

DATA PRIVACY AGREEMENT

Albany-Schoharie-Schenectady-Saratoga BOCES

And

Gale

This Data Privacy Agreement ("DPA") is by and between the Albany-Schoharie-Schenectady-Saratoga BOCES("EA"), an Educational Agency, and Gale ("Contractor"), collectively, the "Parties".

ARTICLE I: DEFINITIONS

As used in this DPA, the following terms shall have the following meanings:

- 1. Breach:** The unauthorized acquisition, access, use, or disclosure of Personally Identifiable Information in a manner not permitted by State and federal laws, rules and regulations, or in a manner which compromises its security or privacy, or by or to a person not authorized to acquire, access, use, or receive it, or a Breach of Contractor's security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personally Identifiable Information.
- 2. Commercial or Marketing Purpose:** means the sale, use or disclosure of Personally Identifiable Information for purposes of receiving remuneration, whether directly or indirectly; the sale, use or disclosure of Personally Identifiable Information for advertising purposes; or the sale, use or disclosure of Personally Identifiable Information to develop, improve or market products or services to students.
- 3. Disclose:** To permit access to, or the release, transfer, or other communication of personally identifiable information by any means, including oral, written or electronic, whether intended or unintended.
- 4. DREAM Consortium:** A procurement consortium managed by the School Library System of Capital Region BOCES whose member BOCES and Districts are able purchase and/or utilize select software via CoSer from Service Agreements and Data Privacy Agreements negotiated by Capital Region BOCES.
- 5. Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. 1232g and 34 C.F.R. Part 99, respectively.
- 6. Educational Agency:** As defined in Education Law 2-d, a school district, board of cooperative educational services, school, charter school, or the New York State Education Department.
- 7. Eligible Student:** A student who is eighteen years of age or older.
- 8. Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Security Rule at 45 CFR 164.304, means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.

9. **NIST Cybersecurity Framework:** The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
10. **Parent:** A parent, legal guardian or person in parental relation to the Student.
11. **Personally Identifiable Information (PII):** Means personally identifiable information as defined in section 99.3 of Title 34 of the Code of Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g , and Teacher or Principal APPR Data, as defined below.
12. **Release:** Shall have the same meaning as Disclose.
13. **School:** Any public elementary or secondary school including a charter school, universal pre-kindergarten program authorized pursuant to Education Law § 3602-e, an approved provider of preschool special education, any other publicly funded pre-kindergarten program, a school serving children in a special act school district as defined in Education Law § 4001, an approved private school for the education of students with disabilities, a State-supported school subject to the provisions of Article 85 of the Education Law, or a State-operated school subject to the provisions of Articles 87 or 88 of the Education Law.
14. **School Library Systems:** are city school districts (New York City, Buffalo, Rochester, Syracuse, and Yonkers) or organizations of school districts and nonpublic schools that work with a board of cooperative educational services (BOCES). Main functions of the program are outlined in Commissioner's Regulations 90.18.
15. **Student:** Any person attending or seeking to enroll in an Educational Agency.
16. **Student Data:** Personally identifiable information as defined in section 99.3 of Title 34 of the Code of Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g.
17. **Subcontractor:** Contractor's non-employee agents, consultants and/or subcontractors engaged in the provision of services.
18. **Teacher or Principal APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.

ARTICLE II: PRIVACY AND SECURITY OF PII

1. Compliance with Law.

In order for Contractor to provide certain services ("Services") to the EA and DREAM Consortium Members; Contractor may receive PII regulated by several New York and federal laws and regulations, among them, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); New

York Education Law Section 2-d; and the Commissioner of Education's Regulations at 8 NYCRR Part 121. The Parties enter this DPA to address the requirements of New York law. Contractor agrees to maintain the confidentiality and security of PII in accordance with applicable New York, federal and local laws, rules and regulations. The EA and DREAM Consortium Members represent, warrant, and covenant that they shall provide all PII and other data to Contractor in compliance with all applicable state, federal, and local laws, rules, and regulations. To the extent the Services involve the collection by the Contractor of personal information (as such term is defined in the Children's Online Privacy Protection Act) from children under the age of thirteen (13), the EA consents on behalf of Parents to the collection of personal information by Contractor for education purposes that benefit the EA and not for other commercial purposes. The individual signing this DPA on behalf of the EA has the authority to authorize the collection of personal information on behalf of the School Library System. The Contractor's privacy notices are available at <https://www.cengagegroup.com/privacy/>.

