

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

**BOARD AGENDA ITEM – September 10, 2020**

**DEPARTMENT/SCHOOL INITIATED AGREEMENT**

**21-107-A-WH – Cengage Learning**

<input type="checkbox"/> (BW) Bids Waived	<input checked="" type="checkbox"/> (A) Agreement
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**REQUESTOR:** Educational Technology

**Legal Review Required:**  Yes  No

**Standard Template Used with No Changes:**  Yes  No

**Standard Template Type:** Software License Addendum

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Cengage Learning, Inc.	\$53,550.00	Access to Online Gale Educational Recourse
<b>Total</b>	\$53,550.00	

<input type="checkbox"/> <b>Contract Renewal</b>	<b>New Contract Amount</b>	\$53,550.00
<input checked="" type="checkbox"/> <b>Recurring Contract</b>	<b>Previous Contract Amount</b>	\$53,550.00
<input type="checkbox"/> <b>New Contract</b>	<b>Variance</b>	\$0.00

**PRICE INCREASE / DECREASE EXPLANATION:** N/A

**DISCUSSION:**

Gale provides curriculum-aligned content in a format accessible to students and proven to increase student outcomes when used in the classroom. Gale’s provision of thought-provoking content supports the incorporation of Florida Standards in ELA and literacy across the subjects and is invaluable for developing critical thinking skills, information literacy, and 21st Century skills. The collection of online references resources provided in this agreement include Student Resources in Context, Opposing Viewpoints in Context, Science in Context, Literature Resource Center, and Student Resource Center Junior. The cost includes training for teachers, technical support, promotional materials, mobile apps, and supports in school and at home access for parents, students, and staff in all eighty-two schools. The Gale student resources are copyrighted by Gale Cengage and are not available from any other provider or vendor.

The standard software license agreement template has been used, which does not require legal review.

**CONTRACT TERM:**

The initial contract term shall commence September 11, 2020 and continue until September 10, 2021.

**RECOMMENDATION:**

It is the recommendation of Russell Cheatham, Assistant Superintendent of Educational Technology and Dawn Bronstein, Manager of Instructional Technology to approve the attached agreement with Cengage Learning, Inc. in the amount of \$53,550.00.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012(11)(b)

Confidential Price Quote  
Expiration Date 1/1/2021  
Quote Number 00024877

21-107-A-WH  
Approved: \_\_\_\_\_



Quote Name Flat renewal

Prepared By Michael Pilon  
Phone (800) 877-4253 x18150  
Email michael.pilon@cengage.com

Ship To JDE # 23746044  
Ship To Account SCHOOL BOARD OF BREVARD COUNTY  
Ship To Contact Dawn Bronstein  
Ship To Address . 2700 JUDGE FRAN JAMIESON WAY  
MELBOURNE  
Florida  
United States  
329406601

Bill To JDE 23746044  
Bill To Account SCHOOL BOARD OF BREVARD COUNTY  
Bill To Contact Dawn Bronstein  
Bill To Address ., 2700 JUDGE FRAN JAMIESON WAY,  
MELBOURNE  
Florida  
United States  
329406601

Subscription Start 9/11/2020  
Date

Subscription End 9/10/2021  
Date

Product	Sales Price	Total Price
Gale In Context: High School	USD 30,450.00	USD 30,450.00
Gale In Context: Opposing Viewpoints	USD 18,900.00	USD 18,900.00
Gale In Context: Science	USD 1,050.00	USD 1,050.00
Gale Literature Resource Center	USD 3,150.00	USD 3,150.00

Payment Terms Net 30

Subtotal USD 53,550.00  
Total Price USD 53,550.00

Click here to review and accept this quote:

Accept Quote <https://cengageportal.secure.force.com/quote/?id=0Q02M000001w4E6>

Signature \_\_\_\_\_

Date \_\_\_\_\_

Misty Belford, Chairperson  
Title

Tax and freight charges will be applied to invoice where applicable.

Payment terms are indicated above and are due from the start date. All trademarks and registered names are used herein under license. This quote form incorporates your License Agreement with Cengage Learning, including any and all Amendments, Addendums, Exhibits and Schedules attached thereto or incorporated by reference and the standard Terms of Use set forth at <http://www.cengage.com/terms/>. This quote form shall be deemed to have been accepted by Customer upon receipt by Cengage Learning of (i) any written confirmations indicating acceptance or ; (ii) upon receipt of a Customer Purchase Order. If any written confirmations or Customer Purchase Orders in any way conflict with or is inconsistent with the conditions of sale herein, this Quote Form will prevail and supercede any inconsistent terms.

**All information embodied in this document is strictly confidential and may not be duplicated or disclosed to third parties outside recipient's organization without prior written consent of Cengage Learning.**



## SOFTWARE LICENSE ADDENDUM

**THIS SOFTWARE LICENSE ADDENDUM** (“Software Addendum”) is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS”) and Cengage Learning, Inc. whose business address is 5191 Natorp Boulevard, Mason, Ohio 45040, (hereinafter referred to as “Contractor”), and is intended to supplement the agreement entered into between the parties effective upon issuance of Purchase Order under Agreement # 21-107-A-WH regarding software and/or Services to be provided by Contractor to BPS.

1. **TERM** – The term of this Software Addendum will coincide with the term of the agreement between the parties and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the parties.
2. **DEFINITION OF “AGREEMENT” AND CONFLICT** - As used herein, the term “agreement” shall mean Contractor’s standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor’s standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor’s agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor’s agreement, the following provisions as set forth in this Software Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency’s county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS’s rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State’s governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Annual licensing and maintenance costs are payable at the beginning of each renewal period. Payment for services will be in arrears. Any references to prepayment are deleted. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY** - BPS, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** - BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a "claims-made" basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S..

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION**

a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys' fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR's performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR's available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of "solely negligent" should arise, a court agreeable to both Parties may be engaged to settle this dispute.

b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

25. **PUBLIC RECORDS – EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. [RECORDSREQUEST@BREVARDSCHOOLS.ORG](mailto:RECORDSREQUEST@BREVARDSCHOOLS.ORG). THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Software Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Software Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Software Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor's agreement, a copy of Contractor's standard terms and conditions as they appear on the date of execution of this Software Addendum are attached hereto and incorporated herein as Exhibit "A."

28. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

**IN WITNESS WHEREOF**, BPS has made and executed this Software License Addendum and Contractor has made and executed this Software License Addendum on the day and year below written.

**CENGAGE LEARNING, INC.**

By:   
Authorized Representative Signature

Date: 8-19-2020

Print Name: Brian McDonough

Title: Sr VP Sales

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Misty Belford, Board Chairperson

**EXHIBIT "A"**  
**CONTRACTOR'S STANDARD TERMS AND CONDITIONS ATTACHED**

# EXHIBIT A

## Cengage Terms of Use for School Products

*Last Updated: August 2020*

### Introduction

These Cengage Terms of Use for primary and secondary education products (“School Terms”) apply to web-based products and related apps and technologies provided by Cengage Learning, Inc. and its affiliates, including those operating with the National Geographic Learning brand (“Cengage”) for use in educational institutions providing primary and secondary level education.. The term “School Products” as used in these School Terms refers to the products, services, websites, content, databases, software, technologies, and tools delivered by Cengage and that link or otherwise refer to these School Terms, or that are delivered through a website or service that links or refers to these School Terms.

If you are under 18, or the age of majority in your country, your parent or guardian must enter into these School Terms on your behalf, and this parent or guardian represents and agrees that they accepts these School Terms on your behalf. **If you are a student, please contact your parent and guardian before entering into these School Terms.**

**The School Products are for use by students, teachers, and administrators in primary and/or secondary education schools. Access to School Products is sometimes enabled through learning management system (LMS) integrations. Cengage only collects and processes information pertaining to students as a processor for the educational institutions when delivering its School Products. Cengage does not use identifiable School student information for its own purposes. For information on your school’s privacy policies, please contact the school’s administration. See Cengage’s [Privacy Notice](#) for additional information on Cengage’s privacy and data collection and usage practices.**

Cengage is willing to provide the School Products to you only on the condition that you first accept these School Terms. By accessing, registering for, or using any School Product, or by accepting these School Terms through an “I Accept” check-box or similar method, you agree to these School Terms. These School Terms along with any Order (defined below) form a legally binding agreement between you and Cengage.

Please read these School Terms carefully and, if you wish, print or save a copy for your records. If you do not agree with these School Terms, you may not access or use the School Products.

Your use of certain School Products, or parts of certain School Products, may be subject to additional terms, which may be presented to you for acceptance when you sign up for those School Products, or may otherwise be accessible through the School Products (“Supplemental Terms”). Such Supplemental Terms will be considered part of these Terms. In the event of any conflict between these Terms and any Supplemental Terms, the Supplemental Terms will control with respect to your use or access of the School Products (or the relevant parts of the School Products) associated with such Supplemental Terms.

***If you are accepting these School Terms on behalf of an organization or entity, you represent that you are duly authorized to bind that organization or entity to these School Terms.***



## **Orders**

You may gain access to the School Products through your acceptance of an online or printed order form or other ordering document that references these School Terms, including access through an access code or card (an "Order"). An Order may specify applicable fees, how long you are authorized to use the School Product, and other terms. In the event of a conflict between these School Terms and the terms of an Order (excluding these School Terms), these School Terms shall control except only to the extent that the Order identifies the specific provision(s) in these School Terms to be varied.

## **Changes to the School Products**

Cengage may, with or without notice, add features to the School Products, or change or remove features of the School Products, at any time.

## **Your Account**

To use a School Product, you will need a Cengage username and password, unless you log in through a "single sign-on" system using your LMS username and password if the School Product includes this feature. Certain School Products may also require additional login information.

Your account is for your personal use only. You may not authorize others to use your account, and you may not assign or transfer your account.

You must keep your username and password confidential. You are responsible for all activities, charges, and liabilities associated with your account. You agree to immediately notify Cengage of any unauthorized use of your account of which you are aware. If you are a minor, Cengage reserves the right to provide access to your account to your parent, guardian or other authorized adult, upon such adult's request.

## **Institution Subscription**

This Section applies only if an applicable Order specifies that you are acquiring a School Product subscription for an institution. Also, if your institution and Cengage have a separate signed agreement, then such agreement will control if there is a conflict between the School Terms of such agreement and the terms of this Section.

Subject to your payment of the applicable fees and taxes, you may authorize your students, faculty, and administrative staff (collectively, "Authorized Users") to access and use the applicable Service for non-commercial educational or instructional use, on condition that those Authorized Users accept these School Terms before or during their first use of that School Product. For School Product subscriptions that include a limit on the number of Authorized Users, Authorized Users includes all individuals authorized to use the School Product, regardless of whether any such individual is actively using that School Product at a particular time. You shall ensure that Authorized Users and any other person that uses the School Product through the use of your password and account comply with these School Terms. You shall take all reasonable precautions necessary to safeguard against unauthorized access and use of the School Product through your password and account, including ensuring that an

Authorized User ceases use of the School Product after that Authorized User is no longer associated with your institution.

## **Content**

The School Products may allow you to upload or otherwise add through the School Products information, text, graphics, photos, audio, video, and/or other materials and content (“Content”). You represent and warrant that you own or have the full right to provide all Content that you provide through the School Products for use with the School Products (“Your Content”), and that Your Content does not infringe any third-party rights, including any intellectual property, publicity or privacy rights.

Cengage does not obtain ownership of Your Content. You hereby grant Cengage a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable and transferable license to use, distribute, reproduce, modify, prepare derivative works of, perform and display Your Content in connection with the School Products and Cengage’s business, including for promoting the School Products, in all media now known or hereafter devised, and through any media channels. In the event that perpetual license terms are not allowed by law, the term shall be for the longest period allowed by applicable law.

Cengage does not adopt, endorse, or accept responsibility for Your Content or any third-party Content. You agree that Cengage will not be liable for any loss or damage resulting from your reliance on Your Content or any third-party Content available through the School Products.

Cengage reserves the right (but has no obligation) to pre-screen, review, flag, filter, modify, refuse, or remove Content from the School Products.

After termination of your use of any School Products, except as required by applicable law, Cengage does not have any obligation to destroy, return or retain Your Content relating to your use of such School Products. It is your sole responsibility to backup and export Your Content prior to termination.

