

DIGITIZATION AGREEMENT

Between

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

AND

CENGAGE GROUP, INC (CENGAGE)

This non-exclusive Digitization Agreement (the “Agreement”), is entered into as of **MONTH DD, YYYY** (the “Effective Date”), by and between Cengage Group Inc. (“Cengage”), along with its subsidiaries and affiliates, and the National Archives and Records Administration, an independent agency in the executive branch of the United States Government with its headquarters in Washington, DC (“NARA”) (with each of Cengage and NARA being referred to as a “party” or collectively as the “parties”).

Recitals

- A. NARA maintains and makes available to the public certain historical records and other documentary materials of the US Government in printed, microfilm, microfiche, and other formats (the “Archival Materials”) at its locations throughout the United States (the “NARA Locations”).
- B. Cengage Group is one of the largest education technology companies in the world, providing quality digital products and services to millions of students, equipping them with skills and competencies needed to advance their careers and improve their lives.
- C. NARA and Cengage agree to cooperate in Cengage’s digitization of selections of the Archival Materials on the terms and conditions set forth in this Agreement.

Definitions

“Archival Materials” the permanently valuable holdings of the National Archives of the United States in printed, microfilm, microfiche, and other formats.

“Confidential Information” shall include, but shall not be limited to, proprietary information, financial information, forecasts or strategies, any of the present or future products, services, designs or styles, trade secrets, inventions, improvements, know-how, processes, customers, employee or agent information, suppliers, methods of operation, marketing or distribution concepts, systems or procedures, or computer programs, of each party. “Confidential Information” shall not include any information known generally to the public (other than as a result of unauthorized disclosure by the other party, its employees, agents or contractors). For the purposes of this Agreement “Confidential Information” does not mean information classified by the United States Government for national security purposes.

“Digital Images” means digital reproductions of selections of the Archival Materials with no associated Metadata.

“Digital Materials” means digital reproductions of selections of the Archival Materials with associated Metadata.

“Embargo Period” – The period of three years, which begins on or after the end of the scanning phase for the Digital Images covered by a Project Plan or a segmented portion of a series of Digital Materials in a Project Plan, within which all Digital Materials for that series or segmented portion created by Cengage will be published exclusively by Cengage.

“Metadata” means information about an analog or digital object, a component of an object, or a coherent collection of objects. For purposes of this Agreement, Metadata includes “Descriptive Metadata,” “Technical Metadata,” and “Preservation Metadata” relating to the images to be digitized by Cengage under this Agreement, as follows:

- Descriptive Metadata provides information or reference points about the content or location of a Digital Image used for purposes of navigating through Digital Images, similar to tabs on a book. This Descriptive Metadata may include items such as records during a particular time frame, records from a particular location, or records of individuals whose family name begins with a certain letter. Descriptive Metadata is not as detailed or specific as Proprietary Indexing. Whereas Proprietary Indexing allows for the specific electronic search for a specific document, Descriptive Metadata only allows for documents with similar characteristics to be grouped together. This is equivalent to the hierarchy that natively exists in the archival structure of the records.
- Technical Metadata is technical information about the digital files and multi-file objects such as the processes used to reformat the records and pixel dimensions.
- Preservation Metadata includes a history log on the reformatting activities –examples of this Metadata can be found at <http://www.loc.gov/standards/premis/>.

“Microform Publication” means microfilm or microfiche of Archival Materials and associated descriptive information produced and made available for sale by NARA for preservation of and broader access to Archival Materials.

“Project Plan” means a document completed and approved by Cengage and NARA representatives that lists the Archival Material that NARA and Cengage have agreed to digitize and provides the details about standards, Metadata, equipment, format, costs, personnel, and other required information for each selection of Archival Materials. NARA provides the template for Project Plans, which will list information including, but not limited to, the name of the underlying federal entity that transferred the Archival Material to NARA’s legal custody. No work will commence on a project until a Project Plan has been signed by both parties. In lieu of a signed Project Plan, the parties may agree in writing to a pilot to test assumptions that lead to a Project Plan.