2. Authorized Use.

Contractor has no property or licensing rights or claims of ownership to PII, and Contractor must not use PII for any purpose other than to provide the Services for the NOVELny program or as required to comply with law. Neither the Services provided nor the manner in which such Services are provided shall violate New York law.

3. Data Security and Privacy Plan.

Contractor shall adopt and maintain administrative, technical and physical safeguards, measures and controls to manage privacy and security risks and protect PII in a manner that complies with New York State, federal and local laws and regulations and the EA's policies. Education Law Section 2-d requires that Contractor provide the EA with a Data Privacy and Security Plan that outlines such safeguards, measures and controls including how the Contractor will implement all applicable state, federal and local data security and privacy requirements.

4. EA's Data Security and Privacy Policy

State law and regulation requires the EA to adopt a data security and privacy policy that complies with Part 121 of the Regulations of the Commissioner of Education and aligns with the NIST Cyber Security Framework. Contractor shall comply with the EA's data security and privacy policy and other applicable policies. The EA shall provide Contractor written notice of any material changes to its data security and privacy policy and any other applicable policies.

5. Right of Review and Audit.

Upon request by the EA, Contractor shall provide the EA with copies of its policies and related procedures that pertain to the protection of PII. It may be made available in a form that does not violate Contractor's own information security policies, confidentiality obligations, and applicable laws. In addition, Contractor may be required to undergo an audit of its privacy and security safeguards, measures and controls as it pertains to alignment with the requirements

of New York State laws and regulations, the EA's policies applicable to Contractor, and alignment with the NIST Cybersecurity Framework performed at Contractor's expense, and provide the audit report to the EA. Contractor may provide the EA with a recent industry standard audit report on Contractor's privacy and security practices as an alternative to undergoing an audit.

6. Contractor's Employees and Subcontractors.

- (a) Contractor shall only disclose PII to Contractor's employees and subcontractors who need to know the PII in order to provide the Services and the disclosure of PII shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each subcontractor performing functions where the subcontractor will receive or have access to PII is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data security and privacy measures of its subcontractors prior to utilizing the subcontractor. If at any point a subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: notify the EA and remove such subcontractor's access to PII; and, as applicable, retrieve all PII received or stored by such subcontractor and/or ensure that PII has been securely deleted and destroyed in accordance with this DPA. In the event there is an incident in which the subcontractor compromises PII, Contractor shall follow the Data Breach reporting requirements set forth herein.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and subcontractors.
- (e) Contractor must not disclose PII to any other party other than a Subcontractor unless:
 - (i) The Contractor has received written permission from a parent or eligible student to whom the data pertains to beforehand; or
 - (ii) Such disclosure is required by statute, court order or subpoena, and the Contractor makes a reasonable effort to notify the EA of the court order or subpoena in advance of compliance but in any case, provides notice to the EA no later than the time the PII is disclosed, unless such disclosure to the EA is expressly prohibited by the statute, court order or subpoena.

7. Training.

Contractor shall ensure that all its employees who have access to PII have received or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access. Contractor shall implement written contracts with its subcontractors pursuant to requirements not materially less protective than those in this agreement.

8. Termination

The obligations of this DPA shall continue and shall not terminate for as long as the Contractor or its sub-contractors retain PII or retain access to PII.

