



CENGAGE
Learning

V-44934

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6/7/2021

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Presented To: Alisa Alcock, alisa.alcock@boone.kyschools.us

Prepared By: Emily O'Brien, emily.obrien@cengage.com

SHIP TO: Boone Co School
District
Alisa Alcock
8330 U S 42 Box 37
Florence, KY 41042
USA

BILL TO: Boone Co School
District
Alisa Alcock
8330 U S 42 Box 37
Florence, KY 41042
USA

Cengage Learning
ATTN: Order Fulfillment
10650 Toebben Drive
Independence, KY 41051
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<http://NGL.Cengage.com/CustomerSupport>

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Quoted Products: KY/ELT Training

Qty	Update Qty	Product	Price	Quoted Price	Total
1		Product Training K-8 Reading Implementation National Geographic Learning 1st Edition [K12, 2018] 9780357074701 / 035707470X	\$3,000.00	\$3,000.00	\$3,000.00

Sub-Total: \$3,000.00
Processing Fee: \$120.00

TOTAL: \$3,120.00

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Thank you for your interest in Cengage Learning products.

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 Standard Terms and Conditions

These terms and conditions (the “Terms”) are incorporated by reference into a Master Agreement to create an integrated agreement (this “Agreement”) between a purchasing institution (the “Institution” identified in the body of each such Master Agreement) and Cengage Learning, Inc., a Delaware corporation, having an address at 5 Maxwell Drive, Clifton Park, NY 12065 (“Cengage”). This Agreement may include: (i) the license to Institution of certain ebooks and digital homework solutions set forth in a schedule to the body of the Master Agreement (the “Digital Products”); (ii) the performance for Institution of the services set forth in a Services Schedule to the body of the Master Agreement (the “Services”); and (iii) the purchase of tangible materials (the “Printed Materials”) set forth in a schedule to the body of the Master Agreement. Cengage and the Institution may add or amend the body of the Master Agreement and schedules from time to time by mutual written agreement.

1. Defined Terms. All capitalized terms used in these Terms and not defined herein shall have the meanings ascribed to them in the body of the Master Agreement or in the schedules thereto.

2. Grant of License to Digital Products. Subject to Institution’s timely payment of the specified fees, Cengage hereby grants to Institution and Institution hereby accepts a non-exclusive, non-transferable, non-sublicensable license to access, and to allow its Authorized Users (as hereinafter defined) to access, the Digital Products via a platform owned or designated by Cengage and in accordance with these Terms. Certain Digital Products are subject to digital rights management restrictions and other terms and conditions that vary depending on the hosting organization; the applicable restrictions for each hosting organization are set forth in the Digital Products schedule to the body of the Master Agreement. All end-user license agreements, online terms and conditions and privacy policies that are provided in the applicable platform or Digital Product are deemed part of this Agreement with respect to the applicable Digital Products. As used herein, “Authorized Users” means any of Institution’s students, teachers or administrators authorized by Institution to access the Digital Products.

3. Engagement to Perform Services. Institution hereby engages Cengage to perform, and Cengage hereby agrees to perform or to retain contractors to perform, the services set forth in each Services Schedule (the “Services”). The scope of the Services, the costs for the Services, the anticipated dates for performance of the services and the relevant acceptance criteria for the Services are set forth in the Services Schedule. No other services are contemplated except as expressly set forth in this Agreement.

4. Purchase and Sale of Certain Tangible Products. Subject to Institution's timely payment of the amounts set forth in the Printed Materials schedule, Institution hereby purchases from Cengage and Cengage hereby sells to Institution the Printed Materials. Institution understands that Institution's ownership of the Printed Materials is limited to ownership of the physical media delivered to Institution. Except as expressly provided to the contrary in these Terms, no rights with respect to the intellectual property embodied in the Printed Materials are granted to Institution hereunder.

