

**FIRST AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN CENGAGE LEARNING INC AND POUDRE SCHOOL DISTRICT R-1**

This First Amendment (“Amendment”) effective July 25, 2024, is attached to and forms part of the Software Services Agreement between Poudre School District R-1 (the “District”) and Cengage Learning Inc. (the “Contractor”) executed April 10, 2023, (“Agreement”), hereby attached and made part of this Amendment. To the extent that any of the terms or conditions contained in this Amendment may contradict with any of the terms or conditions of the attached Agreement, it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the attached Agreement. The parties agree to amend the Agreement by adding the following language:

1. **Purpose of Amendment.** This Amendment shall constitute the First Amendment to the Agreement between the District and the Contractor. The purpose of this Amendment is to amend the terms and deliverables between the District and Contractor.

2. **Term of Agreement.**

2.1. At the conclusion of the term dated July 31, 2024, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on August 1, 2024, through July 31, 2025.

3. **Amended Responsibilities.**

3.1. Exhibit B is deleted hereby in its entirety.

3.2. Replace Exhibit B with Contractor’s renewal quote, hereby attached to this First Amendment and made part of this Agreement.

3.3. The total cost for all Services under this Agreement shall be as set forth on the Attached Exhibit B and shall not exceed Sixty-Three Thousand Six Hundred One Dollar and Eighty Cents (\$63,601.80), due and payable thirty (30) days from receipt of Contractor’s invoice.

3.3.1. Additional Services purchased shall not exceed the pricing as outlined in Exhibit B.

3.4. Within section 1.1, amend with the following additional language which is underlined:

This Agreement shall commence on August 1, 2023 and continue through and including July 31, 2024. The Agreement, at the option of the District, may be extended for up to four (4) additional one-year terms, with the commencement of a written and executed amendment to the Contract for each one-year term.

3.5. Within section 10, delete the language which has a strikethrough and replace with the following language which is underlined:

Poudre School District R-1
Attn: ~~Tracy Stibitz~~
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: tstibitz@psdschools.org

Poudre School District R-1
Attn: Contracts Administrator
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: contracts@psdschools.org

4. **Special Provisions.**

4.1. Terms and Conditions. With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement between the District and Contractor shall remain unchanged and in full force and effect.

5. **General Provisions.**

5.1. Entire Agreement. The original Agreement and this First Amendment constitutes the entire Agreement of the parties regarding the subject matter addressed herein and supersedes all prior Agreements, whether oral or written, pertaining to said subject matter.

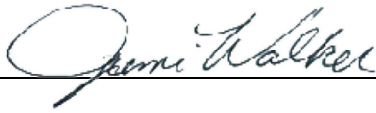
5.2. Signatures. This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.

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IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

CENGAGE LEARNING INC

POUDRE SCHOOL DISTRICT R-1

By: 

Name: Jami Walker
Title: VP, K12 Sales

By: 
R David Montoya (Aug 8, 2024 09:22 MDT)

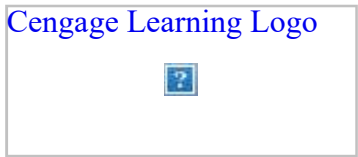
R. David Montoya
Chief Finance Officer

By: 
Amanda J Kreiger (Aug 5, 2024 14:26 MDT)

~~Kate Canine~~
~~Director of Teaching and Learning~~

Amanda Kreiger
Director of Curriculum

Exhibit B



- [Contact Us](#)
- [Tech Support](#)
- [Find your Rep](#)

Confidential Price Quote - RENEWAL QUOTE

03/22/2024
Pricing on this Proposal Guaranteed: 09/30/2024

Presented To: Judy Kinner
Prepared By: Melissa Bobby, Subscription Renewal Specialist, (800) 877-4253.18481, melissa.bobby@cengage.com
Account #: 307443
Account #: 307443
Deliver To: POUDRE SCHOOL DISTRICT
Judy Kinner
Invoice To: POUDRE SCHOOL DISTRICT
Judy Kinner

Deliver To Address:
2407 LAPORTE AVE
FORT COLLINS
Colorado
United States
80521-2211

Subscription Titles	Qty	Total List Price	Total Sales Price
Gale In Context: Global Issues , Imprint:Gale Research Inc, ISBN: 242925 , Subscription Dates: 08/01/2024 to 07/31/2025 , Number of Sites: 4	1	\$11,160.04	\$11,160.04
Gale In Context: High School , Imprint:Gale Research Inc, ISBN: 9780787649258 , Subscription Dates: 08/01/2024 to 07/31/2025 , Number of Sites: 5	1	\$18,804.95	\$18,804.95
Gale In Context: Middle School , Imprint:Gale Research Inc, ISBN: 9780787649265 , Subscription Dates: 08/01/2024 to 07/31/2025 , Number of Sites: 9	1	\$13,143.34	\$13,143.34
Gale In Context: Opposing Viewpoints , Imprint:Gale Research Inc, ISBN: 176168 , Subscription Dates: 08/01/2024 to 07/31/2025 , Number of Sites: 5	1	\$8,682.00	\$8,682.00
Gale In Context: Opposing Viewpoints , Imprint:Gale Research Inc, ISBN: 176168 , Subscription Dates: 08/01/2024 to 07/31/2025 , Number of Sites: 9	1	\$11,811.47	\$11,811.47
Total for Subscription Titles:		\$63,601.80	\$63,601.80
Subscription Item Total: \$63,601.80			

Confirmation Required

After checking the 'I'm not a robot' box, please click the 'I Confirm' button. Selecting "I Confirm" does not require immediate payment. Once confirmed, your invoice will be sent on the start date of your purchase. Your payment terms are: Net 30, unless otherwise requested and agreed to.

