

**RIVERSIDE COUNTY OFFICE OF EDUCATION
on behalf of the California State Library**

ONLINE EDUCATIONAL CONTENT AGREEMENT

This Agreement for Services (“Agreement”) is made as of November 1, 2021, between **the Riverside County Office of Education (“RCOE”) on behalf of the California State Library (“CSL,”** and together with **RCOE, “RCOE/CSL”**), and **Cengage Learning, Inc., (“Provider”**, and together with RCOE/CSL, the “Parties”).

WHEREAS, RCOE/CSL is administering an online source of educational content for students;

WHEREAS, the Provider warrants that it has the appropriate materials and is competent to perform the services required by RCOE/CSL; and

WHEREAS, the Provider agrees to perform the Services described in this Agreement to RCOE/CSL’s satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

- 1. Services.** The Provider shall provide the following platforms as detailed in **Appendix A, RFP 2021-22/08** :

Platform
Gale Presents: National Geographic Kids
Gale In Context: Environmental Science
Gale Interactive Science

Provider shall provide access to the resources as described RFP 2021-22/08.

- 2. Term.** Provider shall commence providing Services under this Agreement on November 1, 2021, and will diligently perform as required or requested by RCOE/CSL as applicable. The term for these Services shall expire on June 30, 2022, and in no event shall be longer than five (5) years. This Agreement may be extended annually upon mutual written approval of both Parties.
- 3. Submittal of Documents.** The Provider shall not commence the Services until it has submitted and RCOE/CSL has approved: the scope of services, the certificates and endorsements of insurance required below, and the **California Student Data Privacy Agreement (CSDPA), Appendix B.**
- 4. Compensation.** RCOE/CSL agrees to pay the Provider for Services satisfactorily rendered pursuant to this Agreement a total fee of **three hundred eighty seven thousand dollars, four hundred fifty dollars, and eighty-eight cents (\$387,450.88)**. RCOE/CSL shall pay Provider according to the following terms and conditions:

4.1 Cost of Services:

Total	Days in a Year	Per Day Amount
\$586,800.00	365	\$1,607.68

Per Day Amount	Days of Access	Pro-Rated Total
\$1,607.68	241	\$387,450.88

4.2 If there is a discrepancy between the Appendix A, RFP 2021-22/08, and this Agreement, this Agreement shall take precedence.

4.3 Payment for Services shall be made for all undisputed amounts within forty-five (45) days after the Provider submits an invoice to RCOE/CSL for the Services. Provider may submit an invoice to RCOE/CSL upon the commencement of the Services. Invoices shall be submitted on a quarterly basis to Riverside County Superintendent of Schools, attention: **Accounts Payable**, P.O. Box 868, Riverside, California 92502 or via email to accountspayable@rcoe.us.

5. **Expenses.** RCOE/CSL shall not be liable to Provider for any costs or expenses paid or incurred by Provider in performing Services for RCOE/CSL.
6. **Independent Contractor.** Provider, in the performance of this Agreement, shall be and act as an independent contractor. Provider understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of RCOE/CSL, and are not entitled to benefits of any kind or nature normally provided employees of RCOE/CSL and/or to which RCOE/CSL's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Provider shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Provider's employees and shall defend and indemnify RCOE/CSL against any claim or liability for any such payments.
7. **Materials.** Provider shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement.
8. **Standard of Care.** Provider's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices for services to California educational agencies.
9. **Originality of Services.** Provider agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, or submitted to RCOE/CSL and/or used in connection with this Agreement, shall be wholly original to Provider and shall not be copied in whole or in part from any other source, except that submitted to Provider by RCOE/CSL as a basis for such Services, and Provider shall defend and indemnify RCOE/CSL against any claim or liability based on unauthorized use of such materials or property.
10. **Pre-existing Proprietary Materials.** Provider's pre-existing proprietary materials utilized to provide or facilitate the scope of services to RCOE/CSL shall remain the intellectual property of Provider.
11. **Intellectual Property.** Provider understands and agrees that all intellectual property (except such Software as defined pursuant to section 11.1) specifically developed or produced for RCOE/CSL under this Agreement as set forth in Schedule A, including but expressly not limited to any property

subject to copyright, trademark, or patent, shall become the property of RCOE/CSL and cannot be used without RCOE/CSL's express written permission, including but expressly not limited to any and all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to RCOE/CSL and/or used in connection with this Agreement. RCOE/CSL shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of RCOE/CSL. Provider consents to use of Provider's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