5. Term and Termination.

5.1 The term of this Agreement shall commence on the Effective Date and, unless otherwise terminated in accordance with this Section 5, shall remain in effect until the termination date set forth in the body of the Master Agreement.

5.2 Either party may terminate this Agreement if the other party fails to comply with a material provision of this Agreement and such default has not been cured within thirty (30) calendar days after delivery of written notice to Institution; provided, however, that if Institution has made an unauthorized disclosure or distribution of any Digital Product or Printed Materials, or otherwise infringes the proprietary rights of Cengage or any of Cengage's licensors, Cengage may terminate this Agreement on notice to Institution. Institution agrees and acknowledges that Institution's failure to make any payment to Cengage when such payment becomes due shall be deemed a material breach.

5.3 Upon termination or expiration of any license to a Digital Product, Institution shall cease using, de-install and destroy all copies and partial copies of such Digital Product in Institution's possession. Upon termination of this Agreement, Institution shall return all confidential and proprietary information of Cengage. In each case, upon request by Cengage, Institution shall confirm in writing within thirty (30) calendar days that any required de-installation and destruction has been performed.

6. Pricing and Payment.

6.1 Institution shall pay Cengage the amounts set forth in the applicable schedule, together with shipping and handling costs, if any, and any taxes, duties or tariffs imposed or levied by any taxing authority, within thirty (30) calendar days after the date of Cengage's invoice to Institution. If Institution claims an exemption from any taxes, duties or tariffs, Institution must provide proper documentation supporting such claim of exemption and Institution agrees to indemnify Cengage for any amounts due, including but not limited to taxes, interest and penalties, in the event any exemption is disallowed.

6.2 Institution shall pay to Cengage a finance charge equal to one and one-half percent (1.5 %) per month or the highest amount permitted by applicable law, whichever is less, on any amount that is not delivered to Cengage within thirty (30) calendar days after the date of Cengage's invoice.

6.3 All prices under this Agreement are exclusive of taxes, shipping and handling, if any. Institution shall pay and be solely responsible for any federal, state, county, local or other

governmental taxes, fees and duties, whether domestic or foreign, now or hereinafter imposed on the sale, export, use or possession of the Printed Materials, Digital Products and Services in connection with this Agreement, other than taxes based on Cengage's net income.

7. Warranties.

7.1 Cengage warrants that it has the authority to enter into this Agreement and to grant the rights granted herein and entering into this Agreement shall not violate the provisions of any other agreement to which Cengage is a party or any applicable laws or regulations. Cengage represents and warrants that it either owns the intellectual property contained in the Digital Products and Printed Materials or has received the necessary permissions and licenses from the copyright holders to allow it to perform its obligations pursuant to this Agreement. Cengage further warrants that the Digital Products and Printed Materials do not infringe upon or violate any copyright, trade name, trademark, or any other proprietary right of any third party, that Cengage is not party to any legal action or administrative proceeding that involves a claim by any third party that the Digital Products and Printed Materials infringe on the intellectual property rights of any third party, and the Digital Products and Printed Materials are free of obscene, pornographic or defamatory material. Cengage agrees that the express warranties will survive acceptance of the Digital Products and Printed Materials and will inure to the benefit of Institution, its successors, assigns, students and faculty users of the Digital Products and Printed Materials. The Digital Products and Printed Materials will be manufactured, created, and sold, as applicable, without violating any applicable law or regulation of any government entity with jurisdiction in the circumstances and will be provided as new and not used or refurbished.

7.2 Cengage shall have no liability or responsibility (a) for problems that are caused by alterations or modifications to the Digital Products or Printed Materials by Institution (including modifications or alternations made using a Cengage provided tool), (b) that arise out of Institution equipment malfunction or deficiency, or (c) that arise from use of the Digital Products in conjunction with other products not provided by Cengage.