After clicking the "I Confirm" button, an email will be sent to your Gale account manager confirming your purchase of these products.

If you have any additional comments or questions, please enter them below.

If you require a purchase order number to appear on your invoice, please enter it here.

Sub-Total:\$63,601.80

ORDER TOTAL:\$63,601.80

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

Click checkbox when ready to confirm quote

Thank you for your interest in products from Gale, a Cengage Company.

Payment terms are days from 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 conflicts 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.



CENGAGE LEARNING

27500 DRAKE ROAD

FARMINGTON HILLS, MI 48331-3535

UNITED STATES

Phone: (248) 699-4253 / (800) 877-4253

Confidential Price Quote - RENEWAL QUOTE (644033)

03/22/2024

Pricing on this Proposal Guaranteed: 09/30/2024

Presented To: Judy Kinner

Prepared By: Melissa Bobby, Subscription Renewal Specialist, (800) 877-4253.18481, melissa.bobby@cengage.com

Account #:

307443

Account #:

307443

Deliver To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Invoice To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Total:\$63,601.80

To place your order

1. MAIL TO:

Cengage Learning Inc

PO Box 936754

Atlanta, GA 31193-6754

2. FAX TO: 800 990 4253

3. FOR ORDERS WITH CHECK,

MAIL TO:

Cengage Learning Inc

PO Box 936754

Atlanta, GA 31193-6754

Method of payment

☐ Check or Money Order enclosed.

Cengage Learning pays postage and handling (in the U.S. and Canada).

☐ Charge my Credit Card.

Cengage Learning pays postage and handling (in the U.S. and Canada).

☐ VISA

☐ MasterCard

☐ American Express

☐ Discover

Card No.

Exp. Date

CVV #

Signature

☐ I have an established account. Please bill me (including postage and handling)

P.O. #

Thank you for choosing Gale as your information provider!

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**SOFTWARE SERVICES AGREEMENT
BETWEEN CENGAGE LEARNING INC.
AND POUDRE SCHOOL DISTRICT R-1**

This Software Services Agreement (“Agreement”) is entered into this 10th day of April 2023, by and between Poudre School District R-1 (the “District”) and Cengage Learning Inc. (the “Contractor”). The District and the Contractor are collectively referenced herein as the “parties.” In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term of Agreement.**

1.1. This Agreement shall commence on August 1, 2023 and continue through and including July 31, 2024.

2. **Deliverables and Purchase Price.**

2.1. The Contractor shall make its Gale electronic database available for use in the District, in accordance with the scope of work set forth in the attached Exhibit A (hereinafter the “Services”).

2.2. The total cost for all Services under this contract as set forth on the attached Exhibit B, shall not exceed Sixty-Three Thousand, Six Hundred and One Dollars and Eighty Cents (\$63,601.80), due and payable thirty (30) days from receipt of Contractor’s invoice.

2.2.1. Additional Services purchases shall not exceed the pricing outlined in Exhibit B.

2.3. Contractor shall maintain compliance with federal, state and local laws as pertains to accessibility for persons with disabilities, including but not limited to Colorado House Bill 21-1110, for the length of the Agreement and all extensions.

2.4. **Invoicing.** Contractor will provide invoices for the Services at the rate specified in Exhibit B. Invoices for Services provided shall be submitted directly to the District’s accounts payable department within thirty (30) days of completion of Services. Invoices for such Services shall include (a) date on which Services were provided, (b) the District Location for which the Service were provided, (c) details of Products delivered, (d) and if issues, a purchase order number.

2.4.1. Invoices received from the Contractor pursuant to this Agreement will be reviewed and approved by the District's representative, indicating that services have been rendered in conformity with the Agreement and then will be sent to the Finance Department for payment. Payment for Services not approved by the District in writing, shall not be considered valid and the District will not be responsible for covering associated costs. Invoices will generally be paid within thirty (30) days following the District representative's approval.

- 2.4.2. Invoices which do not conform with the agreement will be paid thirty (30) days from receipt of a revised and corrected invoice.
- 2.4.3. All invoices must be submitted within 30 days of fiscal year end June 30 and may not include items received by the District outside of the fiscal year July 1 – June 30.
- 2.4.4. Invoices shall be sent to ap@psdschools.org.
- 2.4.5. The District is exempt from federal and state taxes under Colorado Tax Exempt Number 98-03335.
- 2.4.6. If the contract results in the right to use an asset, the Contractor shall provide the District, if requested, documentation necessary to facilitate the District's compliance with the Governmental Accounting Standards Board ("GASB") issued GASB Statement No. 87, Leases.

2.5. The Contractor grants the District a non-exclusive, non-transferable, non-sublicenseable license to access and use, and permit authorized users to access and use the Services solely in the United States during the term of the Agreement.