## **Your Use of the School Products**

During the applicable term of your subscription for use of the School Products if specified in an Order, Cengage grants you a limited, non-exclusive, non-transferable license only to access and to use the School Products for the Permitted Use (as defined below), subject to your compliance with these School Terms. You may not use the School Products for any other purpose, or after the end of the applicable term, or after termination of your rights to use the School Products under these School Terms.

“Permitted Use” means your personal noncommercial purposes, or, only if the Order expressly specifies, your noncommercial educational or instructional purposes.

You shall provide, at your own expense, suitable equipment, software, and internet access as necessary to access and use the School Products.

Neither the School Products nor any portion thereof may be displayed, copied, downloaded, sold, resold, used, distributed, or otherwise exploited for any commercial purpose without Cengage’s prior written consent. You may not frame or utilize framing techniques to enclose any Mark (defined below) or other proprietary information (including images, text, page layout and

form) of Cengage or its licensors without Cengage's prior written consent. You may not use any meta tags or any other "hidden text" using Cengage's Marks without Cengage's prior written consent. Any unauthorized use by you of Cengage's Marks or other intellectual property automatically terminates the license granted by Cengage under these School Terms and your right to use the School Products.

### **Educational Use of Content**

With respect to Content designated as available for download for educational purposes ("Downloadable Content"), librarians, teachers, support staff, administrators, other staff of School educational institutions, students, and adults supporting such students' learning ("Educators or Learners") are authorized to download certain Downloadable Content to a personal computer or school server and print, reproduce, and distribute such Downloadable Content solely for use in educational settings and subject to the restrictions set forth below.

The following restrictions apply to all Downloadable Content:

1. Educators or Learners are prohibited from disseminating or using Downloadable Content beyond such Educator's or Learner's particular educational institution.
2. Under no circumstances may an Educator or Learner use Downloadable Content for commercial purposes.
3. Downloadable Content used for any purpose must always maintain unaltered credit, copyright, other proprietary notices, and embedded links.
4. Educators or Learners may make no modifications to Downloadable Content and must preserve all Cengage credits and copyright notices.

With respect to Read-Only Downloadable Content, Educators or Learners may neither make use of nor allow or enable the use of Read-Only Downloadable Content in a manner in which it is re-posted, framed, or mirrored on any other websites or computer networks, regardless of educational use.

With respect to Modular Downloadable Content, Educators or Learners may post only products that the Educator or Learner has created containing such Modular Downloadable Content and only to a website administered by the Educator's or Learner's school or school system, or by Cengage.

Content used for any purpose must always maintain unaltered copyright and other proprietary notices. Content may not be re-posted, framed, or mirrored on any other Web sites or computer networks, regardless of educational use.

### **Cengage Materials and Intellectual Property**

Cengage and its licensors own and retain all right, title, and interest in and to the School Products, all underlying technology used with or otherwise enabling the School Products, and all software and Content (other than Your Content, which you own subject to the license set forth herein) available within the School Products (collectively, "Cengage Materials"), including all associated trademarks, copyrights, and other intellectual property rights. Nothing in these School Terms transfers any such rights, title or interest to you or any other user, and Cengage

reserves all rights not expressly granted to you. All software and apps provided to you under these School Terms are licensed, not sold.

You agree not to remove, conceal, or alter any proprietary rights notices (including copyright and trademark notices) contained within the Cengage Materials. You may not (and you may not permit anyone else to) extract, copy, modify, reverse engineer, decompile, or otherwise attempt to access or use the source code of the software underlying or otherwise used to provide the School Products or any part thereof, except to the extent allowed by law notwithstanding this restriction.

All trademarks, service marks, trade names, logos and graphics included within the School Products ("Marks") are trademarks of Cengage and its licensors. You may not use any Marks without the prior written consent of Cengage.

You agree that any breach of your obligations with respect to Cengage's and its licensors' proprietary or intellectual property rights will result in irreparable injury to Cengage and its licensors for which money damages are inadequate, and you therefore agree that Cengage and its licensors shall be entitled to seek injunctive relief to address such breach, without the requirement of posting a bond, in addition to any other relief that a court may deem proper.

### **Modifiable Cengage Content**

Certain School Products may contain some Cengage Materials that are presented to you in a modifiable format, where your modification of the Cengage Materials is expressly and clearly permitted ("Modifiable Cengage Content").

Subject to your compliance with these School Terms and any use restrictions specified in the applicable Order, and during the term of the applicable School Products, you may: (1) modify and create derivative works of Modifiable Cengage Content, (2) reformat and print copies of Modifiable Cengage Content (including your modifications and derivative works of Modifiable Cengage Content) when the capability to reformat and/or print that Modifiable Cengage Content is made available through the School Products, and (3) use Modifiable Cengage Content (including your modifications and derivative works of Modifiable Cengage Content) solely for the Permitted Use.

### **Shared Content**

Certain School Products may contain Content posted by Cengage and other users (including Your Content) in an area of an applicable Service that is designated as a learning space and/or user community and that is presented to users in a modifiable format and in a manner clearly indicating that modification and distribution for the Permitted Use is permitted ("Shared Content").

Subject to your compliance with these School Terms and any use restrictions specified in the applicable Order, and during the term of the applicable School Products, you may: (1) modify and create derivative works of the Shared Content, and (2) copy, distribute, display, perform, and otherwise use those modifications, derivative works, and Shared Content, by means of any media or delivery technology now known or hereafter devised, solely for the Permitted Use.

### **Open Content**

Certain School Products may contain Content made available through a Creative Commons license (such as Attribution 4.0 International) or similar “open”-style license (“Open License”), as clearly and expressly specified within the School Products (“Open Content”). You will have the rights to use Open Content solely as specified in the associated Open License. Nothing in these School Terms shall restrict your rights under any Open License to Open Content provided through the School Products.

### **Your Modifications to Modifiable Content, Shared Content, and Open Content**

If you make any modifications to or derivative works of Modifiable Cengage Content, Shared Content, or Open Content, then all such modifications and derivative works shall be considered part of Your Content and are subject to the license and other provisions in the Section entitled “Content” above, as well as all other applicable provisions of these School Terms.