9. Data Return and Destruction of Data.

- (a) Protecting PII from unauthorized access and disclosure is of the utmost importance to the EA, and Contractor agrees that it is prohibited from retaining PII or continued access to PII or any copy, summary or extract of PII, on any storage medium (including, without limitation, in secure data centers and/or cloud-based facilities) whatsoever beyond the period of providing Services to the EA, unless such retention is either expressly authorized for a prescribed period by a Service Agreement or other written agreement between the Parties, or expressly requested by the EA for purposes of facilitating the transfer of PII to the EA or expressly required by law, in which case such PII shall only be used for the purposes for which it is required to be retained. As applicable, upon expiration or termination of this DPA, Contractor shall transfer PII, in a format agreed to by the Parties to the EA.
- (b) If applicable, once the transfer of PII has been accomplished in accordance with the EA's written election to do so, Contractor agrees to return or destroy all PII when the purpose that necessitated its receipt by Contractor has been completed. Thereafter, with regard to all PII except for that which is legally required to be retained pursuant to Section 9(a) above (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) as well as any and all PII maintained on behalf of Contractor in a secure data center and/or cloud-based facilities that remain in the possession of Contractor or its Subcontractors, Contractor shall ensure that PII is securely deleted and/or destroyed in a manner that does not allow it to be reasonably retrieved or reasonably retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that PII cannot reasonably be read or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the PII cannot reasonably be retrieved. Only the destruction of paper PII, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.
- (c) Contractor shall provide the EA upon request with a written certification of the secure deletion and/or destruction of PII held by the Contractor or Subcontractors.
- (d) To the extent that Contractor and/or its subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.

10. Commercial or Marketing Use Prohibition.

Contractor agrees that it will not sell PII or use or disclose PII for a Commercial or Marketing Purpose. This section does not prohibit Contractor from using PII (a) for adaptive learning or customized student learning (including generating personalized learning recommendations); (b) to make product recommendations to teachers or EA employees; or (c) to **notify non-student account holders** about new education product updates, features, or services.

11. Encryption.

Contractor shall use industry standard security measures including encryption protocols that comply with New York law and regulations to preserve and protect PII. Contractor must encrypt PII at rest and in transit in accordance with applicable New York laws and regulations.

12. Breach.

- (a) Contractor shall promptly notify the EA of any Breach of PII without unreasonable delay no later than seven (7) business days after discovery of the Breach. Notifications required pursuant to this section must be in writing, given by personal delivery, e-mail transmission (if contact information is provided for the specific mode of delivery), or by registered or certified mail, and must to the extent available, include a description of the Breach which includes the date of the incident and the date of discovery; the types of PII affected and the number of records affected; a description of Contractor's investigation; and the contact information for representatives who can assist the EA. Notifications required by this section must be sent to the EA's District Superintendent or other head administrator with a copy to the Data Protection Office. Violations of the requirement to notify the EA shall be subject to a civil penalty pursuant to Education Law Section 2-d. The Breach of certain PII protected by Education Law Section 2-d may subject the Contractor to additional penalties.
- (b) Notifications required under this paragraph must be provided to the EA at the following address:

Name: KellyRose Yaeger, Esq.

Title: Data Protection Officer

Address: 900 Watervliet-Shaker Road

City, State, Zip: Albany, New York 12205

Email: dpo@neric.org

13. Cooperation with Investigations.

Contractor agrees that it will cooperate with the EA and law enforcement, where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor or its' Authorized Users, as related to such investigations, will

be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.

14. Notification to Individuals.

Where a Breach of PII occurs that is attributable to Contractor, Contractor shall pay for or promptly reimburse the EA for the full cost of the EA's notification to Parents, Eligible Students, teachers, and/or principals, in accordance with Education Law Section 2-d and 8 NYCRR Part 121.

15. Termination.

The confidentiality and data security obligations of the Contractor under this DPA shall survive any termination of this DPA but shall terminate upon Contractor's certifying that it has destroyed all PII.

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

1. Parent and Eligible Student Access.

Education Law Section 2-d and FERPA provide Parents and Eligible Students the right to inspect and review their child's or the Eligible Student's Student Data stored or maintained by the EA. To the extent Student Data is held by Contractor, Contractor shall respond within forty-five (45) calendar days to the EA's requests for access to Student Data so the EA can facilitate such review by a Parent or Eligible Student, and facilitate corrections, as necessary. If a Parent or Eligible Student contacts Contractor directly to review any of the Student Data held by Contractor, Contractor shall promptly notify the EA and refer the Parent or Eligible Student to the EA.

2. Bill of Rights for Data Privacy and Security.

As required by Education Law Section 2-d, the Parents Bill of Rights for Data Privacy and Security and the supplemental information are included as Exhibit A and Exhibit B, respectively, and incorporated into this DPA. Contractor shall complete and sign Exhibit B and append it to this DPA. Pursuant to Education Law Section 2-d, the EA is required to post the completed Exhibit B on its website.

