requests under clause 4.1.7 in compliance with the Copyright, Designs and Patents Act 1988 Ch. 48, s. 41 (Eng.), as amended by European Directive 2003, and any other applicable law relating to the physical and digital reproduction and distribution by Libraries of copyrighted works;
		9. download and digitally copy a Reasonable Amount of the Licensed Materials;
		10. charge a reasonable fee to cover costs of copying or printing portions of Licensed Materials for Authorised Users;
		11. use a Reasonable Amount of the Licensed Materials in the preparation of Course Packs or other educational materials;
		12. use a Reasonable Amount of the Licensed Materials for use in connection with specific courses of instruction offered by Purchasing Authority;
		13. extract or use information contained in the Licensed Materials 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;
		14. transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes. In addition, Authorised Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorised User’s own scientific, scholarly and educational works;
		15. For the avoidance of doubt, the Licensed Materials may not be used by the Purchaser or Authorized Users in any form of activity competitive with the Provider.
		16. The Purchasing Authority and its Authorised users may incorporate link resolving software at their authorised organisations to access the Licensed Materials via Third Party Systems, if hosted on a Secure Network and using an appropriate method of authentication
	1. Except as provided herein, the Purchasing Authority and Authorised Users shall not use the Licensed Materials as follows:
		1. Commercial Use. Sell or resell the Licensed Materials unless the Purchasing Authority or an Authorised User has been granted prior written consent by Provider. Use all or any part of the Licensed Materials for any Commercial Use or for any purpose other than Educational Purposes;
		2. Alter Identification. Remove, obscure or modify copyright notices, text acknowledging, attributions or other means of identification or disclaimers as they appear;
		3. Alter Licensed Materials. Alter, adapt or modify the Licensed Materials, 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.
		4. Distribution. Display or distribute any part of the Licensed Materials 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;
		5. Notwithstanding anything herein to the contrary, in no event shall Customer disclose to anyone any of the access codes, passwords, or any other access information provided to the Customer by Provider to enable Customer to access and use the Products, and Customer hereby agrees to treat all such information as strictly confidential at all times.
		6. This Clause 4.2 shall survive termination of this Agreement for any reason.

Pursuant to clause 4.2, this excludes the use by the Purchasing Authority and Authorised Users at their authorised organisations, who may incorporate link resolving software to access the Licensed Materials via Third Party Systems, if hosted on a Secure Network and using an appropriate method of authentication.

The Purchasing Authority shall:

* + 1. use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Service and / or Licensed Materials from unauthorised use or other breach of this Licence;
		2. use reasonable endeavours to monitor compliance with this Licence and immediately upon becoming aware of any unauthorised use or other breach, inform the Provider. The Provider shall grant the Purchasing Authority 30 days to rectify such unauthorised use or other breach. The Purchasing Authority shall take all reasonable and appropriate steps to locate and attempt to stop individuals who are abusing the Service and thereafter take action, both to ensure that such activity ceases and to prevent any recurrence. If the breach is not rectified, the Provider shall have rights to terminate the Agreement.
		3. Nothing in this Licence shall make the Purchasing Authority liable for breach of the terms of the Licence by any Authorised User provided that the Purchasing Authority did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
1. Service Availability

The Provider will:

* + 1. provide unlimited access to the Licenced Materials and SJ service 24 hours per day, 7 days per week 365 days per year. SJ currently has a service uptime of 99.7% excluding problems beyond our control and with the exception of scheduled or routine maintenance;
		2. measure and average the availability of our service over a calendar month (the “Measurement Period”). Availability is calculated during the Measurement Period as per the calculation below:



* + 1. use all reasonable efforts to ensure that regular maintenance conducted does not affect access or the end user experience. When additional maintenance is scheduled 5 business days’ notice is provided;
		2. provide notification of an Incident. We have a dedicated point of contact for response to Incidents which is: onlinesupport@sagepub.co.uk;
		3. use all reasonable efforts to fix and restore Service within 24 hours of an urgent or high severity Incident occurring;
		4. provide an Incident report upon request within a reasonable timeframe after Incident resolution if agreed with Purchasing Authority at time of licencing;
		5. upload new issues or editions to the Server(s) no later than date of print publication;
		6. provide access to new issues or editions no later than the day of upload to Server.
1. Service Access

The Provider will:

* + 1. enable access for Authorised Users to the Service and Licensed Materials via the national Access and Identity Management System (AIMS). Currently the national AIMS system is EduServ OpenAthens with SAGE Publications Ltd. is fully compliant;
		2. support Security Assertion Mark-Up Language (SAML);
		3. configure Athens entity IDs and Authorised Users records for subscribing institutions when informed of any required changes by the Purchasing Authority;
		4. work closely with Eduserv to support delivery and access via OpenAthens and to implement OpenAthens changes. Provider has a technical contact registered in the OpenAthens Federation Manager and OpenAthens SP interface to support Eduserv on all service and support needs;
		5. support access via IP authentication for users working on an NHS network and outside of it, or by other means of secure authentication as agreed with the Purchasing Authority at time of licencing;
		6. demonstrate partial compliance with KBART standard, working towards full compliancy. We currently supply all information required by the KBART standard except for prior title information;
		7. make the Licensed Materials compliant with OpenURL Link Resolver standards;
		8. provide title information to Link Resolver and A-Z list vendors to include as a minimum: Volume, issue, start page, journal linking key;
		9. provide data changes to Link Resolver KnowledgeBase's on a weekly basis;
		10. provide WAYFless URLs for all journals;
		11. support Link Resolver and Knowledge Base delivery through a main point of contact on all service and support needs and provide a minimum of 8 weeks’ notice of changes to our platform linking schemes;
		12. provide perpetual access to purchased content online SJ through secure authentication or deliver the materials in an alternative electronic medium as agreed with the Purchasing Authority.
1. Technical

The Provider will ensure full compliance with the following technical standards:

* + 1. Service and content is available and accessible on either Port 80 (for world wide web) or Port 443 (https);
		2. Service works with full functionality on IE 9 and above and is fully supported;
		3. Service works with partial functionality on IE 6, 7, 8.
	1. The Provider will use all reasonable efforts to:
		1. meet the general industry technical standards including W3C standards (https://www.w3.org/standards/webdesign/) to ensure that the Licensed Material is accessible to all Authorised Users;
		2. deliver Licenced Materials through a fully responsive site compatible with use on mobile and portable devices;
		3. ensure Licenced Materials is discoverable through a variety of search options including the native interface, library management systems, and resource discovery systems.
	2. The Purchasing Authority acknowledges that there are certain system requirements that are necessary in order to use SJ, and Purchasing Authority 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 Netscape (version 6.0 or higher) or Microsoft Internet Explorer (Version 5.0 or higher). 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. Provider recommends using the most current browsers available.
1. User Support

The Provider will:

* + 1. provide a point of contact for helpdesk and support services. Details are: onlinesupport@sagepub.co.uk;
		2. use all reasonable efforts to respond to complaints within 1 working day of receipt and take action within 2 working days of receipt;
		3. use all reasonable efforts to respond to general queries within 2 working days or receipt;
		4. use all reasonable efforts to resolve general queries within 18 working days;
		5. produce holdings reports for Purchasing Authority on request to highlight any duplication of Licenced Materials purchases within the same organisation;
		6. make training and education available in the form of online FAQs, user and account administrator guides, video tutorials, online feedback forms and a selection of customizable tools for librarians and users covering all aspects of using the platform.
1. Service Notifications

The Provider will:

* + 1. use all reasonable efforts to provide notification of any anticipated material or substantial native interface changes (e.g. major platform redesign) a minimum of 30 days prior to changes going live;
		2. use all reasonable efforts to provide notification of any significant change to users’ navigation of the native interface a minimum of 30 days prior to changes going live;
		3. use all reasonable efforts to provide notification of any significant change which may result in an adverse effect on Authorised Users access to or use of the Licensed Materials a minimum of 30 days prior to changes going live;
		4. offer a number of current awareness services by which notifications of new content additions such as articles and journal issues published within the Licenced Materials can be set up.
1. Service Reporting

The Provider will:

* + 1. attend contract and service review meetings at the request of the Purchasing Authority. The Purchasing Authority should state whether this is a requirement at time of licencing;
		2. provide regular contract management / service reports at the request of the Purchasing Authority. The Purchasing Authority should state whether this is a requirement at time of licencing;
		3. facilitate the collection of monthly usage statistics. Usage statistics are COUNTER 4 compliant and will be made available by or before the 21st of each month, excluding delays caused by problems outside the Provider’s control;
		4. provide on request details of the number of Gold Open Access articles published in relation to the total number of articles published in the Licensed Materials.
1. Measurement & Related Payment

The Provider reserves the right at any time to withdraw the whole, a part or parts of the Licensed Materials for which it no longer retains the right to publish or provide, or which it has reasonable grounds to believe infringes Copyright or is defamatory, obscene, unlawful or otherwise objectionable. In the event of the withdrawal of the whole of the Licensed Materials under this clause 11.1, the Provider will refund that part of Fee paid for the remaining un-expired portion of the Term (proportional to the amount of the Licensed Materials / Goods unavailable).

The Provider shall provide a service credit in the event that the full specified functionality of the Service is not available, and/or in the event of any unscheduled downtime or total loss of Service occurring. The service credit will be issued against the pro-rated amount for the period in which the service falls below 99.7%. Credits can either be issued as a refund at the end of the subscription term or as a reduction against the renewal fee for the following year, as agreed with the Purchasing Authority at time of licencing.

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| **Service Availability** | **Credit Percentage** |
| 99.7 to 100%  | 0% |
| 99.0% to 99.69% | 3% |
| 98.0% to 98.99% | 5% |
| 97% to 97.99% | 7% |
| 97.8% or below | 10% |