### **Instructor Use**

If you are a teacher or instructor, you may incorporate Cengage Content (including your modifications and derivative works of Modifiable Cengage Content) in: (1) in-class handouts (provided without charge and limited in the number of copies), (2) online classrooms or courses (so long as access to the Cengage Content is limited to matriculated students enrolled in your class who are required to accept these School Terms and enter a unique passcode or other verifiable industry-standard authentication system that ensures each user is individually identified before such access), (3) in-class displays (e.g., via projector, computer monitor or television screen), (4) class outlines or lessons, and (5) non-fee based exams, in each case associated with a course of study (i.e., a class) for which the School Product as specified in an Order has been adopted and is concurrently being used.

### **Fees**

Some School Products and associated Content may be available only if an associated fee has been paid. Unless otherwise specified in the applicable Order, all fees are payable in U.S. dollars. All fees paid are nonrefundable and non-creditable.

Unless another form of payment is specified in the Order, Cengage will bill your credit card (for purposes of these School Terms, the term “credit card” includes a credit card or a debit card) for all applicable fees in advance of Service delivery. You shall provide Cengage with accurate and complete billing information, including your name, address, telephone number, and valid credit card information, and shall promptly notify Cengage of any changes in that information. You acknowledge that the agreement between you and the applicable credit card issuer governs use of your credit card for payment of amounts owed to Cengage, including your rights and obligations as a holder of that card.

Cengage will disclose the applicable payment options at the time you place your Order. You shall select a payment method to pay Cengage for purchases you make for and/or from the applicable School Products. Cengage or Cengage’s billing agent may charge your payment method for all amounts due to Cengage without additional notice or consent unless otherwise required by law. Cengage may, in its discretion: (1) post charges to your payment method individually, or (2) aggregate your charges with other purchases you make within the School Products and apply those charges to your next billing cycle.

Except for taxes based on Cengage’s net income, if any authority imposes a tax, duty, levy, or

fee upon your use of or orders for any School Products, you shall pay that amount as specified in the Order or Cengage's invoice or supply Cengage with exemption documentation. You are also responsible for paying all administrative fees (such as PayPal fees) associated with the School Products and any transactions you entered into in connection with the School Products.

If Cengage does not receive payment from your credit card issuer, upon demand you shall pay all overdue amounts by other means acceptable to Cengage. Cengage may accept other forms of payment, and if Cengage invoices you for School Products, you shall pay to Cengage the amount indicated in each invoice by the due date reflected on the invoice.

If you believe that a billing discrepancy has occurred, unless you notify Cengage in writing within 60 days after the date on which that discrepancy first appeared on your credit card account statement or invoice, as applicable, you waive your right to claim that discrepancy.

Service purchases and subscriptions are nonreturnable and cannot be exchanged. Until your Service is terminated, you will continue to accrue charges for which you remain liable, even if you do not use the School Product.

If you fail to pay according to these School Terms, Cengage may, without prejudice to its other rights and remedies: (1) charge interest on any unpaid amounts on a daily basis from the original due date at the rate of the lesser of 1.5% per month or the maximum amount permissible by law, (2) suspend or terminate your use and/or access to School Products, or both (1) and (2). You shall reimburse Cengage for all reasonable expenses Cengage incurs in collecting past due amounts, including wire transfer fees, collection agency fees, reasonable attorney's fees, and court costs. Cengage may charge a fee for reinstatement of suspended or terminated accounts.

In addition, if you fail to pay according to these School Terms, unless otherwise prohibited by applicable law, you consent and agree that Cengage or its designated third party collection agency may contact you by: (1) phone at one or more of your telephone numbers, including your wireless telephone numbers (in which case you might incur wireless telephone charges under your wireless device plan), (2) text messages (in which case you might incur message and data charges under your wireless device plan) or emails, and/or (3) any other method of contact, including pre-recorded and/or artificial voice messages or an automatic dialing device.

Cengage may from time to time offer School Product promotions and discounts for which you may be eligible, including promotions available for a limited time. Unless otherwise specifically noted, School Product promotional offers and discounts apply to first-time purchasers only. Separate School Terms and conditions may apply to promotional offers and discounts.

### **Acceptable Use**

You may only access the School Products and related Content through the interface provided by Cengage and for lawful purposes. You represent, warrant, and agree that you will not:

1. Use the School Products to commit a criminal offense or to encourage conduct that would constitute a criminal offense or give rise to any third-party claim, or otherwise violate any local, state, federal, or international law or regulation, including export control laws and regulations. Without limiting the foregoing, you agree that you will not use the School Products in connection with the development, design, manufacture or production of nuclear, missile, or chemical or biological weapons;

2. Upload, post, or otherwise transmit any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane, deceptive, or otherwise objectionable Content;
3. Upload, post, or otherwise transmit through, to or otherwise using the School Products any Content that infringes or violates any intellectual property right, publicity right, privacy right, or other right of any third party;
4. Upload, post, or otherwise transmit through, to or otherwise using the School Products any Content that contains any malware, viruses, spyware, worms, or other malicious code or files;
5. Disrupt the normal flow of communication in the School Products or otherwise act in a manner that negatively affects any other users' ability to use or benefit from the School Products;
6. Interfere with or disrupt the School Products or servers or networks connected to the School Products, or violate any requirements, procedures, policies, or regulations of networks connected to the School Products;
7. Access (or attempt to access) any part of the School Products or Content through any automated means (including use of scrapers, scripts, robots, spiders, or web crawlers), or in any way circumvent the navigational structure or presentation of the School Products;
8. Use the School Products for any phishing, trolling, or similar activities, or to redirect users to other sites or encourage users to visit other sites; or to harvest or collect email addresses or other contact information of other users of the School Products by automated or other means;
9. Impersonate or attempt to impersonate Cengage or a Cengage employee, another user, or any other person or entity, or post any information that misrepresents the identity, characteristics or qualifications of you or any other person, including the use of a pseudonym, or misrepresenting current or previous positions, qualifications or affiliations with a person or entity, past or present;
10. Frame or mirror any part of the School Products;
11. Use metatags or code or other devices containing any reference to Cengage or the School Products in order to direct any person to any other website or School Products for any purpose;
12. Use the School Products in a manner contrary to the educational purpose of the School Products, such as by posting answers to test or assessment questions provided through the School Products; or
13. Otherwise use the School Products in violation of these School Terms.