2.6. The District shall access and use the Services solely for non-commercial instructional and administrative purposes within the District. Further, the District shall not, except as expressly authorized or directed by the Contractor: (a) copy, modify, translate, distribute, disclose or create derivative works based on the contents of, or sell, the Services, or any part thereof; (b) decompile, disassemble or otherwise reverse engineer Services or otherwise use the Services to develop functionally similar products or services; (c) modify, alter or delete any of the copyright, trademark, or other proprietary notices in or on the Services; (d) rent, lease or lend the Services or use the Services for the benefit of any third party; (e) avoid, circumvent or disable any security or digital rights management device, procedure, protocol or mechanism in the Services; or (f) permit any authorized user or third party to do any of the foregoing. The District also agrees that any works created in violation of this section are derivative works, and, as such, the District agrees to assign, and hereby assigns, all right, title and interest therein to the Contractor.

2.7. The District agrees, subject to the limited rights expressly granted hereunder, that all rights, title and interest in and to all Services, including all related IP Rights, are and shall remain the sole and exclusive property of Contractor or its third-party licensors. "IP Rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide. The District shall notify Contractor of any violation of Contractor's IP Rights in the Services, and shall reasonably assist Contractor as necessary to remedy any such violation. Contractor Services are protected by patents.

2.8. The District understands and agrees that its students' access to and use of the Services under this Agreement may require that it disclose confidential student records and information, as that term is defined below, to the Contractor. The Contractor understands and agrees that if it fails to comply with any of the requirements under sections 4, 5, 6 or 7 below at

any time during or after the term of this Agreement the District may, as applicable, terminate the Agreement and/or disqualify the Contractor from future agreements with the District.

3. **Definitions.**

3.1. As used in this Agreement, “personally identifiable information” is defined as information (including metadata) that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s social security number, student number or biometric record; and (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name.

3.2. As used in this Agreement, “education records” is defined as records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as the Contractor.

3.3. As used in this Agreement, “confidential student records and information” is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by the Contractor. Confidential student records and information does not include “de-identified confidential student records and information,” as defined in section 3.4 below.

3.4. As used in this Agreement, “collect” is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

3.5. As used in this Agreement, “de-identified confidential student records and information” is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

3.6. As used in this Agreement, “securely destroy” is defined as removing confidential student records and information from the Contractor’s systems, paper files, hard-copy and electronic records, databases and any other media regardless of format, in accordance with the standard detailed in the National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization, so that the confidential student records and information are permanently irretrievable in the Contractor’s normal course of business.

3.7. As used in this Agreement, “eligible student” is defined as a student who is at least 18 years of age or who is legally emancipated.

4. **Ownership of Confidential Student Records, Information.** All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to

intellectual property rights in the confidential student records and information, belong to and are retained solely by the District. The District hereby grants to the Contractor a limited, nonexclusive license to access, view, collect, generate and use confidential student records and information solely for the purpose of performing its obligations under this Agreement.

5. **Security of Confidential Student Records and Information.**

5.1. The Contractor shall store and process confidential student records and information in accordance with commercial best practices, including implementing appropriate administrative, physical and technical safeguards that are no less rigorous than those outlined in CIS Critical Security Controls, as amended, to secure such confidential student records and information from unauthorized access, disclosure, alteration and use. The Contractor shall ensure that all such safeguards, including the manner in which confidential student records and information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including but not limited to Colorado's Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 to -112. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, the Contractor warrants that all electronic confidential student records and information will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

5.2. The Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. The Contractor shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under this Agreement.

6. **Use of Confidential Student Records and Information.**

6.1. Under the Contract, Contractor may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) Contractor shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Contractor shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Contractor shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations under the Contract; and (d) at the conclusion of the term of the Contract Contractor shall, as directed by the District, either securely destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

6.2. Contractor may use de-identified confidential student records and information for purposes of research, the improvement of its products and services, and/or the development of new products and services. In no event shall Contractor re-identify or attempt to re-identify any de-identified confidential student records and information.

6.3. Contractor shall promptly furnish to the District upon request all confidential student records and information collected and/or generated by Contractor and not in

the District's possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to -206 ("CORA"). The District, not Contractor, shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

7. **School Service Contract Provider.** If Contractor is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"), the Contract is amended to add the language in this section 7. Under the Act, a "school service contract provider" is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a "school service." Under the Act, a "school service" is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information.

7.1. As a school service contract provider under the Act, the Contractor has provided the following information the attached Exhibit A: (a) the data elements of confidential student records and information that Contractor collects under the Contract, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for preserving the anonymity of each student included in the data; (b) the learning purpose for which Contractor collects the confidential student records and information; and (c) how the Contractor uses and shares the confidential student records and information. Contractor shall update this information as necessary to maintain accuracy.

7.2. Contractor shall facilitate the District's access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

8. **Remedies.** If Contractor fails to comply with any of the foregoing requirements in sections 4, 5, 6 or 7 at any time during or after the term of the Agreement the District may, as applicable, terminate the Agreement and/or disqualify Contractor from future contracts and subcontracts with the District.

9. **Access to District Server.** If access to any District server is necessary for the functionality of the Contractor's services. Upon written approval by the Executive Director of Information Technology or designee, the District grants the Contractor limited access to the District server for the sole purpose of providing Services

9.1. The Contractor agrees to protect the confidentiality, integrity and availability of all electronic District or student information at all times.

