Master License and Service Agreement

This Master License and Service Agreement ("Agreement" or "MLSA") is made and entered into by and between Cengage Learning, Inc. (Gale, a Cengage Company) ("Vendor"), having its principal offices at 27500 Drake Road, Farmington Hills, MI 48331, and the Board of Cooperative Educational Services for the First Supervisory District, Erie County ("Customer"), having its principal offices at 355 Harlem Road, West Seneca, NY 14224. Vendor and Customer are sometimes referred to herein, individually, as a "Party," and collectively, as the "Parties."

Boards of Cooperative Educational Services ("BOCES"), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements ("CoSers") approved by the New York State Education Department.

Cooperative educational services provided by a BOCES (by the BOCES itself, or if applicable, its respective RIC) include shared computer services, software, and technical training and support that are provided to school districts that enter into applicable CoSers.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of instructional software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in a statewide School Online Library Informational Database Contract Consortium ("SOLID"). Through Customer's procurement process, [Cengage Learning, Inc. (Gale, a Cengage Company)] has been identified and accepted by Customer as a provider of [Gale eResources], as more fully described herein (the "Product(s)").

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable approved CoSers, Customer wishes to make the Product(s) available through the SOLID. Accordingly, the Parties have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the SOLID.

1. TERM and TERMINATION

1.1 Term of Agreement. The Effective Date of this Agreement shall be [7/1/20]. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2023 ("the Initial Term"), unless earlier terminated as otherwise set forth herein. The Initial Term may be extended for successive renewal terms of three (3) years (each a "Renewal Term") only by mutual execution by the Parties of either a written Amendment to this Agreement, or, a new Agreement.
1.2 Termination of Agreement. Either Party may terminate this Agreement for any reason prior to the expiration of its Initial Term (or the expiration of any Renewal Term) upon ninety (90) days' written notice to the other.

1.3 Termination by Customer. Customer shall have the right to terminate this Agreement at any time prior to the expiration of its Initial Term (or the expiration of any Renewal Term) in the event of Vendor's failure to cure any default or breach of this Agreement within (30) days written notice from Customer.

2. SCOPE OF SERVICES

Acting as an independent contractor, Vendor will provide the Product(s) as more fully described and at the prices stated in Exhibit A, attached to this Agreement and incorporated by reference. Any services related to the Product(s) to be provided by Vendor, including but not limited to consulting, educational, hosting, system administration, training or maintenance and support services ("Services"), shall be as more fully described within this Agreement and at the prices stated in Exhibit A, attached to this Agreement and incorporated by reference.

3. GRANT OF LICENSE

3.1 The Product(s) are provided under license. Vendor grants to Customer, as a participating BOCES in the SOLID on behalf of Erie 1 BOCES, and to each other BOCES that is a participant in the SOLID, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for the Product(s) with a BOCES through the SOLID by purchasing CoSer 6316 School Library Systems Service and provides professional development through the same CoSer, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. For purposes of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein may also be referred to individually as a "Licensee" and collectively as "Licensees." Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor.

3.2 Vendor may terminate the license granted to a Licensee under this Agreement if the Licensee fails to comply with any terms and conditions of this Agreement that are specifically applicable to that entity as a Licensee. Within five (5) days of receipt of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee's sites or under the direct control of Licensee.

3.3 Vendor warrants that it has full power and authority to grant the rights herein described. Vendor's obligation and liability under this Section 3 shall be to obtain any authorization necessary to make effective the grant of license to Licensees to use the Product(s), in such a manner or method as determined by Vendor, at Vendor's own cost and expense.
4. **USE of PRODUCTS, PROTECTION OF APPLICATION and CONFIDENTIAL INFORMATION**

4.1 Product(s) shall be utilized only at such licensed sites as shall be designated by Licensees (or utilized in a cloud environment as designated by Licensees) and shall be used solely for the benefit of Licensees. Licensees shall not permit or provide for transfer or reproduction of the Product(s), or any portion thereof, to be placed on a computer not at the Licensee’s designated sites or under the direct control of the Licensee, by physical or electronic means, unless specifically authorized by Vendor and/or as otherwise provided in this Agreement.

4.2 The Product(s) are protected by copyright law. Vendor hereby confirms that Vendor is the owner of the copyright in the Product(s) described in Exhibit A, as well as an authorized source or reseller for the Product(s) in the state of New York. Licensees shall not make or allow others to make copies or reproduction of the Product(s), or any portion thereof in any form without the prior written consent of Vendor and/or as otherwise provided in this Agreement. The unauthorized copying, distribution or disclosure of the Product(s) is prohibited and shall be considered a material breach of this Agreement.

4.3 Except as expressly stated herein, no Licensee may alter, modify, or adapt the Product(s), including but not limited to translating, reverse engineering, decompiling, disassembling, or creating derivative works, and may not take any other steps intended to produce a source language state of the Product(s) or any part thereof, without the prior written consent of Vendor.

4.4 Licensees shall be the sole owner and custodian of any information or data transmitted to, received, or manipulated by the Product(s), except as otherwise specifically set forth in this Agreement.

