

## DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING  
BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY  
AND  
SUPPLEMENTAL INFORMATION ABOUT A CONTRACT  
BETWEEN Cengage Learning, Inc. AND ERIE 1 BOCES

This Data Sharing and Confidentiality Agreement (“DSC Agreement”) is made and entered into by and between Cengage Learning, Inc. (“Vendor”), having its principal offices at 10650 Toebben Drive, Independence, KY 41051, and the Board of Cooperative Educational Services for the First Supervisory District, Erie County (“Erie 1 BOCES”), having its principal offices at 355 Harlem Road, West Seneca, NY 14224 (collectively referred to as the “Parties”).

### 1. **Purpose and Term**

(a) The Parties agree that Erie 1 BOCES will be deemed to have entered into a binding agreement with Vendor for use of the educational resource known as “IAC K12 MT ADOBE DREAMWEAVER CREATIVE CLOUD REVEALED Bishop 1st Edition” (the “Product”) by members of Erie 1 BOCES instructional staff at such time that one or more Erie 1 BOCES staff members enroll online to use IAC K12 MT ADOBE DREAMWEAVER CREATIVE CLOUD REVEALED Bishop 1st Edition in their classrooms and have clicked to accept Cengage Learning, Inc.’s online Terms of Service and/or Privacy Policies (collectively, “the TOS”) on behalf of Erie 1 BOCES. This binding agreement shall be referred to herein as “the Contract.” This DSC Agreement is entered into in order to conform the Contract and the TOS to the requirements of New York State Education Law Section 2-d and Part 121 of the Regulations of the NYS Commissioner of Education (collectively referred to as “Section 2-d”). This DSC Agreement consists of the terms and conditions set forth herein, a copy of “Erie 1 BOCES Bill of Rights for Data Security and Privacy” signed by Vendor, and the “Supplemental Information about a Contract between Vendor and Erie 1 BOCES” that is required to be posted on Erie 1 BOCES website.

(b) By affixing their signatures to this DSC Agreement below, Erie 1 BOCES and Vendor agree that the term of this DSC Agreement shall commence as of the date of mutual execution of this DSC Agreement by the Parties, and shall continue through and until 11:59 pm June 30, 2022 (“the Initial Term”). The Initial Term may be extended for successive renewal terms of three (3) years (each a “Renewal Term”) only by mutual execution by the Parties of either a written Amendment to this DSC Agreement, or, a new DSC Agreement. Vendor shall comply with all terms, conditions and obligations as set forth in this DSC Agreement, including Erie 1 BOCES’ Bill of Rights for Data Security and Privacy and the Supplemental Information about a Contract between Vendor and Erie 1 BOCES, throughout the duration of the Initial Term of this DSC Agreement, and any Renewal Term, and this DSC Agreement shall supersede and take the place of any previous DSC Agreement entered into or similar data sharing and confidentiality language agreed to by the Parties (within the Contract, TOS, or otherwise) prior to the date of mutual execution of this DSC Agreement.

(c) In the event that any term of the Contract, or Vendor's online or written Privacy Policies or TOS that would otherwise be applicable to its customers or users of its Product that is the subject of the Contract, conflicts with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect.

## 2. **Definitions**

As used in this DSC Agreement:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from Erie 1 BOCES pursuant to the Contract.

(b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from Erie 1 BOCES pursuant to the Contract.

(c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.

(d) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1."

## 3. **Confidentiality of Protected Data**

(a) Vendor acknowledges that it will receive Protected Data from Erie 1 BOCES pursuant to the Contract, and that such Protected Data may have been originally generated by the instructional and other programs operated by Erie 1 BOCES, and if Student Data, also by students' school districts of residence.

(b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d), Erie 1 BOCES policy on data security and privacy and this DSC Agreement, as may be amended by the Parties. Erie 1 BOCES will provide Vendor with a copy of its policy on data security and privacy upon request.

## 4. **Vendor's Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data it receives from Erie 1 BOCES in accordance with Erie 1 BOCES' Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

(a) As required by the NIST Cybersecurity Framework, in order to implement all state, federal, and local data security and privacy requirements, including those contained within this DSC Agreement,

consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this DSC Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the Contract, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the Contract:

*Data Security:*

- Data-at-rest & data-in-transit is encrypted
- Data leak protections are implemented

*Information Protection Processes and Procedures:*

- Data destruction is performed according to contract and agreements
- A plan for vulnerability management is developed and implemented

*Protective Technology:*

- Log/audit records are ascertained, implemented, documented and reviewed according to policy
- Network communications are protected

*Identity Management, Authentication and Access Control:*

- Credentials and identities are issued, verified, managed, audited and revoked, as applicable, for authorized devices, processes and users
- Remote access is managed

(c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about a Contract between Vendor and Erie 1 BOCES." below.