9.2. The Contractor agrees to take proper steps to ensure the security of the device in which they connect to the District's systems remotely. The Contractor agrees not to

copy information accessed remotely to local devices and or portable devices. Printing information is not permitted unless specific authorization has been granted.

9.3. The Contractor shall not share passwords, codes, credentials or user accounts with others.

9.4. The Contractor shall have a valid and up-to-date antivirus agent installed to ensure protection against malware and viruses upon connection to the District network.

9.5. The Contractor acknowledges that if the District determines in its discretion that remote access has been compromised by unauthorized parties, or that remote access has been misused, the Contractor's access will be disabled or terminated immediately.

10. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

Poudre School District R-1
Attn: Tracy Stibitz
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: tstibitz@psdschools.org

Cengage Learning Inc.
Attn: Adam Willis
PO Box 95501
Chicago, IL 60694-5501
Email: adam.willis@cengage.com

11. **Insurance.** Contractor shall procure and maintain the required insurance specified below for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. The District's receipt of a Certificate of Insurance from the Contractor with limits and or coverages that do not meet the requirements does not waive the requirements and the Contractor shall still be responsible for the limits and coverages stated in this Agreement. Specified coverages and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates prior to the expiration of any required insurance that expires during the term of this Agreement. Memorandums of Insurance will not be accepted. Certificates of Insurance and all communication regarding insurance shall be addressed to:

Poudre School District
Attention: Risk Management
2407 Laporte Ave
Ft. Collins, CO 80521
Email Certificate to: COI@psdschools.org

Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days' advance written notice to the District prior to cancellation, change of coverage, or non-renewal. The insurance

requirements specified in this section 11 shall not reduce the indemnification liability that Contractor has assumed in section 12.

Commercial General Liability

Minimum Limits

- | | |
|--|-------------|
| a. Each Occurrence Bodily Injury & Property Damage | \$2,000,000 |
| b. General Aggregate | \$3,000,000 |
| c. Products/Completed Operations Aggregate | \$2,000,000 |
| d. Personal/Advertising Injury | \$2,000,000 |
| e. Coverage must be written on an "occurrence" basis. | |
| f. Poudre School District R-1 and its elected officials, employees, agents, and volunteers shall be named as an additional insured or covered as an additional insured by way of a blanket endorsement and shall be insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement. | |

Technology Errors and Omissions Liability (Professional Liability, including Network Security and Privacy Liability)

Minimum Limits

- | | |
|--|-------------|
| a. Per Loss | \$1,000,000 |
| b. Aggregate | \$3,000,000 |
| c. Liability extends for a period of three (3) years beginning at the time work under this Agreement is completed. Contractor shall maintain continuous coverage, as required by the Agreement, for this period. | |

The insurance shall provide coverage for:

- a. Liability arising from theft, dissemination and/or use of confidential information (defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
- b. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party to gain access to Contractor's services including denial of service, unless caused by a mechanical or electrical failure.
- c. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a District or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

12. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, third party claims, grievance, or proceeding, including all attorneys' fees, costs and expenses, incurred as a result of any negligent or

intentional act or omission by Contractor, or its employees, agents, Subcontractors, or assignees related to the terms of this Agreement and any Services provided under this Agreement.

13. **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the District of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Constitution or Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*, as now or hereafter amended.

14. **General Provisions.**

14.1. **No Assignment.** The Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

14.2. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.

14.3. **Press Contacts/News Releases.** The Contractor shall not initiate any press, media, or social media, contact nor respond to press, media or social media requests regarding this Agreement and/or any related matters concerning the District without the prior written approval of the District.

14.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District and the Contractor through written amendments to the Agreement, in the same manner and with the same formality as was done for this Agreement.

14.5. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement, any incorporated exhibits, any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

14.6. **Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the District as provided herein in the event of such failure to perform or to comply by the Contractor.

14.7. **Governing Law and Venue.** All issues regarding the formation, performance and/or legal enforcement of the Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the Contract shall be in Larimer County, Colorado.

14.8. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to

the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

14.9. **Binding Arbitration Prohibited.** The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary is null and void.

14.10. **Severability Clause.** Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

14.11. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation to enforce any provision of this Agreement, the substantially prevailing party in such litigation shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

14.12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

14.13. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

14.14. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties regarding the subject matter addressed herein and supersedes all prior Agreements, whether oral or written, pertaining to said subject matter.

14.15. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes. This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument.

14.16. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.


THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

POUDRE SCHOOL DISTRICT R-1

By: 

Jennifer Fritsch
Vice President of K12 School Sales

By: 
R David Montoya (Apr 13, 2023 14:12 MDT)

R. David Montoya
Chief Finance Officer

By: 
K.Canine (Apr 13, 2023 13:47 MDT)

Kate Canine
Director of Teaching and Learning

Exhibit A

Gale Product Descriptions

The Gale Electronic Database resources described below include:

- Global Issues in Context
- Opposing Viewpoints in Context
- Student Resources in Context
- Research in Context
- Science in Context
- Gale Interactive Science
- Contemporary Literary Criticism
- Contemporary Authors

