

## SUBSCRIPTION AND HOSTING SERVICES AGREEMENT

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Name of Licensee: Learning Resources Center, (“Licensee”)  
a company incorporated in Pohnpei, FM, with its principal office at College of Micronesia-FSM  
P.O. Box 159, Pohnpei, FM 96941

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### 1.0 Definitions

1.1 In this Agreement, the following definitions of “**Affiliate**” shall mean:

- (i) with respect to Cengage Learning:
  - (a) all subsidiaries or related corporations of Cengage Learning; and
  - (b) any other entities expressly designated by Cengage Learning by notice in writing as falling within this definition.

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- b. Licensee may provide electronic links to the Licensed Content from Licensee's web page(s). Cengage Learning will assist Licensee upon request in creating such links effectively. Licensee shall make changes in the appearance of such links and/or statements accompanying such links as reasonably requested by Cengage Learning.
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- e. At any time in the future, Licensee may (i) renew or extend License Content for which a fee shall be paid for access for a specified period of time ("**Subscription**" content) and/or; (ii) purchase additional Licensed Content for which a fee shall be paid for continual or perpetual access ("**Hosted**" content). Such transactions shall be agreed and confirmed by means of Licensee's purchase order or formal letter or email sent from Licensee's domain to CL for acceptance, reflecting the additional items and terms. In such case, such purchase order or formal letter or email confirmation shall be deemed a part of this Agreement.

### 3.0 Warranties.

- A. Cengage Learning 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 Learning and its Affiliate further warrant that it owns and has the right to make available the Licensed Content to the Licensee.
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#### **4.0 Termination.**

- 4.1 Cengage Learning 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 Learning'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 Learning.
  - c. If the Licensee willingly defaults in making payment of the fee as specified in Section 5 of this Agreement and fails to remedy such default after receiving thirty (30) days of notification in writing by Cengage Learning.
- 4.2 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 2.2
  - b. On termination of this Agreement by the Licensee for cause, Cengage Learning 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 Learning for breach of contract) Cengage Learning 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 Learning 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.

#### **5.0 General**

- A. Fees/Payment. In consideration for the services to be provided, Licensee shall pay Cengage Learning according to the attached schedule.
- B. Assignment. Cengage Learning 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 Learning'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 5.
- 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 subject to, governed by and construed in accordance with the laws of Singapore and the parties submit to the exclusive jurisdiction of the courts of Singapore.
- I. Confidentiality. Licensee 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, Licensee shall notify Cengage Learning before disclosing this Agreement). Notwithstanding the foregoing, the terms and conditions of this Agreement may be revealed by Licensee 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.
- J. Prevailing Terms. In the event of a conflict between the terms and conditions set forth in the body of this Agreement and any exhibit or other attachment hereto, this Agreement shall take precedence over any conflicting terms and conditions in any exhibit or other attachment, provided that if a particular exhibit or attachment expressly amends by section a term of this Agreement, such amendment shall take precedence and be valid.
- 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 Learning's Affiliate and its licensors. All rights in respect thereof are reserved to Cengage Learning and its Affiliate 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 Learning's Affiliate and its licensors.
- L. Survival. The provisions of Sections 3 and 5 (K) shall survive the termination or expiration of this Agreement for any reason.
- M. 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

**6.0. Execution**

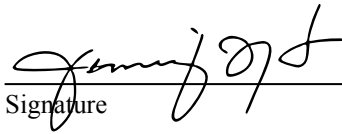
The parties through their authorized agents have executed this contract on the dates set out below.

**Cengage Learning Asia Pte Ltd**

**Licensee**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



\_\_\_\_\_  
Name (Print or Type)

\_\_\_\_\_  
Jennifer Helieisar  
Name (Print or type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Director, Learning Resources Center  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
3/4/2015  
Date

SUB-AKAK12-ASIA 01-2014

Subscription and Hosting Services Agreement by and between  
Cengage Learning and the Licensee  
The day and year first above written

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

**Work Order #:**

**Bill to Contact:** Jennifer Helieisar, Director, Learning Resources Center

**Bill to Address:** College of Micronesia-FSM  
P.O. Box 159  
Pohnpei, FM 96941

Product	# of Sites	# of Users/Site	<b>Extended Price according to Purchase Order</b>
Academic OneFile	5 campuses sites	2099 users	

**Subscription Term Dates:** One year (2015-2016)

**Total Subscription Amount according to Purchase Order**

**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 Learning 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 Learning’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.