### **Third-Party Services**

The School Products may include services or other technology provided by third parties ("Third-Party Services"). The applicable supplier of any Third-Party Services is an intended third-party beneficiary of these School Terms and may enforce these School Terms directly against you with respect to such Third-Party Services. Alternately, an Order (or activation process) for a Third-Party Service may include or be accompanied by a separate service, license, or other agreement ("Third-Party Agreement"), in which case that Third-Party Service is provided solely under the School Terms of that separate Third-Party Agreement.

Cengage may also provide you with certain "Third-Party Supplier Notices" in connection with the provision of Third-Party Services. The applicable Order (or activation process) for a Third-Party Service may include or be accompanied by Third-Party Supplier Notices.

Placing an Order for a Third-Party Service that includes a separate Third-Party Agreement and/or Third-Party Supplier Notices, or activating a Third-Party Service for which the activation process includes a Third-Party Agreement and/or Third-Party Supplier Notices, constitutes your acknowledgment that you have read and agree to all applicable Third-Party Agreements and Third-Party Supplier Notices. Cengage is not a party to, and is not liable for breaches of, any Third-Party Agreement.

Cengage assumes no obligation or liability for: (1) the functionality or performance of Third-Party Services, including their content, accuracy, or reliability, or (2) the acts and omissions (including with respect to privacy practices) of the suppliers of Third-Party Services. You acknowledge that a Third-Party Agreement might give the applicable third-party supplier rights with respect to your data beyond those allowed by these School Terms or Cengage's Privacy Notice. Cengage does not guarantee that a third-party supplier will comply with its agreement with Cengage or its Third-Party Agreement with you, and Cengage is not required to enforce its agreement with a supplier of Third-Party Services.

### **Digital Rights Management**

A School Product might contain or be accompanied by digital rights management technology or similar security technology designed to protect digital information against piracy and other misuse. You acknowledge that any such technology is not a defect in the School Product. While accessing a School Product, your internet-accessible device may be directly connected to an internet site operated by or on behalf of Cengage in order to upgrade that security technology. You hereby consent to the use and automatic upgrading of that security technology. You shall not circumvent, reverse-engineer, decompile, disassemble, or otherwise tamper with the security technology contained in or accompanying any Service.

### **General Practices Regarding Use of School Products and Storage of Your Content**

Cengage may establish general practices and limits applicable to your use of the School Products, including the maximum number of days that Your Content is retained in connection with the applicable Service, the maximum storage space allotted on your behalf for such Service, and the maximum number of times (and the maximum duration for which) you are allowed to access the School Product in a given period of time. Cengage may suspend or terminate user accounts for which applicable fees are unpaid, or that are inactive for an extended period of time, with or without notice. Cengage may establish and change these general practices and limits at any time, with or without notice.

You acknowledge that the School Products are not designed or intended to be used as part of a disaster recovery facility or an emergency data storage facility. Although Cengage takes reasonable precautions to preserve and protect Your Content, you shall not rely on the School Products as your only storage means. You should make and preserve your own backup copies of Your Content. Cengage is not liable for damage to, deletion of, or failure to store, Your Content.

### **Disclaimer of Warranties**

**The School Products and Cengage Materials are provided by Cengage on an "as is" and "as available" basis. Cengage makes no representations or warranties of any kind, express or implied, as to the School Products, Cengage Materials, or other information, content or materials made available through the School Products, including the Cengage**



**Modifiable Content, Shared Content, Open Content, Third-Party Services, or Collaboration Tools (collectively, the “School Products Items”). You agree that your use of the School Products, Cengage Materials, and School Products Items is at your sole risk. The School Products, Cengage Materials and School Products Items could include inaccuracies or typographical errors. Advice received via the School Products, Cengage Materials, and School Products Items is informational only, does not constitute medical, legal, tax, financial, or other professional advice, and should not be relied upon for personal, medical, legal, or financial decisions. You should consult an appropriate professional for specific advice tailored to your situation. Cengage does not warrant or make any representations regarding the use of or the result of the use of any School Products, Cengage Materials or School Products Items in School Terms of their correctness, accuracy, reliability, or otherwise, and you (and not Cengage) assume the entire cost of all necessary servicing, repair and correction.**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CENGAGE DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CENGAGE DOES NOT WARRANT THAT THE SCHOOL PRODUCTS, CENGAGE MATERIALS, OR SCHOOL PRODUCTS ITEMS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SCHOOL PRODUCTS, CENGAGE MATERIALS, OR SCHOOL PRODUCTS ITEMS OR THE SERVERS THAT MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.**

#### **Limitation of Liability**

Neither Cengage nor its suppliers, nor their respective directors, employees, officers or representatives will be liable for any damages of any kind arising from the use of or inability to use the School Products, Cengage Materials, or School Products Items including, but not limited to, any direct, indirect, incidental, special, consequential, exemplary or punitive damages, or any lost profits, lost data, or loss of revenue. Without limiting the foregoing, Cengage’s total liability will at all times be limited to the fees you have paid to Cengage for the School Products at issue during the prior three (3) months. The limitations in this paragraph shall apply to the extent permitted by applicable law.

You agree that Cengage is in no way responsible or liable for any grade or assessment you may receive through or otherwise related to any School Products.

#### **Indemnification**

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS CENGAGE, ITS AFFILIATES AND SUPPLIERS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND REPRESENTATIVES, FROM ANY AND ALL DEMANDS, CLAIMS, ACTIONS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING ATTORNEYS’ FEES AND COURT COSTS, DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF THE SCHOOL PRODUCTS, CENGAGE MATERIALS, OR SCHOOL PRODUCTS ITEMS; ANY CLAIMS RELATED TO YOUR CONTENT; OR YOUR VIOLATION OF ANY OF THESE SCHOOL TERMS. This paragraph shall survive any expiration or termination of these School Terms.