ARTICLE IV: MISCELLANEOUS

1. Priority of Agreements and Precedence.

In the event of a conflict between and among the terms and conditions of this DPA, including all Exhibits attached hereto and incorporated herein, the terms and conditions of this DPA shall govern and prevail, shall survive the termination of a Service Agreement in the manner set forth

herein, and shall supersede all prior communications, representations, or agreements, oral or written, by the Parties relating thereto.

2. Execution.

This DPA may be executed in one or more counterparts, all of which shall be considered one and the same document, as if all parties had executed a single original document, and may be executed utilizing an electronic signature and/ or electronic transmittal, and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.

3. BOCES Opt-In

Any BOCES or Big 5 District that is a member of the DREAM Consortium may bind itself and Contractor to the terms of this DPA by opting into the terms of this DPA. The member BOCES must inform the Parties of its desire to opt-in in writing on a form prepared by EA. Contractor's recourse in the event of a breach of this DPA by any BOCES shall be limited to recourse against the breaching BOCES and shall not extend to any other school district or BOCES.

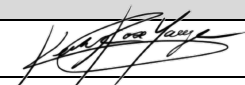
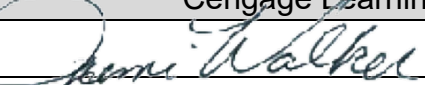
EDUCATIONAL AGENCY	CONTRACTOR Cengage Learning, Inc.
BY: 	BY: 
Name: Kelly Rose Yaeger, Esq.	Name: Jami Walker
Title: Data Protection Officer	Title: VP, School Sales
Date: 12/19/2024	Date: 12/16/2024

EXHIBIT A - Education Law §2-d Bill of Rights for Data Privacy and Security

PARENT BILL OF RIGHTS

Albany-Schoharie-Schenectady-Saratoga BOCES (Capital Region BOCES), in recognition of the risk of identity theft and unwarranted invasion of privacy, affirms its commitment to safeguarding student personally identifiable information (PII) in educational records from unauthorized access or disclosure in accordance with State and Federal law. BOCES establishes the following parental bill of rights:

- Student PII will be collected and disclosed only as necessary to achieve educational purposes in accordance with State and Federal Law.
- A student's personally identifiable information cannot be sold or released for any marketing or commercial purposes by BOCES or any a third party contractor. BOCES will not sell student personally identifiable information and will not release it for marketing or commercial purposes;
- Parents have the right to inspect and review the complete contents of their child's education record (for more information about how to exercise this right, see 5500-R);
- State and federal laws, such as NYS Education Law §2-d and the Family Educational Rights and Privacy Act, protect the confidentiality of students' personally identifiable information. Safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred;
- A complete list of all student data elements collected by the State Education Department is available for public review at <http://nysed.gov/data-privacy-security> or by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
- Parents have the right to have complaints about possible breaches and unauthorized disclosures of student data addressed. Complaints should be directed to the Data Protection Officer, (518) 464-5139, DPO@neric.org, Capital Region BOCES, 900 Watervliet-Shaker Rd., Albany NY 12205. Complaints can also be directed to the New York State Education Department online at <http://nysed.gov/data-privacy-security> by mail to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234 or by email to privacy@nysed.gov or by telephone at 518-474-0937.
- Parents have the right to be notified in accordance to applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.
- Parents can expect that educational agency workers who handle PII will receive annual training on applicable federal and state laws, regulations, educational agency's policies and safeguards which will be in alignment with industry standards and best practices to protect PII.
- In the event that BOCES engages a third party provider to deliver student educational services, the contractor or subcontractors will be obligated to adhere to State and Federal Laws to safeguard student PII. Parents can request information about third party contractors by contacting the Data Protection Officer, (518)-464-5139, DPO@neric.org, 900 Watervliet-Shaker Rd., Albany NY 12205, or can access the information on BOCES' website <https://www.capitalregionboces.org/>.