7.3 EXCLUDING SPECIFIC WARRANTIES PROVIDED IN THIS AGREEMENT, THE DIGITAL PRODUCTS AND PRINTED MATERIALS ARE BEING SUPPLIED HEREUNDER "AS IS" AND THERE ARE NO ADDITIONAL WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED IN LAW OR IN FACT, ORAL OR IN WRITING. CENGAGE SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED OR INCURRED BY INSTITUTION OR ANY THIRD PERSON ARISING OUT OF ANY INACCURACIES, ERRORS, OR OMISSIONS IN THE DIGITAL PRODUCTS AND PRINTED MATERIALS. INSTITUTION HEREBY ACKNOWLEDGES THAT INSTITUTION HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

7.4 Cengage's aggregate liability to Institution relating to any claim arising under a schedule or schedules, regardless of legal theory, shall not exceed the fees paid to Cengage by Institution under such schedule or schedules. In no event shall Cengage's aggregate liability to Institution exceed the total fees paid to Cengage by Institution.

7.5 Institution warrants that it has the right to enter into this Agreement and that its entering into this Agreement and performing its obligations and exercising its rights thereunder will not violate any other agreement to which Institution is a party or any applicable laws or regulations.

7.6 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, GOODWILL, EQUIPMENT FAILURE, OR LOST DATA OR TIME.

8. Ownership; Use Restrictions.

8.1 Institution agrees and acknowledges that title to the Digital Products, and title to anything delivered to Institution in connection with the Services (the "Deliverables"), including, but not limited to, all patent, copyright, trade secret, trademark and other proprietary rights relating to the Digital Products, Printed Materials and Deliverables, are and shall remain the exclusive property of Cengage or its licensors. Title to the Printed Materials shall remain with Cengage until such Printed Materials are delivered to Institution. Institution further agrees and acknowledges that Institution has no rights to the Digital Products, Printed Materials or Deliverables or any copies thereof except as expressly granted herein or in any applicable schedule.

8.2 Institution shall have sole responsibility for determining the compatibility of the Digital Products with Institution's equipment, software and other non-Cengage products.

8.3 The Digital Products and Deliverables may be used only by Institution and its Authorized Users and only as indicated on the applicable schedule and Authorized Users shall be bound by any end user license accompanying any Digital Product or Deliverable. Institution acknowledges its obligations under applicable United States and other copyright laws to refrain from making any copies of any Printed Materials, Digital Products or Deliverables.

8.4 Except as expressly permitted in this Agreement or with the prior written permission of Cengage, neither Institution nor Authorized Users may use any Digital Products in any other way not expressly authorized by this Agreement; cut, copy, paste or forward the Digital Products, except as is necessary for backup or archival purposes; modify, adapt, or create derivative works of any of the Digital Products; disassemble, decompile, unlock, reverse engineer, translate, or in any manner decode any portion of any Digital Products for any reason; sublicense, lease, rent, distribute, or otherwise transfer any of the Digital Products; or transmit, broadcast, or otherwise perform or display any of the Digital Products, in whole or in part.

8.5 Each party acknowledges that, from time-to-time, it may be exposed to certain information which is the other party's confidential and proprietary information and not

generally known to the public ("Confidential Information"). Each party agrees that it will take appropriate steps to protect the other party's Confidential Information from unauthorized disclosure, that it will not disclose such Confidential Information to any third party, and that it will not use any such Confidential Information without the prior written consent of the other party. As used herein, the term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by the recipient or anyone to whom the recipient transmits the information, (b) becomes available to the recipient on a non-confidential basis from a source other than the disclosing party who is not bound by a confidentiality agreement with the disclosing party, (c) was known to the recipient or in its possession prior to the date of disclosure by the disclosing party, (d) is furnished by the disclosing party to others with written permission to disclose, or (e) is independently developed by the recipient without reference to or any use of or any reliance on the Confidential Information.