4.5 **Confidential Information.** Each Party will use the same degree of care to protect the other Party’s Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for purposes of this subparagraph means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software and the terms of this Agreement (except those portions of the Agreement that Customer may be required to disclose by law or legal process) and (b) the Confidential Information of Customer shall include personally identifiable information regarding its and other Licensees’ end users provided in connection with the Product(s). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an
opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

4.6 Vendor Obligations Under NYS Education Law 2-d. For Student Data, or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as Exhibit D. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations in the event of a breach of security of such data. Vendor shall not subcontract or assign its obligation to store or maintain Student Data, or Teacher and Principal Data provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer.

5. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

5.1 Mutual. Each Party represents and warrants that it has the power and authority to enter into this Agreement and that the Party’s execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party; (b) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any agreement to which the Party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party, except as otherwise provided herein.

5.2 Intellectual Property. Vendor warrants that use of the Product(s) does not infringe any United States patent, copyright, or trade secret. Vendor will indemnify Customer and any other applicable Licensee and hold it or them harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with any allegation that the use of the Product(s) provided hereunder infringed upon any United States patent or pending application for letters patent or constituted an infringement of any trademark or copyright. Customer or the other Licensee, as applicable, will notify Vendor in writing of such suit, claim, action, proceeding or allegation(s). Vendor shall have sole control of the defense. Customer or the other Licensee, as applicable, shall provide reasonable information and assistance to the Vendor at the Vendor’s expense.

5.2.1 Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein.

5.2.2 If the Product(s) are held to infringe, or in Vendor’s opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraphs 5.2 and 5.2.1 above, at its expense, (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing. If commercially reasonable efforts to perform the foregoing are unsuccessful, Customer or the other Licensee, as applicable, shall be entitled to a pro-rata refund of fees paid by Customer or the Licensee to Vendor pursuant to this Agreement, calculated as of the date Customer or the Licensee, as applicable, was prohibited from using the Product(s).
5.2.3 Vendor shall have no obligation with respect to any such claim of infringement based upon modifications of machines or programming made by Customer or any other Licensee without Vendor’s approval, or upon their combination, operation, or use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor’s approval.

5.3 Warranties. Vendor represents and warrants that (a) the Product(s) will perform substantially in accordance with the specifications set forth in the then-current Documentation, if any, for such Product(s), and that (b) the Services will be performed in a professional and workmanlike manner. In the event of a non-conformance of the Product(s) or Services, reported to Vendor by Customer or any other Licensee, Vendor shall make commercially reasonable efforts to correct such non-conformance. In the event that Vendor is unable to correct such non-conformance, Vendor will provide Customer or the other Licensee, as applicable, with replacement or repair of defective Product(s), re-performance of Services, or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of any period of non-conformance.

5.4 Remedies available to Customer or any other Licensee for damage or loss to the Product(s) shall be the repair or replacement of the Product(s) or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of the damage or loss. Vendor shall have no liability or responsibility for damage or loss to the Product(s) caused by any alteration or modification by a Licensee not authorized by Vendor, or for damage or loss arising out of the malfunction of Licensee’s equipment or other software not supplied by Vendor.

5.5 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE’S PARTICULAR REQUIREMENTS OR PURPOSE.

5.6 Customer Representations and Warranties. Customer hereby represent and warrants to Vendor:

5.6.1 That all BOCES that are participants in the SOLID, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein.

5.6.2 That all BOCES that are participants in the SOLID, including Customer, will take reasonable measures to ensure that all of the sites used by BOCES and school district Licensees within their jurisdiction will meet the systems and network minimum requirements set forth on Exhibit C, attached to this Agreement and made a part hereof.

5.6.3 That all BOCES that are participants in the SOLID, including Customer, will take steps to ensure that BOCES and school district Licensees within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.
5.6.4 That all BOCES that are participants in the SOLID, including Customer, will provide Vendor with the name of a contact person (hereinafter referred to as the "BOCES Contact") who will have the authority to act on behalf of the BOCES and school district Licensees within their jurisdiction with regards to any questions or issues that may arise during the installation or implementation of the Product(s). Unless directed by that BOCES Contact, the Vendor will have no other contact within the BOCES regardless of previous working relationships. The Vendor will provide written communication to the BOCES Contact if it plans to demo/visit a BOCES or school district Licensee within that BOCES' jurisdiction. This communication will occur a minimum of two (2) days prior to the demo/visit.

6. INDEMNIFICATION

Customer shall indemnify and hold harmless Vendor and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Customer of this Agreement. Vendor shall indemnify and hold harmless Customer and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Vendor of this Agreement.

7. FEES AND PAYMENT

7.1 License Fees. In consideration of the licenses granted to all Licensees as described herein, and the Services to be performed by Vendor, Customer agrees that each participating BOCES (including Customer) shall pay Vendor the applicable fees set forth in Exhibit A on behalf of each Licensee within its jurisdiction that participates in the applicable CoSers during any fiscal year within the Initial Term of this Agreement or any Renewal Term.

7.2 Pricing. The fees set forth in Exhibit A shall be applicable during the period July 1, 2020 through June 30, 2023 (the first fiscal year within the Initial Term of this Agreement).