- 11.1. **Ownership of Software; Third Party Materials.** Notwithstanding the foregoing, Provider and its licensors are and will remain the exclusive owners of all right, title and interest in and to the software contemplated pursuant to this agreement ("Software") and all derivative works.
 - 11.2. **Materials licensed by Provider from third parties** ("Third Party Materials"). Materials licensed by Provider from third parties including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components and the limited license granted under this Agreement.
 - 11.3. **Ownership; Other Works.** Provider shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation, or other intellectual property or copyrightable material conceived, developed, created, written or contributed by Provider pursuant to this Agreement ("Specific Developments").
 - 11.4. **No Rights.** RCOE/CSL will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement.
- 12. Audit.** Provider shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Provider transacted under this Agreement. Provider shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Provider shall permit RCOE/CSL, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that RCOE/CSL shall give reasonable prior notice to Provider and shall conduct audit(s) during Provider's normal business hours, unless Provider otherwise consents.

13. Termination.

- 13.1. **Without Cause by RCOE/CSL.** RCOE/CSL may, at any time, with or without reason, terminate this Agreement and compensate Provider only for services satisfactorily rendered to the date of termination. Written notice by RCOE/CSL shall be sufficient to stop further performance of services by Provider. Notice shall be deemed given when received by the Provider or no later than three (3) days after the day of mailing, whichever is sooner. Upon this termination, RCOE/CSL shall only be liable to Provider for services satisfactorily rendered to the date of termination, and Provider expressly waives and releases any claims for damages against RCOE/CSL that could arise from such termination.
- 13.2. **With Cause by RCOE/CSL.** RCOE/CSL may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 13.2.1. material violation of this Agreement by the Provider; or
- 13.2.2. any act by Provider exposing RCOE/CSL to liability to others for personal injury or property damage; or
- 13.2.3. Provider is adjudged a bankrupt, Provider makes a general assignment for the benefit of creditors or a receiver is appointed on account of Provider's insolvency.

Written notice by RCOE/CSL shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or arrangements satisfactory to RCOE/CSL for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, RCOE/CSL may secure the required services from another contractor. If the expense, fees, and/or costs to RCOE/CSL exceed the cost of providing the service pursuant to this Agreement, the Provider shall immediately pay the excess expense, fees, and/or costs to RCOE/CSL upon the receipt of RCOE/CSL's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to RCOE/CSL.

- 13.3. Upon termination, Provider shall provide RCOE/CSL with all documents produced maintained or collected by Provider pursuant to this Agreement, whether or not such documents are final or draft documents.

14. Indemnification. To the furthest extent permitted by California law, Provider shall, at its sole expense, defend, indemnify, and hold harmless the RCOE, the CSL, the State of California ("State"), and their agents (**excluding insurance carriers**), representatives, officers, consultants, employees, trustees, and volunteers (collectively, the "indemnified parties") from any and all **third party claims**, losses, liabilities, **costs, expenses or damages** (collectively, the "**Losses**") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, intellectual property claim, data breach, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Provider in conjunction with this Agreement, except to the extent caused wholly by the sole negligence or willful misconduct of the indemnified parties. The RCOE/CSL shall have the right to accept or reject any legal representation that Provider proposes to defend the indemnified parties.

15. Insurance.

- 15.1. The Provider shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below, unless agreed to in writing by RCOE/CSL.

- 15.1.1. **Commercial General Liability.** Commercial General Liability Insurance that shall protect the Provider, RCOE/CSL, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001).

- 15.1.2. **Workers' Compensation.** Workers' Compensation Insurance for all of its employees performing any portion of the Services. In accordance with provisions of Labor Code section 3700, the Provider shall be required to secure workers' compensation coverage for its employees.

15.1.3. **Cyber and Privacy.** Such policy shall cover damages resulting from the unauthorized access to, or theft of, data obtained by Provider in connection to this Agreement. It is further agreed and understood that the policy shall include coverage for crisis management costs, credit-monitoring expenses, payment of monies requested in connection to cyber extortion of data, and defense costs, fines, and penalties related to this insurance.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 3,000,000
Workers Compensation	Statutory Limits
Cyber and Privacy (may be included in general liability if expressly identified) Each Occurrence General Aggregate	 \$ 1,000,000 \$ 3,000,000

15.2. **Proof of Carriage of Insurance.** The Provider shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to RCOE/CSL and approved by RCOE/CSL. Certificates and insurance policies shall include the following:

15.2.1. A clause stating: “This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to RCOE/CSL, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice.”