The purpose of Gale electronic databases is to gather reliable, educational information for special projects, such as research papers, history projects, literature analyses, and science projects. Teachers use Gale resources to supplement curriculum with reliable, up-to-date learning content, including biographies of famous people, primary sources from historical events, and literary analysis. Students use the materials as a virtual library to learn, complete homework assignments, and produce projects. A common interface allows students to easily learn and use Gale resources across subjects and grades. Content can be translated into dozens of languages, and searched by reading level to meet student's needs. Information formats include:

- Articles
- Reference Titles
- Biographies
- Other Non-Fiction eBooks
- Multimedia
- Images
- Videos
- Podcasts (audio)
- Interactive maps
- Charts and graphs
- Statistical information

Gale Global Issues In Context spans continents and cultures to bring essential, balanced information to researchers across many academic disciplines. The database integrates news, global viewpoints, reference content, country information, primary source documents, videos, statistics and more in a single search. Global Issues In Context includes authoritative content, updated daily with more than 660 geographically diverse full-text newspapers, magazines, and journals from around the world. Content includes over 100 Gale proprietary reference titles, including Human Geography: People & the Environment, Junior Worldmark Encyclopedia of World Cultures, Middle East Conflict Reference Library, and Worldmark Encyclopedia of the

Nations. Gale editors manage 250 Country topic pages and more than 400 Issue pages covering global topics of interest.

Opposing Viewpoints In Context covers today's most important social issues. This cross-curricular research tool supports science, social studies, current events, and language arts classes. Differing views present each side of an issue and help students develop information literacy, critical thinking skills, and the confidence to draw their own valid conclusions. *Opposing Viewpoints in Context* includes a dedicated portal focused on the annual National Debate Topic as well as additional portals pages to bring together comprehensive topic overview essays alongside expert content. The resource includes:

- More than 20,100 pro/con viewpoints
- More than 19,200 reference articles, including topic overviews
- More than 12,700 charts and graphs, along with other statistical information
- Special coverage of the annual debate topic determined by the National Speech and Debate Association
- Full-text newspapers and periodicals from multiple perspectives

Student Resources In Context offers cross-curricular content aligned to national, state, and Common Core State Standards, and presents material in the way most useful for students. *Student Resources In Context* provides support for papers, projects, and presentations while reinforcing the development of critical thinking and problem solving skills, communication, collaboration, creativity, and innovation. Includes more than 150 titles from Gale and its publishing partners, such as:

- American Decades
- Discovering Authors
- Gale Encyclopedia of Science
- St. James Encyclopedia of Popular Culture
- Worldmark Encyclopedia of the Nations

Research In Context is designed to bridge the gap between resources for elementary school students and the subject-specific Gale In Context suite of electronic databases, which were developed primarily for high school students. The highly visual design and simple navigation is preferred by students in grades 6 to 8. *Research In Context* includes authoritative content aligned with middle school curriculum and a user-focused tool set needed to support middle school assignments and coursework. The *Research In Context* user experience is designed to support the developing information and digital literacy skills of the average middle school student. *Research In Context* brings together content from the former Discovering Collection, Junior Reference Collection, Student Resource Center Jr., InfoTrac Junior Edition, and InfoTrac Junior Graphic Edition. *Research In Context* is cross-disciplinary in nature—spanning literature, science, social studies, and U.S. and world history.

Categories cover the most-studied topics, including nearly 300 topic pages and overviews on the subjects and social issues most studied by and relevant to middle school users as well as science experiments and contextual information for key works and documents. Authoritative information sources include: Proprietary Gale, UXL, and Lucent titles and content from leading sources like National Geographic, Scholastic, NPR, NASA, AP Video News, and others. Content is aligned to national and state curriculum standards for grades 6 to 12 in language arts, social studies, and science.

Science In Context is an electronic database resource that provide contextual information on hundreds of today's most significant science topics. By integrating authoritative, curriculum-aligned reference content with headlines and videos, *Science In Context* shows how scientific disciplines relate to real-world issues. Science In Context includes:

- Millions of full-text articles drawn from hundreds of national and global newspapers, magazines, and journals.
- More than 200 experiments and projects from UXL Experiment Central
- Content aligned to National and State Science standards, including Common Core State Standards, Next Generation Science Standards, and Project 2061
- Thousands of images, videos, and audio selections from authoritative sources
- Reference content from Gale and its publishing partners includes top titles such as:
 - Gale Encyclopedia of Medicine
 - Gale Encyclopedia of Science
 - World of Chemistry

Interactive Science provides a comprehensive view of the most-studied science subjects in high school and middle school. Authoritative digital content is presented with interactive 3D models and links to Gale's *Science In Context* database for in-depth learning content.

Interactive Science is a highly visual online tool that supports science topics in biology, anatomy, chemistry, and earth and space science in an interactive way for learners to explore 3D models by zooming in, rotating, or pulling them apart.

Interactive Science has an easy-to-use, intuitive interface and facilitates in-depth learning by including relevant reference and periodical content. Each of the 200+ interactive lessons are correlated to Next Generation Science Standards and Common Core State Standards.

Interactive Science's reference and periodical content is selected from authoritative resources such as Gale's Science In Context, Grzimek's Student, and Academic OneFile.

