

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**ADDENDUM TO SUBSCRIPTION AND HOSTING SERVICES AGREEMENT**

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and Cengage Learning, Inc., (hereinafter “Contractor”), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Subscription and Hosting Services Agreement, (hereinafter the “Agreement”), attached hereto as Exhibit “A” and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1.     **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
2.     **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
3.     **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
4.     **Confidential Information.** Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
5.     **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind

to County defending, indemnifying, holding or saving harmless Contractor for any reason are hereby deleted.

- 6. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.
- 7. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
- 8. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

FORT BEND COUNTY

Cengage Learning, Inc.

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Authorized Agent- Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent- Printed Name

ATTEST:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Dianne Wilson, County Clerk

\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A

## SUBSCRIPTION AND HOSTING SERVICES AGREEMENT

This License Agreement is made as of 10/08/2014, by and between Cengage Learning, Inc. ("Cengage"), a Delaware corporation, with its principal office at 27500 Drake Rd., Farmington Hills, MI., USA 48331-3535 and the following Licensee:

Name of Licensee: FORT BEND COUNTY LIBRARY # 166914  
Jurisdiction of Formation: TX  
Address: 1001 GOLFBVIEW DR., RICHMOND, TX 77469-5199

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## **2.0 Warranties.**

- A. Cengage warrants to the Licensee and its Authorized Users, that the Licensed Content used in accordance with this Agreement does not infringe the copyright or any other proprietary or intellectual property rights of any person. Cengage further warrants that it owns and has the right to make available the Licensed Content to the Licensee.
- B. Cengage shall use commercially reasonable efforts to provide continuous availability of the online Licensed Content, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of data and downtime related to equipment, the failure of communications networks, or services outside of control of Cengage. Cengage shall use reasonable efforts to provide an average of 98% up time per month. Scheduled downtime will be performed at a time to minimize inconvenience to Licensees worldwide.
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- D. IN NO EVENT SHALL CENGAGE OR ANY THIRD PARTY DATA SUPPLIER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED CONTENT OR FOR THE LOSS OR DAMAGE OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE, OR INABILITY TO USE THE LICENSED CONTENT, INCLUDING WITHOUT LIMITATION LOSSES ARISING FROM ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN OR CORRUPTION CAUSED WHETHER BY TRANSMISSION PROCESSING OR OTHERWISE TO THE MATERIAL PUBLISHED IN THE LICENSED CONTENT OR OTHERWISE MADE

ACCESSIBLE THROUGH THE LICENSED CONTENT. IN NO EVENT SHALL CENGAGE'S OR THIRD PARTY DATA SUPPLIER'S LIABILITY UNDER THIS AGREEMENT WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE ANNUAL FEE RECEIVED BY CENGAGE FROM LICENSEE.

### 3.0 Termination.

3.1 Cengage may at any time (without prejudice to its other rights or remedies) terminate this Agreement and any order form hereunder or in connection herewith (an "Order Form") with written notice to the Licensee in the following circumstances:

- a. With respect to the delivery of any part of the Licensed Content from any third party (a "Source"), upon request of such Source or immediately upon termination of Cengage's agreement with such Source.
- b. If Licensee commits a material or persistent breach of any term of this Agreement or the terms and condition of any Order Form and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by Cengage.
- c. If the Licensee willingly defaults in making payment of the fee as specified in Section 4 of this Agreement and fails to remedy such default after receiving thirty (30) days of notification in writing by Cengage

3.2 On termination, all rights and obligations of the parties automatically terminate:

- a. Licensee shall immediately cease to distribute or make available the Licensed Content to Authorized Users, and shall destroy all Licensed Content locally mounted pursuant to Section 1.2
- b. On termination of this Agreement by the Licensee for cause, Cengage shall forthwith credit the proportion of the fee that represents the paid but unexpired part of the access period.
- c. In the case of Licensed Content for which a fee is paid for continual or perpetual access to the materials, on termination of this Agreement, (otherwise than as a result of notice being given by Cengage for breach of contract) Cengage shall provide reasonable assistance to the Licensee as needed to enable the Licensee and any third party vendor engaged by the Licensee to host, and provide to Licensee and its Authorized Users uninterrupted on-line Internet web-based access to the Licensed Content
- d. Use of the CD-ROMs and FTP electronic feeds after subscription expiration is subject to the license granted under this Agreement. In the case of CD-ROM or FTP electronic feeds for which a license fee is paid for continual or perpetual access to the materials, Licensee may retain the CD-ROM or FTP electronic feed unless the license is terminated due to breach of this Agreement. In the event of breach of any term of this Agreement, Cengage may, in addition to its other legal rights and remedies, terminate the license granted and upon written notice of such termination Licensee shall certify the destruction of all copies of the Licensed Content including the CD-ROMs or FTP electronic feeds as well as any downloaded copies of the licensed materials.