#### **Collaboration Tools**

The School Products may include comment areas, message forums, chat areas and other collaboration tools (“Collaboration Tools”). You agree to use all Collaboration Tools in good faith and not in support of any business venture or entity. Cengage disclaims all responsibility and endorsement and makes no representation as to the validity of any opinion, advice, information or statement made or displayed in any Collaboration Tools. Cengage is not responsible for any errors or omissions in Content provided through Collaboration Tools, including any hyperlinks embedded in any such Content. Under no circumstances will Cengage, or its affiliates, suppliers or agents be liable for any loss or damage caused by the Collaboration Tools, including your reliance on information obtained through the Collaboration Tools. The opinions expressed in or through any Collaboration Tools are solely the opinions of the participants, and do not reflect the opinions of Cengage.

### **Internet Links**

Some links within the School Products may lead to websites controlled by third parties. Because Cengage has no control over these websites, Cengage is not responsible for such websites’ content or accessibility via the internet and does not endorse products, School Products, or information provided by such websites. Cengage shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on any Content, goods, or School Products available on or through any other website. Further, the inclusion of these links does not imply that there is any relationship between Cengage and the linked websites. Reference to other companies does not imply any partnership, joint venture, or other legal connection where Cengage would be responsible for the actions of their respective owners.

### **Privacy and Your Information**

Cengage processes personal information as defined by the applicable law where you live (“PI”) in our School Products for several reasons, and only when Cengage has a legal basis for doing so, such as fulfillment of a contractual obligation or with consent.

Cengage may process PI under legitimate interest as long as such legitimate interest does not outweigh or infringe on the rights and freedoms of its customers.

Cengage may use profiling or analytics in the School Products for use such as assessments and engagement; please note that human intervention is always possible to override any automated decision making.

Cengage may also use customer activity reports, analytics data, usage logs, and other similar information to determine how customers interact with Cengage’s School Products and make improvements to the School Products.

Cengage respects the rights of European Economic Area (EEA) residents to access, correct and request erasure or restriction of their personal information as required by law. If you are a resident of the EEA, you generally have a right to know whether or not Cengage maintains your PI. If your information is incorrect or incomplete, you have the right to ask Cengage to update it. You have the right to object to Cengage’s processing of your PI. You may also ask Cengage to delete or restrict your PI.

To exercise these rights, please contact Cengage via email at [privacy@cengage.com](mailto:privacy@cengage.com) and a

member of Cengage's Privacy Team will assist you. Please understand that Cengage may need to verify your identity before processing your request.

If you are an educator, parent, or student, Cengage is a School Product provider to your school or organization; please reach out to the appropriate contact at your school or organization with questions or inquiries. This notice does not cover other organizations' websites that may be accessible via links through our School Products. These websites have their own privacy policies and we encourage you to read them.

Cengage occasionally may notify users of its School Products of significant announcements regarding the operation of the School Products (whether or not they have opted out of receiving marketing communications from Cengage as further described in Cengage's Privacy Notice).

Some activities within the School Products might request you and other users to submit information that is tabulated and stored in a database and used to produce statistics that are integral to the educational value of these activities. If the requested information is personally identifiable, your specific responses remain confidential and Cengage will not associate those responses with your name, email address, or other personally identifiable information. You hereby consent to including in (and Cengage's disclosure of) any such statistical analysis the information that you submit while participating in any such activity.

For further information about Cengage's privacy and data protection practices, please read Cengage's [Privacy Notice](#). This Privacy Notice explains how Cengage treats your personal information when you use the School Products. You agree to the use of your personal data in accordance with Cengage's Privacy Notice.

To the extent that any third-party website accessible through the School Products has different privacy practices, School Terms or conditions, those practices, School Terms or conditions will be explained at that website and will apply to that website, in lieu of these School Terms and Cengage's Privacy Notice.

## **Accessibility**

Cengage provides a variety of programs and School Products to help make its educational materials accessible to users of all abilities. For additional information regarding Cengage's accessibility initiatives, see <https://www.cengage.com/accessibility>.

## **Responsible Disclosure Surrounding Security**

If you are a security researcher and have discovered a vulnerability in one of our School Products, Cengage appreciates your help in reporting it to Cengage in a responsible and private manner.

Any identified vulnerability in our School Products should be reported to [security@cengage.com](mailto:security@cengage.com). Reported vulnerabilities will be triaged by Cengage's Compliance and Security Team. To allow Cengage to best analyze the vulnerability, please include the following:

- URL of the vulnerable endpoint
- Type and description of vulnerability
- Steps to reproduce the vulnerability
- Your email address and any other pertinent contact information

Cengage does not want to limit the visibility we have into security risks in our School Products. However, to protect our users and systems, you are prohibited from:

- Accessing, downloading, modifying, or removing data of accounts that do not belong to you;
- Performing any penetration testing on the sites in which the School Products are provided or accessed;
- Performing any denial of service (DoS) attack, including a distributed DoS (DDoS) attack or other attack that would degrade the School Products;
- Uploading or posting malicious software;
- Engaging in social engineering of other users, Cengage employees, or Cengage partners, of any kind, including phishing;
- Sending unsolicited communications, including emails, in-application chats, and SMS;
- Testing any third-party applications, websites, or School Products that integrate or link to the School Products. and
- Physical attempts to access Cengage property or any data centers used to provide the School Products.

Cengage does not currently participate in or offer a bug bounty program. You agree that you are not entitled to any compensation in relation to vulnerability identification or disclosure.

If you identify a valid vulnerability and comply with these School Terms, Cengage will:

- Acknowledge the receipt of your vulnerability report;
- Work with you to understand and document the issue;
- Address the risk as deemed appropriate by Cengage;
- Not suspend or terminate your account; and
- Not pursue legal action against you.

## **Termination**

You agree that Cengage may terminate, suspend, or block your use of all or part of the School Products, without liability or refund, if in Cengage's sole determination you have breached these School Terms. You agree that upon termination of your participation in the School Products for any reason, Cengage may delete all information related to you on or within the School Products and may prevent your continued access to and use of the School Products.

In order to protect the integrity of the School Products, Cengage reserves the right at any time in its sole discretion to block users from certain IP addresses from accessing the School Products.

## **Feedback**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information submitted to Cengage relating to modifying or improving the School Products ("Feedback"), whether solicited or unsolicited, are non-confidential. Cengage may use Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you. You grant to Cengage a worldwide, non-exclusive, royalty-free, perpetual, irrevocable, transferable, sublicensable license to use Feedback, and in the event perpetual license School Terms are not allowed by law, the term shall be for the longest period as allowed by applicable law.