Vendor will provide to Customer proposed new pricing for each succeeding fiscal year within the Initial Term of this Agreement (or each succeeding fiscal year within any Renewal Term) by November 1 of each fiscal year, by notification to Michelle Okal-Frink, Erie 1 BOCES by e-mail at contracts@e1b.org or by certified letter addressed to 355 Harlem Road, West Seneca, NY 14224. Michelle Okal-Frink will work with the Vendor to evaluate and accept pricing to be applicable during each succeeding fiscal year; however, in no event shall pricing increase by more than 2% annually. The Parties shall revise Exhibit A as needed to reflect any new prices as mutually agreed. If no notification is received by November 1 of any fiscal year, the fees established for the then current fiscal year will remain in effect for the subsequent fiscal year.

7.3 Quotes. Quotes applicable to any BOCES or school district Licensees based on the fees set forth in Exhibit A shall be provided to each BOCES Contact (including Customer's) or his/her designee. The Vendor will not provide quotes directly to any school district Licensees. Each quote will reference the SOLID contract number. Each participating BOCES (including Customer) will issue a purchase order to Vendor on behalf of each Licensee within its jurisdiction that wishes to participate in the applicable CoSers.
7.4 Invoices. When invoicing Customer, Vendor shall send invoices addressed to 355 Harlem Road, West Seneca, NY 14224 (Attention: Business Office); any other invoices shall be sent by Vendor to the other participating BOCES initiating the request. Vendor shall contact the BOCES contact at each other participating BOCES to receive the proper invoicing address. Payment shall be made by each participating BOCES (including Customer) within forty-five (45) days of either completion of the activation of the Product(s) at the site of a Licensee, or the implementation meeting for service.

7.5 Withdrawal. Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1st), without penalty. Upon receipt of notification, Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data; if requested by the Licensee, Vendor will assist in exporting all Protected Data previously received back to the Licensee prior to deletion. Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this subsection 7.5, “Protected Data” shall have the same meaning as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as Exhibit D. Notwithstanding the non-renewal or withdrawal of any Licensee, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

8. IMPLEMENTATION ASSISTANCE SERVICES AND TRAINING SUPPORT

8.1 Training. The Vendor will provide initial training, at no cost, to Customer’s staff and the staff of each participating BOCES so that they have the ability to turn key and train school district Licensees using BOCES accounts or Product(s) provided to the BOCES at no cost, at four (4) sites during each year of this Agreement. These accounts will be fully active within the system and not simply a training site. This training should be in person or via webinar and be robust whereas the BOCES librarians are able to provide the support and professional development to the school district Licensee in order to promote a successful implementation. The Vendor will provide on-site or webinar training to the BOCES staff as outlined in Exhibit B, attached and incorporated herein by reference.

8.2 Use of Training Materials. Customer, all other participating BOCES, and all school district Licensees may use the entire Vendor provided training materials, on an ongoing basis, at no cost. Customer, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

8.3 Training Logins & Sites. The Vendor will provide Customer and all other participating BOCES the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while training Licensee school districts. The Vendor will provide administrative
logins to Customer and all other participating BOCES for each Licensee school district in order for Customer and all other participating BOCES, as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education. The Vendor may provide updates and training each year for four additional sites throughout New York State for new and current trainers to be coordinated through Michelle Okal-Frink or her designee. Michelle Okal-Frink or her designee must approve any marketing that would include the name and or logo of Customer or any other participating BOCES.

9. TECHNICAL SUPPORT SERVICES

9.1 Technical support and updates provided by Vendor shall include assistance and consultation by phone to assist Customer, any other participating BOCES, or any school district Licensee in resolving problems with the use of the Product(s), at no charge.

9.2 Vendor shall provide support for the Product(s) for at least one (1) year following any notification by Vendor to Customer, any other participating BOCES, or any school district Licensee that the Product(s) has been discontinued.

9.3 All requests for assistance to Vendor by Customer, any other participating BOCES, and/or any school district Licensee to resolve problems which cause the software to become “inoperative” will be acknowledged by Vendor by phone within twenty-four (24) hours during Vendor’s normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone within forty-eight (48) hours.

9.4 Vendor also agrees to provide the following technical support services to Customer, any other participating BOCES, and any school district Licensee:

9.4.1 Toll Free Number support [800-877-4253] from 8:00 A.M. to 5:00 P.M. EST (Eastern Standard Time).

9.4.2 Bug Correction – Vendor shall use its best efforts to correct any software bugs in the Product(s). Customer, any other participating BOCES, and any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

9.4.3 Training, free of charge, for technical staff of Customer and/or any other participating BOCES to install or upgrade any equipment. This training can be provided via webinar.

10. APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State’s choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be vened in any court of competent jurisdiction located in the County of Erie, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.
11. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, neither Party shall have any
liability to the other Party for any default or delay in performance of its obligations hereunder to
the extent attributable to unforeseen events beyond the reasonable control of the Party. Such
events shall include but not be limited to, natural disasters or “acts of God,” war; acts of public
enemies; terrorism; flood; government action, orders or regulations; fire; civil disturbance or
unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic,
pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine
or other employee restriction (each, a “Force Majeure” event). Vendor’s performance of some or
all of its obligations hereunder may also cease at any time upon mutual written agreement
between the Parties. Any warranty period affected by a Force Majeure event shall be extended
for a period equal to the duration of such Force Majeure event.

12. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused,
unless such waiver or consent to breach shall be in writing and signed by the Party granting the
waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of
this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or
consent to any other or further breach of that term or provision or any other different or subsequent
breach of any other term or provision.

13. SEVERABILITY

If any term, clause or provision of this Agreement is held invalid or unenforceable by a
court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other
term, clause or provision and such invalid term, clause or provision shall be deemed severed from
the Agreement.

14. RISK OF LOSS OR DAMAGE

Vendor and its insurers agree at a minimum to assume all risks of loss and damage to the
Product(s) during transportation except for loss or damage caused by the gross negligence of
Customer, any other participating BOCES, and/or any school district Licensee.

Vendor assumes all risks for injuries to or death of its employees and for damage to its
tangible property, excluding damage to data, while on the premises of, or traveling to or from,
facilities of Customer, any other participating BOCES, and/or any school district Licensee. Vendor
shall provide assistance to recover or resolve any damaged data to the reasonable satisfaction
of Customer, any other participating BOCES, and/or any school district Licensee.

15. AMENDMENT

This Agreement may be amended by Customer and Vendor provided that any such
changes or modifications shall be in writing signed by the parties hereto.
16. HEADINGS

The headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

17. NOTICES

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

18. CONFLICT OF INTEREST

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

19. EMPLOYMENT PRACTICES

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other terms of compensation, and selection for training, including apprenticeship. Vendor shall insert similar provisions in any authorized subcontracts for the performance of Services covered by this Agreement.

20. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of monies appropriated and available to Customer or any other BOCES or school district Licensee for the purpose of this Agreement, and no liability on account thereof shall be incurred by Customer or any other BOCES or school district Licensee beyond the amount of such monies. The Agreement is not a general obligation of Customer or any other BOCES or school district Licensee. Neither the full faith and credit nor the taxing power of any school district Licensee is pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement
nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

21. NON-ASSIGNMENT

This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or its right, title or interest therein, or its power to execute this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer; and any attempts to assign the Agreement without Customer's prior written consent are null and void.

22. ENTIRE UNDERSTANDING

This Agreement and all Exhibits attached hereto constitute the entire understanding between Customer and Vendor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

Cengage Learning, Inc. (Gale, A Cengage Company)

Will add e-sig

By: __________ Fritsch

Printed Name: Jennifer Fritsch

Title: Vice President Sales, Schools

Date: __6/11/2020__________

ERIE 1 BOCES

By: ____________

Printed Name: James Fregelette

Title: Executive Director, Administrative Services & Operations

Date: __11/12__________

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EXHIBIT A

[Describe the Product(s) to be provided by Vendor and Provide the Price List Here]

*Gale Subscriptions* - Annual Purchase

It's important that today's researchers access complete, credible, and up-to-date content. From student favorites like Gale's In Context suite to our flagship InfoTrac databases, we offer dozens of powerful research platforms to put vetted sources right at your users' fingertips.

*Gale Digital Archives* - One-time Purchase

Gale Digital Archives brings the thoughts, words, and actions of past centuries into the present for a comprehensive research experience. With authoritative content and powerful search technologies, this platform has been thoughtfully designed to help students and researchers examine literary, political, and social culture of the last 500 years and develop a more meaningful understanding of how history continues to impact the world today. All of the collections on the Gale Primary Sources platform are meticulously indexed to improve discovery, analysis, and workflow for every user who is looking to push past the traditional boundaries of research.

SUBSCRIPTIONS
Gale In Context: For Educators
Gale In Context: Biography (Formerly Biography in Context)
Career Transitions
Gale In Context: Global Issues (formerly Global Issues in Context)
Gale In Context: Environmental Studies (formerly GREENR)
Gale Health & Wellness (formerly Health & Wellness Resource Center)
Gale OneFile: Health and Medicine (formerly Health Reference Center Academic*)
Gale In Context: U.S. History (formerly U.S. History in Context)
Gale In Context: World History (formerly World History in Context)
Gale In Context: U.S. & World History (Formerly Gale In Context: U.S. and World History in Context)
Gale In Context: Elementary
Gale Literature Resource Center
Gale In Context: Opposing Viewpoints (formerly Opposing Viewpoints in Context)
Gale In Context: Science (formerly Science in Context)
Gale In Context: Middle School (formerly Research in Context)
Gale In Context: High School (formerly Student Resources in Context)
Smithsonian Primary Sources in U.S. History:
Human Sexuality and Identity: LGBTQ
LGBTQ Part 2 Subscription
Gale Books and Authors (formerly Books and Authors (Replaces What Do I Read Next)
Gale Literature LitFinder
Scribner Writers Online
Twayne's Authors Online
Gale Academic OneFile (formerly Academic OneFile)
Gale OneFile Educator's Reference Complete (formerly Educator's Reference Complete)
Gale Academic OneFile Select (formerly Expanded Academic ASAP)
General Reference Center
General Reference Center Gold
Gale Onefile Custom Journals 100
Gale Onefile Custom Journals 500
Gale OneFile: High School (formerly Student Edition)
Gale OneFile: Informe (formerly Informe)
The Times Digital Archive (London) 1785-2014
The Times Digital Archive (London) 1785-1985
National Geographic Virtual Library
National Geographic: "1995-Current* (Must have 1888-1994 to purchase this module)
National Geographic: People, Animals and the World*
National Geographic Kids
National Geographic Archive
(1888-1994)
National Geographic Archive
(1888-1994) - Hosting fee
National Geographic (1888-1994) Annual Subscription
ChiltonLibrary.com
Testing and Education Reference Center
Testing and Education Reference Center Plus Careers

