GALE
A Cengage Company

27500 DRAKE RD / FARMINGTON HILLS, MI 48331
(800) 877 4253 / WWW.GALE.COM

February 6, 2020

Amy Heebner
Library Development Specialist
Division of Library Development
New York State Library
Cultural Education Center, 10B41
Albany, NY 12230

Dear Amy,

Thanks so much for reaching out via email last week for an update on privacy, security and accessibility attributes of Gale resources. We hope the following answers will be helpful to you, and to your colleagues and all constituencies of the New York State Library.

Privacy and Security

Our company complies with FERPA and all applicable state laws including Education Law 2d. For more information on our privacy practices please visit https://www.cengage.com/privacy/k12- notice/. Further, we have agreements that we execute with customers which contractually state our obligations and compliance with these laws, we have attached a template here for your review. We also have a department dedicated to answering additional specific questions, regarding our privacy practices or compliance. I will be glad to contact our officers at Privacy Office at privacy@cengage.com, but I want you to also have this direct route should you need it.

Accessibility

Gale subscription resources now provided through our agreement with NOVELNY satisfy Level A and AA checkpoints. The products conform to Section 1194.22 and WCAG 2.0 A & AA priorities with few or no exceptions. Their interfaces support assistive software and devices including large print interfaces, voice activated input, alternative keyboard or pointer interfaces. Additionally, these products support Apple and Android mobile assistive technology. Any limited exceptions are described in the VPATs that we will be glad to provide upon request.

Accessibility Improvements we completed in the last year include:

- Navigational Consistency: Improvements for keyboard/assistive technology navigation
- Adjustable Text Size: Allows users to change the text size of the document for increased visibility.
- Improved Readability: Use of larger default font sizes, sans serif fonts, greater prominence for ReadSpeaker text-to-speech technology, optimized screen width and optimal contrast ratios facilitate a better experience when reading on screen.

Gale is committed to making its products accessible to users of all abilities and to make products universally accessible and user-friendly in conformance with Section 508 standards of the Rehabilitation Act and Web Content Accessibility Guidelines (WCAG) 2.0 from the W3C (World Wide Web Consortium).

Many of the recent enhancements are foundational in nature, laying the groundwork for an exciting future of ongoing iteration where user insights are captured and applied with greater agility.

The recent enhancements to Gale products offer your patrons with unparalleled collections of informational text, primary sources, eBooks, and multimedia content accessible to learning communities and patrons anytime, anywhere, and on any device. By focusing on discoverability, ease of access, and collaboration, Gale content becomes a daily curriculum supplement and supports research, project based learning, workplace skills development, makes lifelong learning a joy, and supports diverse styles of learning.

Additional Information

As you know, our services go beyond providing a product—we work with you to achieve the ultimate goal of providing secure, reliable, accurate and essential content for student, patron, and professional success. We are always glad to have an opportunity to advance all of your goals for the Division of Library Development. Please don't hesitate to contact me for additional information or documentation on these issues and any others of interest.

Very best regards,

Jackie Sullivan
Consortia Director East
800.877.4253 ext. 18772 | jackie.sullivan@cengage.com

Privacy and Security Agreement for K-12 Student Data

This Agreement is entered into between _____, a ("Customer") and Cengage Learning, Inc. ("Cengage Learning") on _____ ("Effective Date") to demonstrate Cengage Learning's commitment to student privacy and security and to document Cengage Learning's compliance with Federal and stateprivacy laws.

General Compliance Commitments:

1. **Compliance with FERPA**. Cengage shall comply those provisions of the Family Educational Rights and Privacy Act *(*FERPA*,* 20 U.S.C. § 1232g; 34 CFR Part 99) that are applicable to it.