“Proprietary Indexing” means additional metadata created by Cengage that is beyond the scope of Metadata required by NARA in a Project Plan. This material will not be transferred to NARA as part of a data transfer as part of this Agreement unless agreed to in the Project Plan.

Terms

1. Creation and Use of Digital Materials.

1.1 NARA agrees to provide Cengage with controlled access to available subsets of Archival Materials to enable Cengage to create Digital Images of such Archival Materials. The dates and other details of the access will be described in each Project Plan with such access to be granted within ninety days from the execution of any Project Plan.

1.2 The nature, location, and details about the digitization process for each selection of Archival Materials will be listed in a Project Plan. All use of the Archival Materials must take place at the location set forth in the applicable Project Plan. The location may be a NARA facility or a Cengage facility approved by NARA, with such approval not to be unreasonably delayed or denied. Details of the on-site scanning or other method of digitization, including but not limited to hours during which Cengage may have access to the Archival Materials, will be agreed to between the parties in each Project Plan. To ensure public access to these records, NARA reserves the right to interrupt the project for short periods of time to make copies and otherwise provide reference service to the public.

1.3 NARA will provide the original copy of the Archival Materials for scanning and the creation of Proprietary Indexes and Metadata unless a usable microform publication (microfilm or microfiche) or other surrogate is available. The format of the Archival Materials to be scanned will be described and agreed to in the Project Plan.

1.4 Digital Images will be created to meet imaging standards that will be provided by NARA and that will be described and agreed to in a Project Plan. The assumption is that projects will be digitized at 300ppi, but occasionally, depending on individual projects and records, NARA may require a different ppi. Because physical materials and

customer-driven needs may vary for selections of Archival Materials, imaging standards and other specifications will be incorporated into each Project Plan.

1.5 Cengage will at all times comply with applicable NARA requirements for the handling of the Archival Materials, and NARA will provide training and oversight in the proper handling of the Archival materials. Any digitization equipment to be used by Cengage in conjunction with NARA holdings, including equipment installed on a NARA computer or network, must be approved by NARA prior to its installation, with such approval not being unreasonably delayed or denied. For each Project Plan, Cengage will propose the digitization equipment to be used for the records specific to that Project Plan. All equipment must conform to NARA regulations (e.g., 36 C.F.R. 1254.80), or as agreed to in a Project Plan, for use of scanners and other personal copying equipment, and any other rules applicable to the particular NARA facility. NARA and Cengage will designate points of contact for each location prior to the start of the project. The points of contact will provide guidance and assistance on all the requirements for the particular project.

1.6 The Digital Materials will be published by Cengage and made available on certain of its worldwide websites, mobile applications, and other formats now known or developed in the future (the "Cengage Network"). Cengage will provide a direct link from the published Digital Materials to NARA's Catalog (NAC) or any successor to NAC. NARA will provide a direct link from NAC or its successor to an agreed upon page on the Cengage Network which includes the Digital Materials.

1.7 Cengage will develop and maintain a searchable database of the Digital Materials based upon Metadata that will be accessible on the Internet and that will provide the ability to browse the Digital versions of the documents in the order that the records appear in the boxes at NARA.

1.8 Pursuant to each Project Plan, the Digital Materials will include all Metadata identified by NARA as necessary to allow NARA to maintain or recreate the archival hierarchy of a series of records (i.e., files, items, subseries, etc.) and to provide easy access to files and/or items in the series. The required Metadata will be outlined in the Project Plan.