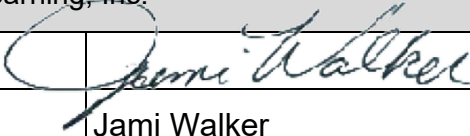
CONTRACTOR	Cengage Learning, Inc.
[Signature]	
[Printed Name]	Jami Walker
[Title]	VP, School Sales
Date:	12/16/2024

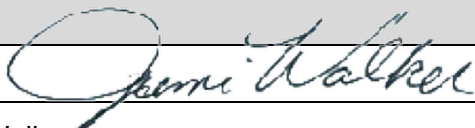
EXHIBIT B

BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY - SUPPLEMENTAL INFORMATION FOR CONTRACTS THAT UTILIZE PERSONALLY IDENTIFIABLE INFORMATION

Pursuant to Education Law § 2-d and Section 121.3 of the Commissioner’s Regulations, the Educational Agency (EA) is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

Name of Contractor	Cengage Learning, Inc.
Description of the purpose(s) for which Contractor will receive/access PII	<p>NOVELny services, including provision of educational and library content and platforms to EAsGale Presents: Peterson’s Test and Career Prep collects and uses PII for the following uses: 1. To create a unique user account. 2. To pre-populate a small handful of fields with learner names such as greetings and in the in-product resume builder. PII such as email is used to respond to any student help desk tickets that a user submits, and to send password reset emails to those who forget their password.</p> <p>There is no PII collected or Stored for the resources below;</p> <ul style="list-style-type: none"> ▪ Gale Academic OneFile with Gale OneFile Collections* ▪ Gale General OneFile with Gale OneFile Collections* ▪ Gale OneFile: News ▪ Gale Business: Insights (formerly known as Business Insights: Global) ▪ Gale Business: Entrepreneurship ▪ Gale In Context: Elementary ▪ Gale In Context: Middle School ▪ Gale In Context: Opposing Viewpoints ▪ Gale Health and Wellness ▪ Gale Legal Forms (State of New York forms) ▪ Gale Literature: Books and Authors ▪ Gale OneFile: Academic OneFile Select ▪ Gale OneFile: Custom Newspapers (The New York Times, subset of Academic OneFile) ▪ Gale OneFile: Educator’s Reference Complete ▪ Gale OneFile: Informe Academico ▪ Gale OneFile: Health and Medicine ▪ Gale OneFile: High School Edition

Type of PII that Contractor will receive/access	<p>Check all that apply:</p> <p><input checked="" type="checkbox"/> Student PII</p> <p><input type="checkbox"/> APPR Data</p>
Contract Term	<p>Contract Start Date <u>October 1, 2024</u></p> <p>Contract End Date <u>July 31, 2027</u></p>
Subcontractor Written Agreement Requirement	<p>Contractor will not utilize subcontractors without a written contract that requires the subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract. (check applicable option)</p> <p><input type="checkbox"/> Contractor will not utilize subcontractors.</p> <p><input checked="" type="checkbox"/> Contractor will utilize subcontractors.</p>
Data Transition and Secure Destruction	<p>Upon termination of this DPA, Contractor shall transfer PII agreed to by the Parties to the EA. Subject to any retention requirements necessary to comply with applicable law, Contractor shall ensure that PII is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Contractor shall provide EA or member BOCES with a written certification of the secure deletion and/or destruction of PII held by the Contractor or Subcontractors.</p>
Challenges to Data Accuracy	<p>Parents or eligible students can inspect Student Data held by the Contractor by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Contractor by following the appeal process in their employing school district's applicable APPR Plan.</p>
Secure Storage and Data Security	<p>Please describe where PII will be stored and the protections taken to ensure PII will be protected: (check all that apply)</p> <p><input checked="" type="checkbox"/> Using a cloud or infrastructure owned and hosted by a third party.</p> <p><input type="checkbox"/> Using Contractor owned and hosted solution</p> <p><input type="checkbox"/> Other: Contractor conducts pre-engagement due diligence on subcontractors regarding privacy and security protections. Subcontractors are required to agree to written agreements containing privacy and security terms to protect PII consistent with the requirements of applicable law. Contractor periodically reviews audit reports and assessments conducted by its subcontractors regarding their security controls, and conducts periodic audits and reviews of subcontractors where it deems necessary consistent with its vendor management policies.</p>
Encryption	<p>Contractor or if applicable its subcontractors must encrypt PII at rest and in transit as specified in Section 13402(H)(2) of P.L. 111-5 and in accordance with applicable New York laws and regulations.</p>

CONTRACTOR Cengage Learning, Inc.	
[Signature]	
[Printed Name]	Jami Walker
[Title]	VP, School Sales
Date:	12/16/2024