2. **Compliance with State Student Privacy Laws.** Cengage shall comply those provisions of state student privacy laws that are applicable to it with respect to the Customer's data: *indicate which law applies or add new reference below*:
   - ☐ Arizona student privacy laws, as codified at Ariz. Rev. Stat. Ann. §15-1046 et seq.
   - ☐ California Student Online Personal Information Protection Act (Cal. Educ. Code § 49073.1)
   - ☐ Colorado Student Data Transparency and Security Act (Co Rev. Stat. 22-16-101).
   - ☐ Connecticut Student Data Privacy Act of 2016 (Conn. Gen. Stat. §10-234aa et seq.)
   - ☐ Delaware Student Data Privacy Protection Act (14 Del. Code Ann. §§ 8101A-8106A)
   - ☐ Georgia Student Data Privacy, Accessibility, and Transparency Act (Ga. Code Ann. § 20-2-660 – 20-2-668)
   - ☐ Kansas Student Data Privacy Act (KS Stat § 72-6215 (2014))
   - ☐ Kentucky Family Education Rights and Privacy Act (Ky. Rev. Stat. Ann. §160.700–160.730)
   - ☐ Maine Student Information Privacy Act (Me. Rev. Stat. tit. 20-A, § 951, et. seq.)
   - ☐ Maryland student privacy law codified at Md. Code. Ann. Educ. § 4-131 et seq.
   - ☐ New Hampshire student privacy law codified at N.H. Rev. Stat. Ann. §189;65, et seq.
   - ☐ New York student privacy law codified at New York State Education Law § 2-d
   - ☐ Oregon Student Information Protection Act, (2017 ORS 336.184)
   - ☐ Tennessee Student Online Personal Protection Act (Tennessee Code Annotated 49-1-708)
   - ☐ Virginia student privacy law codified at Va. Code. Ann. §22.1-289.01 et seq. (2015)
   - ☐ Washington Student User Privacy in Education Rights Act (28A.604 RCW)
   - ☐ _____
     _____

3. ***Compliance with COPPA.*** Cengage shall comply those provisions of the Children's Online Privacy Protection Act (COPPA, 15 U.S.C. §§ 6501–6506) that are applicable to it. To the extent that Cengage Learning is collecting personal information from children under 13 in connection with websites and/or mobile apps provided to the Customer, Cengage Learning may rely on the Customer to authorize the collection of the personal information.

   (a) Cengage Learning shall post a clear and comprehensive online privacy policy describing its information practices for personal information collected online from the children;

   (b) Cengage Learning shall obtain consent from the school prior to collecting personal information from the children;

   (c) The personal information may only be used for educational purposes that benefit of the school and not for any commercial purposes;

   (d) To the extent feasible, Cengage Learning shall provide parents with access to their child's personal information to review and/or have the information deleted;

(e) To the extent feasible, Cengage Learning shall give parents the opportunity to prevent further use or online collection of a child's personal information; and

(f) the personal information shall only be retained for only as long as is necessary to fulfill the educational purpose for which it was collected.

4. General Provisions Regarding K-12 Student Data

4.1 Definitions:

(a) **K-12 Student Data** means any personally identifiable information that, alone or in combination with other data, identifies an individual K-12 student or the student's parent or family, and that is collected, maintained, generated, or inferred by Cengage Learning in the course of providing products or services to the Customer.

K-12 Student Data encompasses all personally identifiable information pertaining to K-12 Students (including all persistent identifiers, geolocation data, images and photographs) collected from the Customer (such as via rosters) or collected directly from K-12 Students in the course of using the products or services provided to them through the Customer.

K-12 Student data does not include any information collected by Cengage Learning directly from individuals over the age of 13 who register for personal accounts with Cengage Learning (via Cengage Brain, MyCengage or other platforms).

(b) **Targeted Advertising** means selecting and sending advertisements to a K-12 student based on information obtained or inferred over time from the student's online behavior, use of applications, or personally identifiable information. "Targeted Advertising" does not include:

(1) advertising to a student (i) at an online location based on the student's current visit to that location or in response to the student's request for information or feedback; and (ii) without the collection and retention of a student's online activities over time;

(2) adaptive learning, personalized learning, or customized education; or

(3) with the consent of a student or the student's parent or legal guardian, using the student's personally identifiable information to identify for the student institutions of higher education or scholarship providers that are seeking students who meet specific criteria.