1.9 Cengage will donate a copy of the Digital Materials to NARA in the electronic format specified in the Project Plan. This donation will occur prior to or simultaneously with Cengage's initial publishing of the Digital Materials covered by a Project Plan, but no later than three years after the end of the digitization process (to mean creating a digital image from the analog material) for any individual series of a multi-series plan or for any segmented portion of a Project Plan covering an unusually large single series and requiring multiple years of digitization. In the case of a multi-series or segmented project, the segments will be delineated in the Project Plan. The result will be that the Digital Materials relating to the separate series of a multi-series plan or the individual segments of a multi-year single series plan will exit the respective Embargo Period in partial releases throughout the length of the project. Documentation of each donation will be

accomplished by a cover letter from Cengage referencing this Agreement and the relevant Project Plan. Metadata will be provided to NARA using a metadata schema provided to Cengage by NARA and described in the Project Plan.

1.10 Cengage will use reasonable efforts to make corrections that are necessary to ensuring the accuracy of the Digital Materials and the integrity of its archival structure within a mutually agreeable reasonable period of time of identifying a problem or receiving a NARA request for correction, and Cengage will deliver the revised data (images and/or Metadata) to NARA when the correction is completed.

1.11 Except as otherwise provided herein or in a Project Plan, upon initial publishing of any Digital Materials, Cengage will provide free online access to those Digital Materials in all NARA locations to which NARA provides Cengage with the applicable IP address and other necessary information to enable the access. This free access will continue as long as the Digital Materials are on the Cengage Network. Notwithstanding the foregoing, the parties agree that in situations where Cengage may be working with a third party, any restrictions imposed by the third party shall be fully disclosed in the project plan and specifically, accepted, rejected, or modified by Cengage and NARA; otherwise the provisions of this paragraph 1.11 shall govern.

1.12 During the Embargo Period, for any individual Digital Materials covered by a Project Plan or segmented portion of a series of a Project Plan, all Digital Materials for that series or segmented portion created by Cengage will be published exclusively by Cengage. During the Embargo Period, NARA will not sell, make available for downloading, provide access through an application programming interface (“API”) operating on a third-party site or otherwise distribute the Digital Materials or a major file segment thereof. During this Embargo Period, NARA may display sample images on NARA’s website or elsewhere to promote awareness of NARA’s services and activities or for noncommercial educational purposes. During this Embargo Period, NARA will have full access to all published digitized NARA Records available on the Cengage platform in NARA Research Rooms.

1.13 After the expiration of the Embargo Period, NARA will have full and unrestricted rights to use the Digital Materials donated by Cengage, including the right to sell, make available for downloading, or otherwise provide in electronic form, the entire contents of the Digital Materials or segments of them.

1.14 Should Cengage cease to exist, or a successor company or organization that will operate with essentially the same purposes as Cengage cease to exist, and unless Cengage has transferred its rights to the Digital Materials to a third party which intends to use them in like manner, NARA shall immediately: (a) receive a copy of Digital Materials not previously provided to NARA (Cengage or the successor company or organization will make all reasonable efforts to deliver this copy to NARA before it ceases to exist); and (b) have full and unrestricted right to use the Digital Materials consistent with

Section 1.13, above. Any successor company, organization, or third party shall be bound by the terms of this Agreement in accordance with Section 11 below.

1.15 After Cengage's initial publishing of the Digital Materials covered by a Project Plan or segmented portion of a series of a Project Plan, should Cengage (or any successor as described in 1.14 above) cease to publish substantially all the Digital Materials related to a Project Plan on the Cengage Network for 90 consecutive days, or demonstrate an intent to permanently not publish that material, NARA shall immediately: (a) receive a copy of Digital Materials not previously provided to NARA; and (b) have full and unrestricted rights to use those Digital Materials, consistent with Section 1.13, above, no longer or never published by Cengage. This provision will not apply to any Digital Materials that NARA requests to be de-published for any reason.

2. Obligations.

2.1 Except as otherwise specified in this Section 2, all access and services contemplated under this Agreement will be provided free of charge.