**MAIL OR FAX TO:**     **Cengage Learning Asia Pte Ltd**  
                                  **Attn: Electronic Billing**  
                                  **151 Lorong Chuan #02-08 New Tech Park**  
                                  **Singapore 556741**  
                                  **FAX: (65) 64101 208**

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Subscription and Hosting Services Agreement by and between  
Cengage Learning and the Licensee  
The day and year first above written

## Gale Virtual Reference Library Terms and Conditions

### Addendum to Licensed Content Agreement

This Addendum governs your access to and use of certain Gale Virtual Reference Library licensed products when you purchase the perpetual archive option. This addendum, effective the date it is accepted by you, applies only to those products eligible for this option and for which you have paid a fee for perpetual or continual access, as reflected in the order form, purchase order or invoice outlining your purchase of such products (the "Licensed Content"). BY CLICKING THE "I ACCEPT" BUTTON AND/OR OPENING THIS PACKAGE, (i) CENGAGE LEARNING SHALL MAKE AVAILABLE AN XML VERSION OF THE TEXT CONTENT DELIVERED VIA FILE TRANSFER PROTOCOL ("FTP"); (ii) YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS, AND (iii) THAT YOU AGREE TO BE BOUND BY ITS TERMS CONDITIONS AND ALL APPLICABLE LAWS AND REGULATIONS GOVERNING THE USE OF THE LICENSED CONTENT. Should you have any questions/comments regarding this Agreement, please contact Gale at [gale.contracting@cengage.com](mailto:gale.contracting@cengage.com)

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3. **Fees and Payments:** Solely for the purposes of your licensing of the Licensed Content, the following provisions shall apply in place of Schedule 1 of your Agreement:
  - a. You shall pay the fees for your license including hosting and access fees to the Licensed Content as shown on the applicable order form, invoice, or accepted purchase order. The fees due for your license consist of the following components:
    - i. One-time Purchase fee. This fee represents a one-time payment for a perpetual license to the Licensed Content pursuant to the terms and conditions outlined your Agreement as modified by this Addendum.

- ii. Annual access and hosting fees. Access and hosting to the Licensed Content through Cengage Learning servers and/or systems shall be continual through the payment of an annual fee as set forth on the order form, purchase order or invoice, which is in addition to the one-time purchase fee. Fees are based on the current number of titles owned; in the event of a change in the number of titles purchased Cengage Learning reserves the right to review pricing annually with adjustments as applicable.
- b. Upon termination and/or request, Cengage Learning shall endeavor to (i) provide the Licensed Content in an available media format or, (ii) in the case of Licensed Content delivered via FTP electronic feed, re-activate the FTP electronic feed link for download; provided in all cases that the Licensed Content remains generally available via Cengage Learning and Cengage Learning retains sufficient rights to make available the Licensed Content at the time of such request. You acknowledges that Cengage Learning may not retain all necessary rights to Licensed Content in perpetuity and Cengage Learning's provisions of access to the Licensed Content is subject in all instances to Cengage Learning's continuing rights to the Licensed Content from third party content providers.

#### **4. Term and Termination**

Solely in relation to the Licensed Content, the following provisions shall apply in place of the termination provisions in your Agreement:

- a. Term of License. You have a perpetual, non-exclusive, non-transferable license to the Licensed Content. Your continuing on-line access through Cengage Learning's servers and/or systems will be maintained provided you pay the applicable access and hosting fees as invoiced annually by Cengage Learning.
- b. Termination of Annual Access and Hosting Services. Should you terminate your continuing on-line access to the Licensed Content by choosing not to pay the annual service fees or if Cengage Learning ceases to make the Licensed Content available through its on-line servers and/or system, upon request Cengage Learning will provide you with an electronic copy of the Licensed Content data (images, ASCII text and meta-data as applicable) at that time in a format of Cengage Learning's choice. Your continued use of the Licensed Content remains subject to the provisions of the Agreement as amended by this Addendum.

Except as modified herein, the Agreement remains in full force and effect.