4.2 Cengage Learning shall not collect, maintain, use or disclose K-12 Student Data beyond that needed for authorized educational/school purposes, or as appropriately authorized by the Customer, the student or student’s parent or legal guardian.

4.3 Cengage Learning shall not:

(a) Use any K-12 Student Data for Targeting Advertising,

(b) Create K-12 Student profiles for advertising or for any other purpose that is not required by the Customer for educational purposes, or

(c) Sell K-12 Student Data or otherwise disclose the K-12 Student Data to any third party unless (i) such third parties are data processors acting on our behalf, (ii) the disclosure is required by law or otherwise legally permitted, or (iii) the disclosure is made at the request of the Customer for educational purposes.

4.4 Cengage Learning has implemented and documented appropriate administrative, technical and physical measures to protect the K-12 Student Data against accidental or unlawful destruction, alteration, unauthorized disclosure or access. These measures include appropriate procedures and controls for:

(a) Risk assessment,

(b) Access rights,

(c) Authentication,
(d) Physical security,
(e) Encryption,
(f) Malicious code detection and prevention,
(g) System development, acquisition and maintenance,
(h) Administrative security (including employee training and oversight),
(i) Service provider oversight,
(j) Media handling,
(k) Incident detection and response,
(l) Logging and monitoring,
(m) Testing and controls audit,
(n) Records management (including secure disposal), and
(o) Business continuity and disaster recovery.

4.6 Cengage Learning shall notify the Customer of any (a) requests to access, correct or delete K-12 Student Data that it may receive directly from any individual who is (or claims to be) a student or the parent or legal guardian of a student, or (b) any other inquiries regarding K-12 Student Data.

Cengage Learning understands that it is not authorized to respond to the requests or inquiries unless it is either instructed by the Customer to respond or the response is required by applicable law (such as in response to a subpoena).

Cengage Learning will use commercially reasonable efforts to assist the Customer in responding to any requests on inquiries that concern its handling or storage of K-12 Student Data.

4.7 Cengage Learning shall not retain K-12 Student Data longer than needed to fulfill the educational purposes for which it was collected. Cengage Learning will also delete K-12 Student Data upon request of the Customer.

4.8 Cengage Learning shall not use any K-12 Student Data for product development, testing or innovation unless the K-12 Student Data has been de-identified (anonymized) and aggregated.

Cengage Learning may use de-identified data for product development, research and other purposes. This data will have all direct and indirect identifiers removed, including name, student ID numbers, dates of birth, demographic information, and location data.

Cengage Learning shall not attempt to re-identify any de-identified data and shall prohibit any recipients of the de-identified data from trying to re-identify individuals.

4.9 In the event of an unauthorized disclosure of a K-12 Student Data (or other security breach as may be defined by applicable law), Cengage Learning shall promptly notify the Customer to enable it to expeditiously implement its response program. In the event that the incident is the result of Cengage Learning's negligence, it shall bear the actual, reasonable costs of notifying affected individuals, providing customer support, and providing one year of credit monitoring with identity theft insurance to individuals if monitoring and insurance are available. Notwithstanding the preceding, the parties agree that Cengage Learning shall have no obligation to send any notification letters or provide credit monitoring unless such letters are legally required or otherwise needed to alert the individuals of a real potential harm.

4.10 In the event of any merger, acquisition or similar transaction involving Cengage Learning's business or assets, Cengage Learning may transfer K-12 Student Data to another entity, provided the successor entity is subject to these same commitments for the K-12 Student Data.

5 Specific Statements for Compliance with SOPIPA and similar state laws:

If Customer is a Local Education Agency (LEA), the parties agree as follows:

5.1 Definitions:

(a) "Deidentified Information" means information that cannot be used to identify an individual pupil.

(b) "Eligible Pupil" means a pupil who has reached 18 years of age.

(c) "Pupil-generated Content" means materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. "Pupil-generated content" does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

(d) "Pupil Records" means both of the following: (i) any information directly related to a pupil that is maintained by the LEA, and (ii) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee.