Contemporary Literary Criticism covers authors who are currently active or who died after December 31, 1959. Each volume in this long-standing series profiles approximately 6-8 novelists, poets, playwrights and other creative and nonfiction writers by providing full-text or excerpted criticism taken from books, magazines, literary reviews, newspapers and scholarly journals. Approximately 90-95% of critical essays are full text. Each of the approximately 200 essays per volume is prefaced by a full citation and annotation.

Contemporary Authors covers biographical information on more than 156,000 modern novelists, poets, playwrights, nonfiction writers, journalists and scriptwriters. Sketches typically include personal information, contact information, career history, writings, biographical and critical sources, authors' comments, and informative essays about their lives and work. Sketches typically include personal information, contact information, career history, writings, adaptations, biographical and critical sources, and informative essays about authors' lives and works. The series also includes a select number of autobiographical essays, about 10,000 words in length, written by the authors themselves and accompanied by a selection of unique family photos.



Gale, a part of Cengage Learning
27500 Drake Road, Farmington Hills, MI 48331
FEIN 59-2124491, DUNS 86-1016442

June 7, 2017

Kim McMonagle
Director of Educational Technology
Poudre School District
2407 LaPorte Avenue
Fort Collins, CO 80521

Dear Ms. McMonagle,

Regarding the Colorado Student Data Transparency and Security Act, this letter is to advise you that Gale, a Cengage Company (Gale) does not collect personally identifiable information (PII) when providing Gale products and services. Students are able to use Gale's online products immediately, once their school is recognized. Gale controls product access based on identification of the school generally, and does not require students to log in or authenticate individually. All usage data is in aggregate, and is not obtained, collected, or used for or by individual students.

All Gale products conform to the Colorado Student Data Transparency and Security Act's requirements and Gale commits to upholding them. Descriptions of the Gale resources used by Poudre School District are attached. Resources all have an identical functionality and are distinguished by subject area. Gale subscription database resources include:

- Global Issues in Context
- Opposing Viewpoints in Context
- Student Resources in Context
- Research in Context
- Science in Context
- Gale Interactive Science
- Contemporary Literary Criticism
- Contemporary Authors

Per Section 22-16-108 of the Colorado Student Data Transparency and Security Act, Gale provides reporting of usage statistics on a regular basis. This is aggregate data only, for the usage by each school within Poudre School District. Individual students are not tracked; data is only collected on an aggregate basis.

With regard to the stipulation that all electronic confidential student records and information be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended, Cengage does not comply to 100% for at-rest encryption at this time. The percentage of Cengage products that do not meet this is very small and Cengage can provide specific detail on those that do not use at-rest encryption.

In response to the district's additional questions regarding privacy, please note Gale's responses in green:

- 1) What student personally identifiable information (data) can be collected through the use of the system?
 - a. List all PII that is collected, maintained, generated, or inferred through use of service. This includes information created or collected by the company.
Gale does not collect Personally Identifiable Information (PII). Students may be instructed to use their login credentials, for example Gmail email address to save research content or annotations, but Gale does not collect any login credentials.
- 2) What is the purpose for collecting student personally identifiable data? Not Applicable
- 3) What third-parties does the vendor share information in any format?
 - a. This includes storage and vendors receiving encrypted data. Not Applicable. Gale does not collect or share any PII information.
- 4) What is the purpose of these third-party vendors? Not Applicable

Gale/Cengage does not require a signed contract, but I am ready and will personally sign a required contract, on behalf of Gale.

If you need any further information regarding Gale or its products, please feel free to contact me. Thank you for using Gale for your digital learning needs.

Best regards,

Jennifer Fritsch

Jennifer Fritsch, Vice President of K12 School Sales
Jennifer.Fritsch@cengage.com (281) 923-2695

Exhibit B



QUOTE

- [Contact Us](#)
- [Tech Support](#)
- [Find your Rep](#)

Confidential Price Quote - RENEWAL QUOTE

03/21/2023

Pricing on this Proposal Guaranteed: 10/31/2023

Presented To: Judy Kinner

Prepared By: Melissa Bobby, Subscription Renewal Specialist, (800) 877-4253.18481, melissa.bobby@cengage.com

Account #:

307443

Account #:

307443

Deliver To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Invoice To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Deliver To Address:
2407 LAPORTE AVE
FORT COLLINS
Colorado
United States
80521-2211

Subscription Titles		Qty	Total List Price	Total Sales Price
Gale In Context: Global Issues , Imprint:Gale Research Inc, ISBN: 242925 , Subscription Dates: 08/01/2023 to 07/31/2024 , Number of Sites: 4		1	\$11,160.04	\$11,160.04
Gale In Context: High School , Imprint:Gale Research Inc, ISBN: 9780787649258 , Subscription Dates: 08/01/2023 to 07/31/2024 , Number of Sites: 5		1	\$18,804.95	\$18,804.95
Gale In Context: Middle School , Imprint:Gale Research Inc, ISBN: 9780787649265 , Subscription Dates: 08/01/2023 to 07/31/2024 , Number of Sites: 9		1	\$13,143.34	\$13,143.34
Gale In Context: Opposing Viewpoints , Imprint:Gale Research Inc, ISBN: 176168 , Subscription Dates: 08/01/2023 to 07/31/2024 , Number of Sites: 5		1	\$8,682.00	\$8,682.00
Gale In Context: Opposing Viewpoints , Imprint:Gale Research Inc, ISBN: 176168 , Subscription Dates: 08/01/2023 to 07/31/2024 , Number of Sites: 9		1	\$11,811.47	\$11,811.47

Subscription Titles

Qty	Total List Price	Total Sales Price
	Total List Price	Total Sales Price
	\$63,601.80	\$63,601.80

Total for Subscription Titles:
Subscription Item Total: \$63,601.80

Confirmation Required

After checking the ‘I’m not a robot’ box, please click the ‘I Confirm’ button. Selecting "I Confirm" does not require immediate payment. Once confirmed, your invoice will be sent on the start date of your purchase. Your payment terms are: Net 30, unless otherwise requested and agreed to.

