OK AS TO FORM
A.M.H. 8.11.2020

Student Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Cengage Learning, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Cengage Learning, Inc., a corporation organized under the laws of DE ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services. JCPS and Services Provider may be referred to each as a "Party" and collectively the "Parties" to the Agreement.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of August 19, 2020 and will terminate as outlined in Section H, Termination.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE STUDENT DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective August 19, 2020 : Services Provider will provide Gale Professional Development eBooks on the Gale eBooks platform, Gale In Context: For Educators.

2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees. ; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3,

under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. For clarity, the data disclosed by JCPS under FERPA and shared with Services Provider shall include personally identifiable student data and educator data (collectively "Student Data"). The Services Provider's access to Student Data is determined by JCPS with respect to the use and maintenance of Student Data; and the Services Provider is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of Student Data. The Student Data is described in a document attached to this agreement as **Attachment A** ("Attachment A")**.** Services Provider shall use Student Data in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to Student Data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the Student Data disclosed shall be reduced to writing and included in an updated Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.

4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of Student Data between each other and such transfers shall comply with FERPA and any data privacy and security rules and regulations including the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq (collectively "Data Protection Laws"). Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

5. For the purposes of this Agreement, JCPS is the controller of Student Data and Services Provider is the processor of Student Data as the terms "controller" and "processor" are defined under Data Protection Laws.

6. Services Provider will process Student Data in accordance with written instructions provided by JCPS.

C. CONSTRAINTS ON USE OF STUDENT DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.

2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.

3. Services Provider shall not re-disclose any individual–level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.

4. Services Provider shall use the Student Data only for the purpose described in Paragraph B.1 above. The Student Data shall not be used for personal gain or profit.

D. CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements ("Data Security Standards"):

1. Services Provider acknowledges that the Student Data is confidential and proprietary to JCPS, and agrees to protect Student Data from unauthorized disclosures and to comply with all applicable Data Protection Laws.

2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any Student Data regarding any JCPS student that is subject to FERPA, Services Provider agrees to the following Data Security Standards:

    a. In all respects comply with the provisions of FERPA.

    b. Use any such Student Data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any Student Data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.

    c. Ensure all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such Student Data.

    d. Maintain any such Student Data in a secure computer environment, and not copy, reproduce or transmit any such Student Data expect as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.

    e. Provide the services under the services contract described in Paragraph B.1 above services in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.

f. Destroy or return to JCPS any such Student Data obtained under this Agreement within thirty days (30) after the date within which it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above. Notwithstanding the foregoing, Services Provider may retain Student Data in accordance with Services Provider's records management and digital archive policies ("Records Management Policy") provided such Student Data retained remains subject to the terms of this Agreement and Data Protection Laws and provided such Student Data is destroyed in due course in accordance with Services Provider's Records Management Policy.

3. Services Provider shall not release or otherwise reveal, directly or indirectly, the Student Data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any Student Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall, unless legal prohibited, use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of Student Data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of Student Data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the Student Data.

5. Services Provider shall not use Student Data shared under this Agreement for any purpose other than the services outlined in this Agreement. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the Student Data to Services Provider.

6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the Student Data do not gain access to the Student Data. Reasonable security precautions and protections include, but are not limited to:

    a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;

    b. Encrypting all data carried on mobile computers/devices;

c. Encrypting data before it is transmitted electronically;

d. Requiring that users be uniquely identified and authenticated before accessing data;

e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;

f. Ensuring that all staff accessing Student Data sign a nondisclosure statement, no less restrictive than the sample nondisclosure statement attached as **Attachment B** ("Attachment B"), and maintain copies of signed statements;

g. Securing access to any physical areas/electronic devices where Student Data is stored;

h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and

i. Installing anti-virus software to protect the network.

7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

    a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

        i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;

        ii. A Social Security number;

        iii. A taxpayer identification number that incorporates a Social Security number;

        iv. A driver's license number, state identification card number or other individual identification number issued by an agency;

        v. A passport number or other identification number issued by the United States government; or

vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.

b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.

c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.

d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

The Parties acknowledge and confirm that Services Provider will not receive Personal Information as defined in this Section 7.

8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:

a. Services Provider shall not process Student Data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the Services Provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

b. Pursuant to KRS 365.734(2), Services Provider shall not in any case process Student Data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process Student Data for any commercial purpose.

d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the Jefferson County Board of Education that it will comply with KRS 365.734(2).

The Parties acknowledge and confirm that Services Provider is not a cloud computing service provider.

9. Services Provider shall report all known or suspected breaches of the Student Data, in any format, to Dr. Kermit Belcher, Chief Information Officer. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.

10. Services Provider shall securely and permanently destroy the Student Data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement. Services Provider agrees to ensure all employees, contactors, or agents of any kind with access to and using Student Data will comply with this provision. Services Provider agrees to document the methods used to destroy Student Data, and upon written request, provide confirmation to JCPS that the Student Data has been destroyed.