9. Indemnities. Each party shall defend, indemnify and hold harmless the other party for any breaches of its warranties hereunder or its failure to meet its obligations hereunder. Cengage shall defend and hold harmless or, at its option, settle any claim, suit or proceeding brought by a third party against Institution alleging that use of any Printed Materials, Digital Products, or Deliverables in the manner permitted pursuant to this Agreement constitutes infringement of any copyright or trade secret and Cengage shall indemnify Institution for all costs or damages finally awarded as a result of such infringement, provided Institution gives Cengage prompt notice of any such claim, suit or proceeding and sole control of the defense of such claim, suit or proceeding, Institution agrees to provide reasonable information and assistance. This indemnity shall not apply to any claim of infringement resulting from Institution's modification of the Printed Material, Digital Products or Deliverables or combination of the Printed Materials, Digital Products or Deliverables with any other product.

10. Assignment. Institution may not assign this Agreement in whole or in part without the prior written consent of Cengage. This Agreement shall inure to the benefit of each party's successors and permitted assigns.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to conflict of law principles thereunder which would require the application of the laws of another jurisdiction. Any dispute arising under this Agreement shall be resolved in the state and federal courts of New York County, New York, and each party hereto waives any objection to venue and hereby submits to the personal jurisdiction of such courts.

12. Independent Contractors. The parties are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party without the other party's written consent. Cengage shall be solely responsible for all materials and work in connection with any Service until acceptance by Institution, and Institution will have no direction or control of

Cengage, or any person employed by Cengage or contracted for by Cengage, except in the results to be obtained.

13. Force Majeure. Neither party shall be responsible for delays or failure of performance (other than the failure to make any payment when due) resulting from acts beyond the reasonable control of such party, including but not limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes and other natural disasters.

14. Publicity. Cengage may use Institution's name and logo for promotional and marketing purposes provided that Cengage gives Institution not less than seven (7) calendar days advance written notice of such intended use. Institution may reject any such proposed use of its name or logo by giving Cengage written notice within five (5) business days after receipt of samples of Cengage's promotional or marketing material. If Institution fails to reject Cengage's use of its name or logo within five (5) business days following receipt of such samples, Institution shall be deemed to have approved such use. Institution may not use Cengage's name or logo for promotional purposes or any other purpose without Cengage's express prior written consent.

15. Prevailing Terms. In the event of a conflict between the terms and conditions set forth in the body of the Master Agreement, a schedule and these Terms, the terms and conditions in the body of the Master Agreement shall prevail over the schedules and these Terms, and each schedule shall prevail over these Terms.

16. Third Party Beneficiary Rights. In certain instances, Cengage is acting as a reseller or sub-licensor of the products or services of affiliated and non-affiliated third parties, as may be reflected on the schedule applicable thereto. In all such instances, such third parties shall be deemed to be third party beneficiaries of this Agreement with respect to such party's products or services.

17. Export Restrictions. Institution hereby expressly agrees that, without the prior written authorization of Cengage and the United States government, Institution will not and will cause its representatives to agree not to export, re-export, divert or transfer any Printed Material, Digital Products or Deliverables delivered in connection with any Services, or any other printed material provided to Institution by Cengage, or any direct product thereof, including without limitation, any software, to any destination, company or person prohibited by the United States Export Administration Regulations or other export control laws and regulations.

18. General. All notices required hereunder shall be in writing and sent by certified mail, return receipt requested, to the address written in the body of the Master Agreement, or such other address as noticed to the other party. The body of the Master Agreement, the schedules, these Terms and any addenda, amendments, or end user license agreements accompanying the Digital Products delivered to Institution shall together constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede any and all prior and contemporaneous agreements and understandings regarding such subject matter. There are no other understandings, agreements, representations or warranties relied upon by Institution, which are not included herein. This Agreement may only be modified in a

writing signed by both parties. Institution purchase orders may be submitted for administrative purposes only, but the terms and conditions contained therein shall be of no force and effect. The failure by either party to insist upon strict enforcement of any terms and conditions of this Agreement shall not be construed as a waiver of such right. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.