DIGITAL ARCHIVES
Human Sexuality and Identity: LGBTQ
LGBTQ Part 2 Archive
The Times Digital Archive (London) 1785-2014
The Times Digital Archive (London) 1785-1985
Sources in US History - Civil War
Sources in US History - Slavery in America
19th Century U.S. Newspapers
National Geographic Archive
(1888-1994)
Sources in US History - The American Revolution
Archives Unbound

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**Total Price for Trench & Climb:** $1,832.80

**Total Price for City of Heroes:** $2,771.96

**Total Price for Both Games:** $4,604.76

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**Game Information:**

City of Heroes

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GPE, Enlarged Reading

GPE, Enlarged Writing

GPE, Enlarged Math

GPE, Enlarged Science

GPE, Enlarged Social Studies

GPE, Enlarged Technology

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<tr>
<th>Literary Resources</th>
<th>U.S. Price</th>
<th>U.S. Price: 20% Discount</th>
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<td>$1,288.59</td>
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<tr>
<td>Graphic Novels</td>
<td>$1,210.00</td>
<td>$968.00</td>
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*Offer terms: In order to receive maximum price, orders must be accompanied by payment. There will be no reordering of merchandise as it is not available. Discounts are not available to state entities unless authorized by the State Education Department. Orders must be placed in full quantities. Minimum order is 10% of the total order price.

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Purchase Order Instructions

If placing Purchase orders please go to the following # 240-409-8881

If emailing Purchase orders please email your education sales consultant at level below.

If mailing your purchase order please mail to the address listed below. AEM sales operations - Female customer.

**To allow us to track and process the order in a timely manner please reach out to your consultant when the order is being sent.

c/o Fred's Quarters

27510 Route 26A

Leonardville, NY 14453

Phone: 585-877-2323

Email: Fredsquarters@george.com

Quinn Sullivan, Executive Director

1010 East Main Street

Chattanooga, TN 37407

Phone: 855-500-4232

Fax: 855-500-4232

Email: Quinn.sullivan@george.com

Quinn Sullivan, Executive Director

WNYRIC

www.wnyric.org

Erie 1 BOCES Education Campus • 355 Harlem Road • West Seneca, NY 14224-1892
EXHIBIT B

[Describe the training services provided to BOCES. Include a sample agenda.]

Our Trainers have advanced library, education, and business degrees and extensive teaching experience. These strong backgrounds and unique perspectives drive the development of training sessions that remain relevant while serving a wide array of audiences and needs. Gale Training Consultants maintain product and industry knowledge through contacts and demonstrations with Gale’s product management and content teams, as well as personal research and hands-on experience. They also continue to sharpen skills and develop specialized training based on direct feedback from session participants in the form of a post-training survey.

Gale Customer Education Specialists bring an average of 9 years’ experience providing training on Gale resources. Our Specialists either have credentials and experience in library and information sciences and/or they have experience as teachers/professors. Gale Customer Education Specialists will ensure that the training is focused on the level and core needs of each session’s attendees. Training assists administrators, teachers, and librarians in finding age-appropriate answers that improve learning while meeting educational standards.

Gale’s Customer Education Specialists are trained to accommodate a range of competency in computer and online skills and, as such, will incorporate such special audience needs into training plans to ensure that information and methods connect with each audience member.

Gale Customer Education Specialists will also show examples of how to integrate Gale content with state education standards and discuss the process with audience members. Gale provides this customized training at no charge to our partners.

Gale has provided educational resources that include training (educator training) for decades. Our training team prioritizes development of programs and materials based on the targeted use of each resource and training is refined based on enhancements, requests, feedback, and research into user needs and preferences. We monitor aggregate usage of existing training tools to identify which formats and techniques resonate. We use this insight to create materials that show individuals how to use Gale resources, outline key scenarios in which they should use a specific feature and underscore the value of using Gale’s trusted sources.
EXHIBIT C

[Attach the tech specs from the RFP here]

The only technical requirement for the use of the propose resources is an internet connection from any device, anywhere in the world. Gale eBooks are device agnostic. Access to users is controlled by our BOCES partner through any preferred method.

Every product update released by Gale complements our existing features and functionality while offering the most current and popular technology tools. For that reason, Gale is IMS Global 1.0 Certified and Gale resources support Deep Linking for LT1 learning management systems. We also created greater consistency for single sign on through Google for Education partnership and Microsoft 365 Integration that support organizational and study skills, encourage collaboration, improve engagement, and foster critical thinking. Gale products are Clever, ClassLink, and MackinVIA compatible, offering access from any path a user chooses.

Our work to create a better experience for users included:

- Consolidating several products on a single platform
- Redesigning products for unified experience, improved UI and greater accessibility
- Third-party testing

Enhanced product platform—Provides a unified experience across Gale products.