After clicking the "I Confirm" button, an email will be sent to your Gale account manager confirming your purchase of these products.

If you have any additional comments or questions, please enter them below.
If you require a purchase order number to appear on your invoice, please enter it here.

Sub-Total:\$63,601.80
ORDER TOTAL:\$63,601.80
Tax and freight charges will be applied to invoice where applicable.

Click checkbox when ready to confirm quote



Thank you for your interest in products from Gale, a Cengage Company.

Payment terms are days from 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 conflicts 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.



CENGAGE LEARNING
27500 DRAKE ROAD
FARMINGTON HILLS, MI 48331-3535
UNITED STATES

Phone: (248) 699-4253 / (800) 877-4253

Confidential Price Quote - RENEWAL QUOTE (606404)

03/21/2023

Pricing on this Proposal Guaranteed: 10/31/2023

Presented To: Judy Kinner

Prepared By: Melissa Bobby, Subscription Renewal Specialist, (800) 877-4253.18481, melissa.bobby@cengage.com

Account #:

307443

Account #:

307443

Deliver To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Invoice To:

POUDRE SCHOOL DISTRICT

Judy Kinner

Total:\$63,601.80

To place your order

1. MAIL TO:

Cengage Learning Inc

PO Box 936754

Atlanta, GA 31193-6754

2. FAX TO: 800 990 4253

3. FOR ORDERS WITH CHECK,

MAIL TO:

Cengage Learning Inc
PO Box 936754
Atlanta, GA 31193-6754

Method of payment

☐ Check or Money Order enclosed.

Cengage Learning pays postage and handling (in the U.S. and Canada).

☐ Charge my Credit Card.

Cengage Learning pays postage and handling (in the U.S. and Canada).

☐ VISA

☐ MasterCard

☐ American Express

☐ Discover

Card No.

Exp. Date

CVV #

Signature


☐ I have an established account. Please bill me (including postage and handling)

P.O. #

Thank you for choosing Gale as your information provider!

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[TERMS OF USE](#) | [PRIVACY](#)

 Cengage Learning Empower Change Logo

CENGAGE AGREEMENT FOR GALE PRODUCTS AND SERVICES
TERMS & CONDITIONS

1. Product and Services, Uptime. Subject to the timely receipt of all required fees and conformance to the terms herein, Cengage shall make the Products and/or Services available for use by Customer's Authorized Users. An "Authorized User" means only (i) for public libraries: library staff, individual residents of the library's reasonably defined geographic service area, and walk-in patrons accessing the Products and/or Services on site; (ii) for schools and academic institutions: currently enrolled students, faculty, staff, and visiting scholars, as well as walk-in patrons accessing the Products and/or Services on site; (iii) for other types of organizations and subscribers: employees, and independent contractors, in the capacity of their employment or engagement with the organization. The term Authorized Users excludes persons associated with corporate affiliates of the Customer unless those users are expressly identified in this Agreement. Cengage will use reasonable commercial efforts to ensure that the Products and/or Services are available on a monthly basis not less than 98.0% of the time, exclusive of scheduled outages, maintenance, and downtime that is outside of Cengage's reasonable control. As Customer's sole remedy for Cengage's failure to meet the monthly uptime requirement, at Customer's request, Cengage may provide a credit of the fee pro-rated for the month where service was interrupted, in Cengage's sole discretion.

2. Use of the Products and/or Services. Customer may permit its Authorized Users to access and use the applicable Products and/or Services for their individual, personal, non-commercial, educational, academic, and instructional use, only. Customer shall not use or transmit the Products and/or Services in any manner except as specifically authorized herein. Customer acknowledges and agrees that Authorized Users access to the Products and/or Services are conditioned upon their acceptance of, and subject to the Gale Terms of Use ("Terms of Use") and the Cengage Privacy Policy then in effect, and that failure or refusal to abide by the Terms of Use will disenable access to the Products and/or Services. Customer shall take all reasonable precautions necessary to safeguard against unauthorized access and/or use of the Products and/or Services and prevent the "Prohibited Uses" defined in the Terms of Use and shall cooperate with Cengage to identify the source(s) of and, whenever possible, disable unauthorized access and/or Prohibited Uses promptly upon Cengage's request. Cengage may suspend Customer's and/or any Authorized User's access to the Products and/or Services without liability if: (i) Cengage reasonably believes that the Products and/or Services are being used in violation of this Agreement or the Terms of Use; (ii) Customer fails to cooperate with Cengage's reasonable investigation of a suspected violation of this Agreement or the Terms of Use; (iii) there is an attack on the Products and/or Services or either is accessed or manipulated by a third party in violation of this Agreement or the Terms of Use; (iv) Cengage is required by law, or a regulatory or government body to suspend access to the Products and/or Services; or (v) there is another event for which Cengage reasonably believes that the suspension of access to the Products and/or Services is necessary to protect the Products and/or Services or Cengage's other customers from imminent and significant operational, legal, or security risk. Cengage will give Customer advance notice of a suspension under this section of at least thirty-six (36) hours unless Cengage determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect the Products and/or Services or Cengage's other customers from imminent and significant operational, legal, or security risk. Cengage will not suspend access to the Products and/or Services if the grounds on which the suspension are based are cured during the forgoing notice period.