### 4.0 General

- A. Fees/Payment. In consideration for the services to be provided, Licensee shall pay Cengage according to the attached schedule.
- B. Assignment. Cengage shall be permitted to assign this Agreement to an affiliate, a successor in interest or in connection with a change of control or transfer of assets to which this Agreement relates, without the consent of the Licensee. Licensee may not assign this Agreement, or any of its rights or obligations hereunder without Cengage's prior written consent. All provisions of this Agreement shall be binding upon and inure to the benefit of each party's successors in interest and permitted assigns.
- C. Force Majeure Neither party shall be liable for any delay or failure in performing its obligations hereunder if caused by a factor beyond such party's reasonable control, including, without limitation, acts of God, acts of terrorism, acts of government, fire or other casualty, provided the affected party makes every effort to promptly resume performance. In the event that the affected party cannot resume performance within thirty (30) days, then the other party may, without penalty or liability, terminate this Agreement upon written notice.
- D. Notice. Any and all notices and other communications to either party hereunder shall be in writing and deemed delivered (i) upon receipt if by hand, or overnight courier; (ii) three (3) days after mailing by first class, certified mail, postage prepaid, return receipt requested, to the addresses set forth on the attached schedule or to such other address for a party as shall be specified by like notice and (iii) and upon receipt if delivered via

fax or email provided that any notices for breach of this Agreement or for termination of this Agreement must be by notice as specified in clauses (i) or (ii) of this Section 4.

- E. Severability. 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.
- F. Waiver. 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 or of any other right hereunder.
- G. Relationship of the Parties. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship or to subject the parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.
- H. Choice of Law/Venue. The Agreement and Order Form(s) shall be construed according to the laws of the State of Michigan, without application of its conflict of laws provisions. Licensee consents to the non-exclusive jurisdiction of courts situated in Michigan in any action arising under this Agreement
- I. Affirmative Action, Non-Discrimination in Hiring and Employment. Cengage shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.
- J. Equal Opportunity. Cengage shall not discriminate against any individual with respect to his or her compensation, terms conditions or privileges of employment or discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- K. Copyrighted Works. Except for the specific rights granted herein, all right, title and interest, including copyrights to the Licensed Content, are owned exclusively by Cengage and its licensors. All rights in respect thereof are reserved to Cengage and such licensors. Through this Agreement Licensee obtains certain limited rights to the Licensed Content, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with such Licensed Content. All such copyrights and intellectual property rights remain the property of Cengage and its licensors.
- L. Confidentiality. Customer shall not use itself or reveal to any person or business, confidential or proprietary information or material gained as a result of this Agreement, including without limitation, the terms and conditions of this Agreement, except as may be required by any court of competent jurisdiction, governmental agency, law or regulation (in such event, Customer shall notify Cengage before disclosing this Agreement). Notwithstanding the foregoing, the terms and conditions of this Agreement may be revealed by Customer as part of the normal reporting or review procedure to its accountants, auditors and legal counsel, provided such accountants, auditors, and legal counsel agree to keep such information confidential. This Section shall not supersede any non-disclosure agreement separately executed between the parties, and such terms and conditions thereof shall remain in full force and effect and shall be deemed incorporated herein and shall take precedence over any conflicting terms herein.
- M. Survival. The provisions of Sections 2 and 4 (l) shall survive the termination or expiration of this Agreement for any reason.
- N. Entire Agreement. This Agreement and any order form, schedules, addenda and amendments hereto, constitute the entire understanding between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understanding, whether written or oral, regarding such subject matter. There are no other understandings, agreements, representations or warranties relied upon by either party with respect to the subject matter herein, which are not included herein. This Agreement may be modified only in writing signed by both parties

**5.0 ACKNOWLEDGEMENT**

The Licensee acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms and conditions.

**ACCEPTED: FOR BEND COUNTY LIBRARY 166914**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1  
LICENSED CONTENT, FEES, SUBSCRIPTION PERIOD**

**Bill to Contact:** TERESA THIMM

**Bill to Address:** 1001 GOLFVIEW DR., RICHMOND, TX 77469-5199

Product	Subscription Dates	# of Users/Site	Extended Price
Gale Biography In Context Digital Archive Hosting	11/01/14– 10/31/15		\$4,984.04
Gale Opposing Viewpoints In Context	11/01/14 – 10/31/15		\$7,998.54
ChiltonLibrary.Com	03/01/15 – 02/28/16		\$12,972.00
Gale Science In Context	11/01/14 – 10/31/15		\$8,166.64
Gale Virtual Reference Library Hosting Fee	12/1/2014 – 11/30/2015		\$1,200.00

**Subscription Term Dates:** SEE ABOVE      **Total Subscription Amount:** \$35,321.22

**Term.** This Agreement shall commence for the Initial Term (the "Initial Term") and shall extend through the term stated above and remain in effect unless earlier terminated or extended as provided for herein. This Agreement may be renewed at the end of the Initial Term unless the Licensee provides Cengage with notice of termination at least thirty (30) days prior to the end of the term. Any notice of termination will be effective upon Cengage's receipt thereof.

**Payment.** All fees shall include applicable sales, use, excise, or similar taxes. The fee is due within thirty (30) days after invoice date.