## **Changes to These School Terms**

Cengage may change these School Terms from time to time. When these changes are made, Cengage will make a new copy of these School Terms available through the School Products. You understand and agree that your use of the School Products after the date on which these School Terms have changed constitutes acceptance of the updated School Terms.

### **Miscellaneous**

All disputes arising out of or relating to these School Terms, including all intellectual property issues and your rights and obligations, shall be governed by the laws (without regard to any conflicts of laws rules) and shall be subject to exclusive jurisdiction as set forth in the following paragraphs, based on your country of residence. Each party waives any objection to the identified venue or jurisdiction:

If you reside in the United States of America or any other country not stated below:

- The laws of the United States of America and the State of New York shall apply, with exclusive jurisdiction in the state or federal courts of New York County, New York.

If you reside in the United Kingdom or in EMEA or India:

- The laws of England shall apply, with exclusive jurisdiction of the English courts.

If you reside in Australia or Asia (excluding India):

- The laws of Australia shall apply, with exclusive jurisdiction in Australia courts.

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these School Terms and is expressly excluded.

School Products and Content are not available in all languages or in all countries. Cengage makes no representation that the School Products, Cengage Materials, or School Products Items are appropriate or available for use in any particular location. To the extent you choose to access the School Products, you do so at your own risk and are responsible for compliance with any applicable laws, including applicable local laws.

These School Terms are personal to you and you may not assign them or your rights or obligations under them to anyone. If any provision of these School Terms is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect. Cengage may assign its rights and obligations, or these School Terms, in whole or in part.

The failure of Cengage to exercise or enforce any right or provision of these School Terms does not constitute a waiver of such right or provision. No waiver of any term of these School Terms by Cengage shall be deemed a further or continuing waiver of such term or any other term.

You and Cengage acknowledge and agree that no partnership, agency, joint venture, or employment relationship is formed between you and Cengage by your use of the School Products, and neither you nor Cengage have the power or the authority to obligate or bind the other.

Cengage shall not be liable for any failure or delay in the performance of its obligations due to causes beyond its reasonable control, including but not limited to, war, terrorism, sabotage, insurrection, riot or other act of civil disobedience, strikes or other labor shortages, act of any government affecting the School Terms hereof, accident, fire, explosion, flood, hurricane, severe weather or other disaster.

These School Terms along with any applicable Order and Supplemental Terms constitute the entire understanding between the parties pertaining to their subject matter, and any prior or other contemporaneous written or oral agreements between the parties are expressly superseded.

Any FAQs or similar documents included in or associated with the School Products are for informational purposes only and are not deemed to be part of these School Terms.

If Cengage provides a translation of the English language version of these School Terms, the translation is provided solely for convenience, and the English version shall prevail.

When the term "including" is used in these School Terms, it shall be interpreted to mean "including, without limitation," so that the items after the term "including" are understood to be illustrative only and not a complete list.

### **Notice and Procedure for Making Claims of Copyright Infringement**

Note: the following information is provided exclusively for notifying Cengage that your copyrighted material might have been infringed. All other inquiries, such as requests for technical assistance, will not receive a response through this process.

Pursuant to the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c), to be effective, written notification ("Notification") of claimed copyright infringement must be submitted to the following **Agent Designated to Receive Notification of Claimed Infringement**:

Laura Stevens  
Legal Department, Cengage Learning, Inc.  
200 Pier Four Blvd  
Boston, MA 02210  
Phone: (617) 289-7700  
**infringements@cengage.com**

To be effective, the Notification must include the following:

- 1 A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- 2 Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- 3 Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- 4 Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;

- 5 A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- 6 A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## Supplemental Terms for Products

### MindTap

**Instructor Use:** If you are a teacher or instructor, you may incorporate Cengage Content (including your modifications and derivative works of Modifiable Cengage Content) in: (1) in-class handouts (provided without charge and limited in the number of copies), (2) online classrooms or courses (provided access to the Cengage Content is limited to matriculated students enrolled in your class who are required to accept the Cengage Terms of Use including these Supplemental Terms and enter a unique passcode or other verifiable industry-standard authentication system that ensures each user is individually identified before such access), (3) in-class displays (e.g., via projector, computer monitor or television screen), (4) class outlines or lessons, and (5) non-fee based exams, in each case associated with a course of study (i.e., a class) for which the e-book included in the Service as specified in an Order (“Title”) has been adopted and is concurrently being used (“Course”).

**Institution Subscription:** This Section applies only if an applicable Order specifies that you are acquiring a Service subscription for an institution. Subject to your payment of the applicable fees and taxes, you may authorize your students, faculty, and administrative staff (collectively, “Authorized Users”) to access and use the applicable Service for non-commercial educational or instructional use, on condition that those Authorized Users accept the Cengage Terms of Use including these Supplemental Terms before or during their first use of that Service. For Service subscriptions that include a limit on the number of Authorized Users, Authorized Users includes all individuals authorized to use the Service, regardless of whether any such individual is actively using that Service at a particular time. You shall ensure that Authorized Users and any other person that uses the Service through the use of your password and account comply with the Cengage Terms of Use including these Supplemental Terms. You shall take all reasonable precautions necessary to safeguard against unauthorized access and use of the Service through your password and account, including ensuring that an Authorized User ceases use of the Service after that Authorized User is no longer associated with your institution.

### Special Provisions Applicable to Developer Offerings

Cengage collaborates with developers to offer them the use of the Service to develop services and/or content designed to enhance your experience with the Service (“Developer Offering”). Developer Offerings are not provided under these Terms, but are instead provided under separate terms that are included or accompany the Order (or the activation process) for a given Developer Offering (“Developer Offering Terms”). Placing an Order for a Developer Offering that includes Developer Offering Terms, or activating a Developer Offering for which the activation process includes Developer Offering Terms, will be deemed to constitute your acknowledgment that you have read and agree to all applicable Developer Offering Terms, including those provided only in the English language. You acknowledge that Cengage is not a party to, and Cengage is not liable for breaches of, any Developer Offering Terms, and that Cengage is an intended third-party beneficiary of, and may enforce directly against you, all such Developer Offering Terms.