15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

15.2.3. An endorsement stating that RCOE/CSL and the State, and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds. An endorsement shall also state that Provider’s insurance policies shall be primary to any insurance or self-insurance maintained by RCOE/CSL.

15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to RCOE/CSL.

16. Assignment. The obligations of the Provider pursuant to this Agreement shall not be assigned by the Provider.

17. Compliance with Laws. Provider shall observe and comply with all rules and regulations of the governing board of RCOE/CSL and all federal, state, and local laws, ordinances and regulations. Provider shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Provider observes that any of the Work required by this

Contract is at variance with any such laws, ordinance, rules or regulations, Provider shall notify RCOE/CSL, in writing, and, at the sole option of RCOE/CSL, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Provider's receipt of a written termination notice from RCOE/CSL. If Provider performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying RCOE/CSL of the violation, Provider shall bear all costs arising there from.

- 18. Permits/Licenses.** Provider and all Provider's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
- 19. Safety and Security:** Provider is responsible for maintaining safety in the performance of this Agreement. Provider shall be responsible to ascertain from RCOE/CSL the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 20. Employment with Public Agency.** Provider, if an employee of another public agency, agrees that Provider will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
- 21. Anti-Discrimination.** It is the policy of RCOE/CSL that in connection with all work performed under Contracts that there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Provider agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Provider agrees to require like compliance by all its subcontractors.
- 22. Fingerprinting of Employees.** RCOE/CSL may request a Fingerprinting/Criminal Background Investigation Certification to be completed and attached to this Agreement prior to Provider's performing of any portion of the Services, depending on the anticipated contact with minors, if any.
- 23. RCOE/CSL's Evaluation of Provider and Provider's Employees and/or Subcontractors.** RCOE/CSL may evaluate the Provider in any manner which is permissible under the law. RCOE/CSL evaluation may include, without limitation:
 - 23.1. Requesting that RCOE/CSL employee(s) evaluate the Provider and the Provider's employees and subcontractors and each of their performances.
 - 23.2. Announced and unannounced observance of Provider, Provider's employees, and/or subcontractors.
- 24. Limitation of Liability.** *To the extent not prohibited by law, in no event will the total and cumulative liability of either Party for all claims of any nature arising out of or related to this Agreement exceed the total compensation provided in this Agreement. The foregoing limitation does not limit or exclude any liability arising from (a) Provider's indemnification obligations hereunder; or (b) a Party's gross negligence, or fraud.* Notwithstanding any other provision of this Agreement, in no event, shall RCOE/CSL or Provider be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with his Agreement.

- 25. Disputes:** In the event of a dispute between the Parties as to performance of Services Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Provider shall neither rescind the Agreement nor stop providing Services.
- 26. Confidentiality.** The Provider and all Provider’s agents, personnel, and employees shall maintain the confidentiality of all information received in the course of performing the Services to the extent permitted by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 27. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or email, addressed as follows:

RCOE

Riverside County Office of Education
on behalf of California State Library
3939 Thirteenth Street
Riverside, California 92501
Attn: Mark Banks
Email: mbanks@rcoe.us

Provider

Cengage Learning, Inc.
200 Pier Four Boulevard, Suite 400
Boston, MA 02210
Attn: Jennifer Fritsch
Email: Jennifer.Fritsch@cengage.com

Any notice personally given or sent by email shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day of delivery as documented by the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 28. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 29. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State. The Parties further acknowledge and agree that the performance of this agreement shall occur within the State, and any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the RCOE’S administration offices are located.
- 30. Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 31. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference:

- APPENDIX A – Request for Proposals (RFP) and Provider’s Response
- APPENDIX B – California Student Data Privacy Agreement (CSDPA)
- APPENDIX C – License Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Riverside County Office of Education

Cengage Learning, Inc.

Date: December 14, , 20 21

Date: December 14 , 2021

By: [Signature]

By: [Signature]

Print Name: Scott S. Price Ph.D.

Print Name: Jennifer Fritsch

Title: Chief Business Official

Title: VP K12 Sales

California State Library

Date: December 14, , 20 21

By: [Signature]

Print Name: Greg Lucus

Title: State Librarian