A contextual and “sticky” toolbar ensures that the most important research tools are always in the user’s view. Gale is committed to making its products accessible to users of all abilities and to make products universally accessible and user-friendly in conformance with Section 508 standards of the Rehabilitation Act and Web Content Accessibility Guidelines (WCAG) 2.0 from the W3C (World Wide Web Consortium).

Many of the early enhancements are foundational in nature, laying the groundwork for an exciting future of ongoing iteration where user insights are captured and applied with greater agility.

The recent enhancements to Gale products offer the learning communities of New York with unparalleled collections of informational text, primary sources, eBooks, and multimedia content accessible to learning communities anytime, anywhere, and on any device. By focusing on discoverability, ease of access, and collaboration, Gale content becomes a daily curriculum supplement and supports research, project based learning, workplace skills development, makes lifelong learning a joy, and supports diverse styles of learning. Our services go beyond providing a product—we work with you to achieve the ultimate goal of providing accurate and essential content for student, patron, and professional success.
EXHIBIT D

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. **Purpose**

(a) This Exhibit supplements the Master License and Service Agreement ("MLSA") to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES' Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES' website.

(b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.

(b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
(c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.

(d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA to support its own educational programs or operations.

3. Confidentiality of Protected Data

(a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption, and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. Data Security and Privacy Plan

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

(a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.

In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical,
operational and physical safeguards and practices in place throughout the term of the MLSA:

Cengage Learning
Information Security Program Overview

Cengage Learning, Inc. maintains a formal, written information security program containing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personal information. This program is reasonably designed to protect (i) the security and confidentiality of personal information, (ii) protect against any anticipated threats or hazards to the security or integrity of the information, and (iii) protect against unauthorized access to or use of the information.

This document provides an overview of Cengage’s information security program.

1. Information Security Management

Cengage has established a Security Organization, led by the company’s Chief Security Officer and staffed with dedicated security personnel. This organization is independent from the various divisions or business units that manage and operate IT systems within the company.

The Security Organization consists of cross-divisional security teams leveraging a multi-disciplinary approach to compliance with cyber and information security standards, operational risk management, client security management, workforce protection and business resilience. Roles and responsibilities have been formally defined in writing for all members of the security team.

2. Identification of Risks

Cengage periodically assesses the risks associated with its processing activities, including risks associated with its third-party processors, to confirm that foreseeable risks are managed properly. If a security gap is identified, new controls are agreed and defined in an agreement with such external parties.

3. Formal Definition of an Information Security Policy

Cengage has developed and documented a formal information security policy that sets out Cengage’s approach to managing information security. Specific areas covered by this policy include, but are not limited to the following:

- Information security responsibilities
- Electronic communications systems
  - E-mail security
  - Instant messaging
  - Voicemail security
- Disposing of confidential information
  - Secure on-site shredding
  - Disposal and reuse of electronic media
- Data classification
- Employee monitoring and access to employees’ electronic files
- Securing confidential information ("clean desk")
- Data loss prevention tools
- Client requests for information security statements and policies
- Responding to information requests / media response guidelines

- Third-party access to Cengage or client confidential information
- Mobile device management
  - Laptop security guidelines
  - Smart device guidelines
  - Employee personal device guidelines
- Virus and malware protection
- Remote access
- Wireless networking access
- Electronic incident management and handling
- Internet use and "acceptable use policy" requirements
- Internet applications and services security assessment
- Identification and authorization
  - Password standards for employees
  - Password standards for system / LAN administrators and application developers of intranet systems
  - Access control standards
  - User id standards for system / LAN administrators and intranet application developers
- Computer hardware & software management
- Encryption
- IT physical security
- Incident response, reporting and tracking policy
- Facility security
  - Emergency evacuation and assembly locations
  - Handling biochemical incidents, suspicious mail and explosives
  - Physical security
  - Security guidelines for visitors
  - Visitor security information
- HR security requirements
  - Background checks
  - Cell phones, cameras and recording devices
  - Workplace safety and weapons
  - Termination of systems access for departing employees

The Cengage Code of Ethics and Security policy document is approved by management. Cengage employees are required to acknowledge receipt and acceptance of the Cengage Code of Ethics and
Security policy upon commencing work with Cengage. Policies are communicated to all employees and contractors through onboarding/new hire orientation, training classes, and distribution of policies on-line.


Cengage reviews its information security policy at least once per year or whenever there are major changes impacting the functionality of Cengage's information systems.

5. Information Security Incident Response Plan

Cengage has developed a documented methodology for responding to security incidents quickly, consistently, and effectively. Should an incident occur, a predefined team of Cengage employees will activate a formal incident response plan that addresses such areas as:

- Escalations based on the classification or incident severity
- Contact list for incident reporting/escalation
- Guidelines for initial responses and follow up with involved clients
- Compliance with applicable security breach notification laws
- Investigation log
- System recovery
- Issue resolution, reporting, and review

Cengage’s policies define a security incident, incident management and all employees’ responsibilities regarding the reporting of security incidents.

6. Third-Party Sub-contractors/Subprocessors

Cengage uses third-party data processors and subcontractors including for processing, hosting and storage purposes. Cengage remains responsible for the quality of the services and these sub-processors’ compliance with data protection/privacy law as it applies to data processors. Cengage is committed to working with its customers to achieve an appropriate level of transparency around its use of sub-processors.