3. Intellectual Property. Cengage has the proprietary rights in and to the Products and/or Services and Cengage owns all, right, title, and interest thereto, including all intellectual property rights associated therewith, throughout the world. Cengage may improve or modify the Products and/or Services or any materials embodying the Products and/or Services, at any time. Cengage shall notify Customer of any such improvements or modifications via the Gale Support Updates page found at <https://support.gale.com/updates/>, unless immediate modification is necessary to comply with legal process, regulation, order, or to prevent harm to Cengage, Customer, or any third party (including Authorized Users). Customer shall not, by virtue of this Agreement or by virtue of its access to the Products and/or Services obtain any proprietary rights in or to the Products and/or Services.

4. Warranties & Indemnities. Customer represents and warrants that: (i) Customer has full power and authority to enter into this Agreement and to grant the rights granted hereunder; and (ii) Customer shall not use the Products and/or Services in any manner except as expressly authorized in this Agreement. Unless prohibited by law, Customer shall defend, indemnify, and hold Cengage and its distributors and service providers, and their respective officers, directors, employees and agents harmless against all claims, demands, suits, losses, costs, damages, and expenses (including attorneys' fees and costs) that Cengage may sustain or incur by reason of any breach or alleged breach of the aforesaid warranties of Customer or any of Customer's other obligations under this Agreement.

5. Term and Termination. This Agreement shall commence as of the date specified in this Agreement and shall continue in full force and effect for the duration of the Term.

6. Payments and Fees. In consideration of the Products and/or Services provided by Cengage to Customer, Customer agrees to pay the fee provided on this Agreement, plus any applicable shipping and handling fees, service fees, and applicable taxes. Customer shall remit payment within thirty (30) days of receipt of an invoice. Purchases are nonrefundable and cannot be exchanged. If Customer fails to make payment, Cengage may, without prejudice to its other rights and remedies suspend or terminate Customer's (and Customer's Authorized Users') use and/or access to the Products and/or Services. Customer shall reimburse Cengage for all reasonable expenses Cengage incurs in collecting past due amounts, including wire transfer fees, collection agency fees, reasonable attorneys' fees, and court costs. Cengage may charge a fee for reinstatement of suspended or terminated service.

7. Limited 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 Products and/or Services, 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 paid by Customer for use of the Products and/or Services at issue during the immediately preceding twelve (12) month period.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, and legal representatives and permitted successors and assigns, provided that the Customer may not assign this Agreement.

9. Confidentiality. Either party may disclose Confidential Information to the other party during the Term. "Confidential Information" means all information disclosed by one party ("Disclosing Party") to the other party ("Receiving Party") which is in tangible form and labeled "confidential" or the like, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Confidential Information will not include information that as shown by the Receiving Party's records was (a) already known to Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by Receiving Party without use of the Disclosing Party's Confidential Information. The Receiving Party will use no less than a reasonable standard of care to safeguard the Confidential Information received from the Disclosing Party. The Receiving Party will only use the Confidential Information of the Disclosing Party to exercise its rights and perform its obligations under this Agreement, or as otherwise required by law, including any Freedom of Information Act or Public Records Act request. Neither party will disclose Confidential Information in violation of the terms and conditions of this Agreement to any third party without the prior written consent of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information without the prior written consent of the other party: (w) to its regulators, auditors, accreditors, and consultants; (x) as compelled by law provided that, to the extent legally permissible, the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party seeks to contest such disclosure; (y) in confidence to its legal counsel; (z) in connection with the enforcement of rights or performance of obligations under this Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information expressly excluding Customer Materials in confidence to its accountants, banks and financing sources, partners, providers and their advisors; and in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction. This Section 9 shall survive the termination or expiration of this Agreement.

10. Miscellaneous. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement, and supersedes all other oral or written proposals, negotiations and other communications relating thereto. In the event of a conflict between this Agreement, the terms, or other attachment hereto, the terms and conditions of this Agreement shall prevail. No amendment of this Agreement will be effective unless it is in writing and signed by both parties. No waiver of satisfaction of a condition or noncompliance with an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or noncompliance with any other obligation. Any terms of this Agreement that contemplate compliance or otherwise by their nature should extend after the termination of this Agreement will remain in effect until fulfilled. Except for Customer's payment obligations,

neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party, including but not limited to, acts of God, acts of terrorism, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes and other natural disasters. The parties may sign this Agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument. This Agreement will be considered signed when the signature of a party is delivered by scanned image (e.g. as a “portable document format” or “PDF” file) as an attachment to electronic mail (email), and any such scanned signature is to be treated in all respects as having the same effect as an original signature, except that either party may require the exchange of original signatures.