(d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.

(e) Vendor [*check one*] will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the Contract. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the Contract, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in the "Supplemental Information about a Contract between Vendor and Erie 1 BOCES," below.

(f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this DSC Agreement.

(g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the Contract is terminated or expires, as more fully described in the “Supplemental Information about a Contract between Vendor and Erie 1 BOCES,” below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Erie 1 BOCES, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the terms of this DSC Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the Contract.

(c) Not use Protected Data for any purposes other than those explicitly authorized in this DSC Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor’s obligations under the Contract, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Erie 1 BOCES no later than the time of disclosure unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in the “Supplemental Information about a Contract between Vendor and Erie 1 BOCES,” below.

(g) Provide notification to Erie 1 BOCES of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse Erie 1 BOCES for the full cost of notification, in the event it is required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

(a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

(b) Vendor will provide such notification to Erie 1 BOCES by contacting David Kajdasz, Data Security, Protection & Compliance Officer, Erie 1 BOCES directly by email at dkajdasz@e1b.org, or by calling (716) 821-7093 (office).

(c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to David Kajdasz or his designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist Erie 1 BOCES if it has additional questions.

(d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department (“CPO”). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform David Kajdasz or his designee.

(e) Vendor will consult directly with David Kajdasz or his designee prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected school district.

**IN WITNESS WHEREOF**, the Parties have caused this DSC Agreement to be executed by their duly authorized representatives as of the dates set forth below.

**VENDOR**

By: National Geographic Learning | Cengage

Printed Name: David Svedlow

Title: Northeast Regional Manager

Date: 7/19/2021

*David Svedlow*

**ERIE 1 BOCES**

By: *James Fregelette*

Printed Name: Jim Fregelette

Title: Executive Director

Date: 7/26/21

**DATA SHARING AND CONFIDENTIALITY AGREEMENT (CONTINUED)**

**ERIE 1 BOCES**

**BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY**

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and 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.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website: <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

**BY THE VENDOR:**

*David Svedlow*

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**Signature**

Northeast Regional Manager

**Title**

7/19/2021

**Date**

## DATA SHARING AND CONFIDENTIALITY AGREEMENT (CONTINUED)

### SUPPLEMENTAL INFORMATION ABOUT A CONTRACT BETWEEN Cengage Learning, Inc. AND ERIE 1 BOCES

Erie 1 BOCES has entered into an online Contract with Cengage Learning, Inc. which governs the availability to instructional and other programs operated by Erie 1 BOCES of the following Product(s):

#### IAC K12 MT ADOBE DREAMWEAVER CREATIVE CLOUD REVEALED Bishop 1st Edition

Pursuant to this Contract, Erie 1 BOCES may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”). Vendor has also entered into a separate Data Sharing and Confidentiality Agreement (“DSC Agreement”) with Erie 1 BOCES setting forth Vendor’s obligations to protect the confidentiality, privacy and security of Protected Data it receives pursuant to the Contract.

**Exclusive Purpose for which Protected Data will be Used:** The exclusive purpose for which Vendor is being provided access to the Protected Data is to provide Erie 1 BOCES with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized above or in the DSC Agreement. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

**Oversight of Subcontractors:** In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the Contract (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging their obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the DSC Agreement and applicable state and federal law.

#### **Duration of Contract and Protected Data Upon Expiration:**

- The Contract commences at such time that one or more Erie 1 BOCES staff members have enrolled online to use IAC K12 MT ADOBE DREAMWEAVER CREATIVE CLOUD REVEALED Bishop 1st Edition in their classrooms and have clicked to accept Cengage Learning, Inc.’s online Terms of Service and/or Privacy Policies (collectively, “the TOS”) on behalf of Erie 1 BOCES. The Contract expires on such date that IAC K12 MT ADOBE DREAMWEAVER CREATIVE CLOUD REVEALED Bishop 1st Edition is no longer used by any Erie 1 BOCES staff members. Upon expiration of the Contract, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES, Vendor will assist Erie 1 BOCES in exporting all Protected Data previously received back to Erie 1 BOCES for its own use, prior to deletion, in such formats as may be requested by Erie 1 BOCES.

- In the event the Contract is assigned to a successor Vendor (to the extent authorized by the Contract), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

**Challenging Accuracy of Protected Data:** Parents or eligible students can challenge the accuracy of any Protected Data provided by Erie 1 BOCES to Vendor, by contacting Erie 1 BOCES regarding procedures for requesting amendment of education records it maintains under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of any APPR data provided to Vendor by following the appeal process in Erie 1 BOCES' applicable APPR Plan.

**Data Storage and Security Protections:** Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

**Encryption of Protected Data:** Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.