When you use a Developer Offering, Cengage or the Service may furnish the following information about you to the Developer Offering: (1) your role (for example, instructor or student); (2) your institution or organization; (3) your name; (4) your user ID (for example, email address); (5) the ISBN of the Services you ordered and the ISBN of the Title’s corresponding physical textbook; (6) your Course ID (identifying the type of Course in which you are enrolled, for example, Introduction to Chemistry) and course key (an instructor-created identifier used by students to register for that instructor’s Course); and (7) your Course’s Snapshot ID (an ID generated by the Service that identifies the specific Course for which the applicable Title has been adopted, for example, “Professor Smith’s Introduction to Chemistry class at State University”). The Developer Offering Terms between you and the applicable Developer (and not these Terms) governs the use, storage, and transfer by that Developer and its Developer Offering of Your Content and your other information. You acknowledge that the Developer Offering Terms with a Developer might give the Developer rights with respect to your data beyond those allowed by the Developer’s agreement with Cengage and beyond those allowed by the Cengage Terms of Use including these Supplemental Terms or Cengage’s Privacy Notice. Cengage does not guarantee that each Developer will comply with its developer agreement with Cengage or its Developer Offering Terms with you, and Cengage is not required to enforce a developer agreement against a Developer.

A Developer Offering is either a Cengage-Hosted Developer Offering or a Developer-Hosted Developer Offering. Cengage’s only obligations with respect to Developer Offerings are to: (1) obtain and collect payment for your Developer Offering Order, and (2) host and provide you with online access to the functionality of Cengage-Hosted Developer Offerings in the same manner that Cengage hosts and provides you with online access to the functionality of Services developed by Cengage. Cengage is not responsible or liable for: (1) the availability, delivery, functionality, or performance of Developer Offerings, including their content, accuracy, or reliability or (2) the acts and omissions (including privacy practices) of the developers of Developer Offerings.



## **WebAssign**

WebAssign, a Cengage Service made available at [www.webassign.com](http://www.webassign.com), includes online homework delivery, grading, and assessment functionality, and is available to instructors through paid subscription, for specified classes and time durations. The main purpose of the WebAssign Service is to provide instructors with a secure, accessible platform in which to assign and grade homework and assessments, in order to assess student performance and comprehension. The WebAssign Service can also be used for quizzes, tests, labs, and self-study depending on the instructor's application of the WebAssign Service. In the WebAssign Service, course materials, including textbooks, questions, answers, multimedia files, and ebooks, are accessible to students between the start and end dates, set by the instructor, of the courses for which access has been purchased. This restriction applies to single-semester access, multi-semester access, and Lifetime Of Edition access ("Lifetime of Edition" means that the student has access to course materials whenever that student is enrolled in a course within the same institution where the same edition of such materials is being used).

The WebAssign Service may be used only in conjunction with an educational course offering in which you are enrolled or which you are teaching or administering, as applicable.

### **WebAssign IDs**

Student usernames and passwords may be provided to WebAssign for use with the WebAssign Service by the instructor (or, if the instructor chooses and if available, by self-enrollment functionality). WebAssign determines any applicable institution code. You should change your password before starting to use the WebAssign Service, to prevent unauthorized access to your assignments. To facilitate communication between WebAssign and users of the WebAssign Service, and for retrieval of login information, we use email addresses.

If your WebAssign Services account has been set up by your instructor or other administrator, your instructor or administrator may be able to access or disable your account. WebAssign shall have no liability for any acts or omissions of your instructor or other administrator.

### **Shared Content**

You may be able to specify that Shared Content is generally available for use by all other WebAssign Service users, or only to the WebAssign Service users that you specifically allow to use the Shared Content.

## **SAM**

**Instructor Use:** If you are a teacher or instructor, you may incorporate Cengage Content (including your modifications and derivative works of Modifiable Cengage Content) in: (1) in-class handouts (provided without charge and limited in the number of copies), (2) online classrooms or courses (provided access to the Cengage Content is limited to matriculated students enrolled in your class who are required to accept the Cengage Terms of Use including these Supplemental Terms and enter a unique passcode or other verifiable industry-standard authentication system that ensures each user is individually identified before such access), (3) in-class displays (e.g., via projector, computer monitor or television screen), (4) class outlines or lessons, and (5) non-fee based exams, in each case associated with a course of study (i.e., a class) for which the e-book included in the Service as specified in an Order (“Title”) has been adopted and is concurrently being used (“Course”).

**Institution Subscription:** This Section applies only if an applicable Order specifies that you are acquiring a Service subscription for an institution. Subject to your payment of the applicable fees and taxes, you may authorize your students, faculty, and administrative staff (collectively, “Authorized Users”) to access and use the applicable Service for non-commercial educational or instructional use, on condition that those Authorized Users accept the Cengage Terms of Use including these Supplemental Terms before or during their first use of that Service. For Service subscriptions that include a limit on the number of Authorized Users, Authorized Users includes all individuals authorized to use the Service, regardless of whether any such individual is actively using that Service at a particular time. You shall ensure that Authorized Users and any other person that uses the Service through the use of your password and account comply with the Cengage Terms of Use including these Supplemental Terms. You shall take all reasonable precautions necessary to safeguard against unauthorized access and use of the Service through your password and account, including ensuring that an Authorized User ceases use of the Service after that Authorized User is no longer associated with your institution.

## **PM eCollection**

### **Premium subscription**

Each student seat that is purchased is to be used to provide a single student with access to the PM eCollection platform, once the student no longer needs access the student should be deleted which will de-allocate their seat and allow another user to be added to the subscription using up a seat allocation. Only teachers that work for your school/institution may be added to your subscription, these teachers should be removed from the platform once they no longer work for your school/institution.

### **PM Benchmark Software**

Only teachers that work for your school/institution may be added to your subscription, these teachers should be removed from the platform once they no longer work for your school/institution.

**PM Guided Reading Planner**

Only teachers that work for your school/institution may be added to your subscription, these teachers should be removed from the platform once they no longer work for your school/institution.

You may only supply copies of the Cengage Materials available through this platform to teachers that already have access to the platform or that would have the right from being within your school to have access