11. For purposes of this Agreement and ensuring Services Provider's compliance with the terms of this Agreement and applicable Data Protection Laws, Services Provider designates Karla Daugherty (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the Student Data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. The Parties agree that Student Data shall not be shared directly with Temporary Custodian and the Parties further acknowledge and agree that Student Data shall be transferred only as outlined in Section F, however, Temporary Custodian is the Service Provider representative responsible for supervising the security of the Student Data while in Service Provider's possession and is the employee authorized by Service Provider to request Student Data from JCPS. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.

12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or Data Protection Laws constitutes just cause for JCPS to immediately terminate this Agreement.

13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of $5M. Upon written request, Services

Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon written request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

Each Party shall be responsible for their portion of costs that may arise under this Agreement. Examples of potential costs to JCPS are costs associated with the compiling of Student Data requested under this Agreement and costs associated with the electronic and secure delivery of the Student Data to Services Provider.

No payments will be made under this Agreement by either Party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the Student Data described in Attachment A.

2. Only provide Student Data using secure methods in accordance with Data Protection Laws and as outlined and agreed by the Parties in writing.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, reasonable and documented costs, damages or expenses (including reasonable and documented attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of Student Data ("Claim" or "Claims"). Services Provider agrees to hold harmless JCPS for any Claims to the extent such Claims are, as set forth in a final, non-appealable court order, the direct result of Services Provider's failure to comply with Data Protection Laws. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):

    a. By either Party in the event of a material breach of this Agreement by the other Party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.

    b. By either Party after thirty (30) days advanced written notice to the other Party, for any reason or no reason.

2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either Party for material breach or for any other reason with thirty (30) days written notice, within seven (7) days of the termination the Student Data shall be returned or destroyed within seven (7) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the Student Data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within seven (7) days after the end of the term, Services Provider shall return or destroy all Student Data and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the Student Data pursuant to Paragraph D.11.

3. Destruction of the Student Data shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both Parties recognize that each organization may have extant work that predates this Agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the Agreement, as described in Paragraph B.1 above, each Party shall own all right, title and interest in the materials/data developed by the respective Party.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both Parties.

K. QUALITY OF SERVICES

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph B.1. JCPS shall provide written notice to Services Provider of any performance issues ("Performance Issues") in order that Services Provider may be afforded an opportunity

to cure, as outlined under Section H.1.a, such Performance Issues. Failure of Services Provider to cure any Performance Issues may serve as grounds for termination of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this Agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

N. WAIVER

No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one Party to the other Party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address, including email addresses, as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the

power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the Parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

S. EXECUTION

This Parties consent to the use of electronic signatures and electronic transmission of this Agreement and any amendment thereto.

AGREED:

Cengage Learning, Inc.

200 Pier 4 Blvd, Suite 400

Boston, MA 02210

BY: 

Name: Name of signee Brian McDonough

Title: Title of signee SVP, North American Sales

Date: 8/11/2020

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: _____

Attachment A

STUDENT DATA TO BE DISCLOSED

Name, Email Address

Attachment B (If Applicable)

SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

I understand that the performance of my duties as an employee or contractor of _____ ("Services Provider") involve a need to access and review confidential information (information designated as confidential by the Jefferson County Board of Education), and that I am required to maintain the confidentiality of this information and prevent any redisclosure prohibited under applicable federal and state law. By signing this statement, I agree to the following:

- I will not permit access to confidential information to persons not authorized by Services Provider.

- I will maintain the confidentiality of the data or information.

- I will not access data of persons related or known to me for personal reasons.

- I will report, immediately and within twenty-four (24) hours to my immediate supervisor, any known or reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site to my immediate supervisor.

- I understand that procedures must be in place for monitoring and protecting confidential information.

- I understand that the Family Educational Rights and Privacy Act ("FERPA") protects information in students' education records that are maintained by an educational agency or institution or by a party acting for the agency or institution, and includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would 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.

- I understand that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing of federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than $250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both.

- I understand and acknowledge that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq) ("NSLA") or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) ("CNA") and the regulations implementing these Acts, is confidential information.

- I understand that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal as provided in the NSLA or the CNA and the regulations implementing these Acts, specifically 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than $1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

- I understand that KRS 61.931 also defines "personal information" to include an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

a) An account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

b) A Social Security number;

c) A taxpayer identification number that incorporates a Social Security number;

d) A driver's license number, state identification card number, or other individual identification number issued by any agency;

e) A passport number or other identification number issued by the United States government; or

f) Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.

- I understand that other federal and state privacy laws protect confidential data not otherwise detailed above and I acknowledge my duty to maintain confidentiality of that data as well.

- I understand that any personal characteristics that could make the person's identity traceable, including membership in a group such as ethnicity or program area, are protected.

In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of sign on/password(s).

Employee signature: Date:

_____ _____