The following entities are deemed approved as subprocessors:

- Amazon.com, Inc. (AWS - Hosting services);
- Cognizant Technology Inc. (Business processing services, e.g., call center, and hosting)
- IBM Corporation (e-commerce platform services)
- Oracle Corporation (Eloqua - Digital marketing services)
- Experian Data Quality (QAS – Address verification services)
- Informatica Corporation (Address verification services)
- CyberSource Corporation (E-commerce payment management services)

7. Audit and Assurance
- **Internal Audits and Internal Control Reports.** Cengage conducts periodic vulnerability assessments to verify the sufficiency of its security measures. Cengage also engages third party auditors to review its security controls and may provide Client with a copy of applicable internal control reports (SOC Type II), which reports shall be classified as confidential information of Cengage.

- **Client Audits.** To the extent required by law, Cengage shall permit Client (or an independent third-party auditor for Client that is subject to confidentiality obligations) to audit Cengage’s security practices relevant to Personal Data processed hereunder. Unless restricted by law, these audits are subject to the following terms:
  
  (i) Client audits shall take place upon thirty (30) days advance notice to Cengage. Cengage shall work with Client in good faith to provide Client with the information needed to support such audit. Client and Cengage shall mutually agree to the scope and determine the agenda of the audit in advance. The audit shall, to the extent possible, rely on certifications and audit reports or other verifications available to confirm Cengage’s compliance with the applicable security requirements.

  (ii) Client may conduct a site visit of Cengage’s facilities at Client’s expense. Access at Cengage facilities shall be subject to Cengage’s reasonable access requirements and security policies. The site visit is subject to the following conditions: (i) such site visit shall occur at a mutually agreeable time not more than once during any given calendar year; (ii) such site visit shall not unreasonably interfere with or disrupt Cengage’s operations; and (iii) any third party performing such site visit on behalf of Client shall execute a nondisclosure agreement with Cengage in a form reasonably acceptable to Cengage with respect to the confidential treatment and restricted use of Cengage’s confidential information. (iv) the scope of the site visit must be mutually agreed upon by the parties and shall exclude direct access to Cengage’s systems, applications, network components, data center or testing of transactions.

- **Audit Findings.** If Client discovers a breach of Cengage’s obligations, Client and Cengage shall work expeditiously and in good faith to agree on a plan to remediate such problems (“Remediation Plan”). Once the parties agree on a Remediation Plan, Cengage shall execute and complete the same without unreasonable delay and notify Client when such actions are completed. Notwithstanding the following, Cengage’s shall have the sole discretion to determine which measures are best suitable to ensure compliance with applicable security requirements and laws.

- **Cooperation with Regulatory Audits.** Cengage shall fully cooperate with Client, at Client’s expense, in connection with any governmental audit or investigation regarding Client’s data or the data processing activities. (In the event that such audit or investigation is a result of Cengage’s violation of applicable law, then Cengage shall be responsible for the costs and expenses or the audit or investigation).

  (b)

  (c) Vendor will comply with all obligations set forth in Erie 1 BOCES’ “Supplemental Information about the MLSA” below.

  (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and
privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.

(e) Vendor [check one] will ___ X will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontactors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES’ “Supplemental Information about the MLSA,” below.

(f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES’ “Supplemental Information about the MLSA,” below.

5. Additional Statutory and Regulatory Obligations

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor’s obligations under the MLSA, unless:

(i) the parent or eligible student has provided prior written consent; or
(ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

(g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

(a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

(b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).

(c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who may have additional questions.

(d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
(e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.
EXHIBIT D (CONTINUED)

ERIE 1 BOCES

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Erie 1 BOCES is committed to protecting the privacy and security of personally identifiable information about students who attend Erie 1 BOCES instructional programs in accordance with applicable law, including New York State Education Law Section 2-d.

To further these goals, Erie 1 BOCES wished to inform parents of the following:

1) A student's personally identifiable information cannot be sold or released for any commercial purposes.

2) Parents have the right to inspect and review the complete contents of their child's education record.

3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.


5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints may be directed to the NYS Chief Privacy Officer by writing to the New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website [http://www.nysed.gov/data-privacy-security/report-improper-disclosure](http://www.nysed.gov/data-privacy-security/report-improper-disclosure).

BY THE VENDOR: Cengage Learning Inc., (Gale, A Cengage Company

[Signature]

Jennifer Fritsch
Printed Name

VP Gale K12 Sales
Title
EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
BETWEEN
ERIE 1 BOCES AND Cengage Learning, Inc. (Gale, a Cengage Company)

Erie 1 BOCES has entered into a Master License and Service Agreement ("MLSA") with [Cengage Learning, Inc. (Gale, a Cengage Company)] which governs the availability to Participating Educational Agencies of the following Product(s):

[list Product(s) from Vendor]