"Pupil Records" does not mean any of the following: (i) Deidentified Information, including aggregated deidentified information, used by the third party to improve educational products for adaptive learning purposes and for customizing pupil learning. (ii) Deidentified Information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator's products in the marketing of those products. (iii) Deidentified Information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.

5.2 Pupil Records obtained by Cengage Learning from the LEA continue to be the property of and under the control of the LEA.

5.3 To the extent applicable (and to the extent that the Cengage Learning products used by the LEA enable creation of Pupil-generated Content), Cengage Learning shall enable pupils to retain possession and control of their own Pupil-generated Content (including transferring such Pupil-generated c=Content to a personal account) by requesting access to such Pupil-generated Content from Cengage Learning customer support.

5.4 Cengage Learning shall cooperate with the LEA as needed to respond to requests from parents, legal guardians, or Eligible Pupils who want to review personally identifiable information (“PII) in the Pupil Records and correct erroneous information. If a pupil is 13 years of age or older and the pupil has a personal account with Cengage Learning, the student may access his or her PII directly using the tools provided by the Cengage Learning platforms. Parents, legal guardians and students that do not have a personal account with Cengage Learning should contact the LEA regarding access. Upon request from the LEA, Cengage Learning shall provide the requestor with a copy of the responsive PII. This process is designed to ensure that the LEA can properly authenticate the requestor prior to Cengage Learning’s disclosure of PII. Cengage Learning shall rely on the LEA to approve all such access and correction requests.

5.5 Cengage Learning has implemented a security program containing administrative, technical and physical safeguards that are reasonably designed to protect the security and confidentiality of Pupil Records. Cengage Learning has designated appropriate individuals who are responsible for privacy and security, and Cengage Learning associates are trained to protect Pupil Records.

5.6 In the event of an unauthorized disclosure of a Pupil Records (or other security breach as may be defined by applicable law), Cengage Learning shall notify the LEA to enable it to expeditiously implement its response program. In the event that the incident is the result of Cengage Learning's negligence, it shall bear the actual, reasonable costs of notifying affected individuals, providing customer support, and providing one year of credit monitoring with identity theft insurance to individuals if monitoring and insurance are available. Notwithstanding the preceding, the parties agree that Cengage Learning shall have no obligation to send any notification letters or provide credit monitoring unless such letters are legally required or otherwise needed to alert the individuals of a real potential harm.

5.7 Cengage Learning shall use PII and other information in a Pupil Record for educational purposes (namely for purposes that aid in instruction in the classroom or at home, or in classroom administration) and for related purposes as may be permitted by law. Cengage Learning shall not use any PII in Pupil Records to engage in targeted marketing. Cengage Learning may use Deidentified Information for any purpose permitted by law.

5.8 Cengage Learning shall only collect PII as needed to provide the products and services requested by the LEA. The LEA certifies to Cengage Learning that it shall not provide Cengage Learning with Pupil Records other than as needed for Cengage Learning to provide the products and services requested by the LEA. When Cengage Learning ceases to provide products and services to the LEA, it shall purge, delete and destroy all Pupil Records. Upon request, Cengage Learning will provide the LEA with an Officer's Certificate to certify its compliance with this provision. (Notwithstanding the preceding, Cengage Learning may retain in its own records the PII and Pupil-generated Content pertaining to those individuals who establish personal accounts with Cengage Learning.)

6 Additional Provisions:

6.1 Cengage Learning and Customer each agree to cooperate as may reasonably needed to enable both parties to comply with all laws applicable to them, including (without limitation), any applicable state privacy law, the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA).

6.2 In the event that any term of this Privacy and Security Agreement conflicts with any other term in any services agreement or terms of use between Cengage Learning and the Customer, the terms of this Agreement shall control.

6.3 Customer may direct any questions regarding privacy or security to Cengage Learning Privacy Office, privacy@cengage.com.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

_____	Cengage Learning, Inc. 200 Pier 4 Blvd. Suite 400 Boston MA 02210
_____	_____
By:_____	By:_____
Date:_____	Date:_____