Gale In Context: For Educators
Gale In Context: Biography (Formerly Biography in Context)
Career Transitions
Gale In Context: Global Issues (formerly Global Issues in Context)
Gale In Context: Environmental Studies (formerly GREENR)
Gale Health & Wellness (formerly Health & Wellness Resource Center)
Gale OneFile: Health and Medicine (formerly Health Reference Center Academic*)
Gale In Context: U.S. History (formerly U.S. History in Context)
Gale In Context: World History (formerly World History in Context)
Gale In Context: U.S. & World History (Formerly Gale In Context: U.S. and World History in Context)
Gale In Context: Elementary
Gale Literature Resource Center
Gale In Context: Opposing Viewpoints (formerly Opposing Viewpoints in Context)
Gale In Context: Science (formerly Science in Context)
Gale In Context: Middle School (formerly Research in Context)
Gale In Context: High School (formerly Student Resources in Context)
Smithsonian Primary Sources in U.S. History:
Human Sexuality and Identity: LGBTQ
LGBTQ Part 2 Subscription
Gale Books and Authors (formerly Books and Authors (Replaces What Do I Read Next)
Gale Literature LitFinder
Scribner Writers Online
Twayne's Authors Online
Gale Academic OneFile (formerly Academic OneFile)
Gale OneFile Educator's Reference Complete (formerly Educator's Reference Complete)
Gale Academic OneFile Select (formerly Expanded Academic ASAP)
General Reference Center
General Reference Center Gold
Gale Onefile Custom Journals 100
Gale Onefile Custom Journals 500
Gale OneFile: High School (formerly Student Edition)
Gale OneFile: Informe (formerly Informe)
The Times Digital Archive (London) 1785-2014
The Times Digital Archive (London) 1785-1985
National Geographic Virtual Library
National Geographic: "1995-Current* (Must have 1888-1994 to purchase this module)
National Geographic: People, Animals and the World*
National Geographic Kids
National Geographic Archive
(1888-1994)
National Geographic Archive
(1888-1994) - Hosting fee
National Geographic (1888-1994) Annual Subscription
ChiltonLibrary.com
Testing and Education Reference Center
Human Sexuality and Identity: LGBTQ
LGBTQ Part 2 Archive
The Times Digital Archive (London) 1785-2014
The Times Digital Archive (London) 1785-1985
Sources in US History - Civil War
Sources in US History - Slavery in America
19th Century U.S. Newspapers
Sources in US History - The American Revolution
Archives Unbound

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law ("Protected Data").

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute...
legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: A summary of Vendor’s subcontractors are included in Exhibit E: Cengage Learning Information Security Program Overview. Each subcontractor is subject to a written contract containing terms materially the same as those contained herein that requires it to protect all Protected Data to which it may be exposed and comply with applicable privacy laws. Vendor may, from time to time, notify Erie 1 BOCES of new subcontractors.

Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on [7/1/20] and expires on [6/30/23].
- Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such formats as may be requested by the Participating Educational Agency.
- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student’s district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district’s applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a
technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(h)(2) of P.L. 111-5.

Supplement to

MASTER LICENSE AND SERVICES AGREEMENT
(Term Ending June 30, 2023)

Vendor Cengage Learning, Inc. (Gale, A Cengage Company) having its principal offices at 27500 Drake Rd., Farmington Hills, MI. 48331, and Board of Cooperative Educational Services for the First Supervisory District, Erie County having its principal offices at 355 Harlem Road, West Seneca, NY 14224 ("Erie 1 BOCES"), have entered into a Master License and Services Agreement, the term of which ends June 30, 2023 (the "Agreement"). By this Supplement, Vendor Cengage Learning Inc., (Gale, A Cengage Company) and Erie 1 BOCES wish to provide for the potential purchase of Software ABC Gale e-Resources licenses and services by other Board of Cooperative Educational Services (BOCES) in the State of New York (intermediate units of the NYS Education Department) on the same terms and conditions.

Vendor Cengage Learning Inc., (Gale, A Cengage Company) agrees to honor the pricing in Exhibit A only for the BOCES that adopt the contract at their Boards of Education. If a BOCES has not adopted the resolution Vendor Cengage Learning Inc., (Gale, A Cengage Company) may not extend the same or lesser pricing than has been set forth in Exhibit A. Lower prices will not be offered to school districts/BOCES/RCs in NY state. Vendors may utilize national promotions or sales within the state of New York and those prices would be extended through the contract after the approval of Michelle Okal-Frink or her designee. Special pricing for specific BOCES is not allowable under this contract.

Erie 1 BOCES and Vendor Cengage Learning Inc., (Gale, A Cengage Company) hereby agree:
1. From time to time during the term of the Agreement, another BOCES in New York State (an “Other BOCES”) may adopt a Board of Education resolution that permits Erie 1 BOCES to represent the Other BOCES’ interests and to enter into the Agreement on behalf of the Other BOCES.

2. The Other BOCES shall purchase under the Agreement by issuing an Addendum in the form of a Board resolution, appropriately amended to reflect that the Other BOCES is the purchaser. By issuing that Addendum, the Other BOCES will agree to be bound by all of the terms of the Agreement with respect to its purchase thereunder.

IN WITNESS WHEREOF, the parties have signed this Supplement to Agreement.

Erie 1 Board of Cooperative Educational Services Vendor Cengage Learning Inc., (Gale, A Cengage Company)

By: ___________________________ By: ___________________________
Authorized Signature

Name: James Fregelette Name: Jennifer Fritsch
Title: Executive Director Title: VP Gale K12 Sales

Address: 355 Harlem Rd Address: 27500 Drake Rd, Farmington Hills, MI.

West Seneca, NY 14224

Date: 6/11/2020