2.2 Each Project Plan shall outline the costs that NARA and Cengage anticipate incurring, including for items described in Sections 2.3.1 through 2.3.8, and shall describe the amounts, if any, that Cengage will reimburse to NARA for such costs. Cengage will be responsible for its costs described in each Project Plan and for reimbursement to NARA for NARA's costs, unless such reimbursement is waived by NARA in the Project Plan.

2.3 NARA may, in its sole discretion, waive any or all of Cengage's obligations to reimburse NARA's costs for a project. The reimbursement for a cost may be waived by NARA for many factors including public demand, condition of the records, current workload, or concessions made by Cengage. A waiver decision will be made on a project-by-project basis. NARA shall be deemed to have waived any right to reimbursement for any cost not specifically outlined and estimated in a Project Plan. Those costs for which Cengage may be responsible include, but are not limited to costs related to:

2.3.1 Unique or specialized infrastructure at a NARA facility required to support Cengage efforts;

2.3.2 Retrieval and transport of records to and from digitization work stations and monitoring Cengage staff and volunteers handling the records;

2.3.3 Conservation and preservation activities as determined to be necessary by NARA (with costs to be estimated and agreed upon in each Project Plan);

2.3.4 Digitizing the selected content pursuant to standards and specifications defined in each Project Plan;

2.3.5 Quality control of the Digital Materials including audits of the Digital Materials to verify the quality of the images, the quality of the indexes and other agreed-upon standards contained in the applicable Project Plan. Specific quality control and assurance actions will be detailed in the Project Plan for each digitization project.

2.3.6 Preparing descriptive Metadata that are linked to and permit the organization of Digital Images, according to standards and specifications to be defined in each Project Plan;

2.3.7 Publishing the content on the Cengage Network and making it available to the public as part of Cengage's standard subscription offerings, and making it available in NARA locations pursuant to Section 1.11, above; and

2.3.8 Delivering the Digital Materials to NARA, pursuant to Sections 1.9 and 1.10.

2.4 NARA will be solely responsible for all costs related to:

2.4.1 Power, lighting, heating and similar physical facility requirements for any digitization project conducted at a NARA facility;

2.4.2 Training Cengage staff and volunteers in handling the records;

2.4.3 Managing any NARA staff involved in implementing each Project Plan; and

2.4.4 Providing cost estimates for the activities for which Cengage is responsible pursuant to sub-Section 2.3.

3. Public Domain: Ownership

3.1 U.S. Government works, which comprise the majority of Archival Materials in the National Archives of the United States, are not eligible for copyright protection in the United States and, as such, are in the public domain.

3.2 The parties acknowledge that nothing in this Agreement is intended to alter or impair any rights of control, custody, ownership or use that NARA or the U.S. Government may have in any Archival Materials. NARA shall not transfer control, custody or ownership over any Archival Materials to Cengage or any third party.

3.3 The parties will use all reasonable efforts to ensure that the Archival Materials digitized under this Agreement are in the public domain. In accordance with 36 C.F.R. 1254.62, for any Archival Materials digitized that are not in the public domain, Cengage will be responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of the Copyright Act (Title 17, United States Code).

3.4 The parties will promptly notify each other in writing of any claim made by a third party that any of the Archival Materials are covered by copyright or any other

intellectual property right. Following such notification: a) the parties will use their best efforts to identify and exclude from their own website any images subject to such restrictions that have not been cleared with the rights holder; and b) compliance with copyright laws and observance of the reproduction rights of any third party will be the sole responsibility of each party, separately, with respect to any Digital Materials under its control.

3.5 Without impairing or modifying NARA's underlying ownership rights in the Archival Materials, Cengage will own all rights to and have the unlimited right to use and permit others to use the Digital Materials and the searchable database of Digital Materials referred to in Section 1.7, including without limitation all Proprietary Indexes and Metadata created for the Digital Images, and to sell, copy and distribute the Digital Materials and Proprietary Indexes, including, without limitation, through the worldwide offering for sale of Digital Materials and Proprietary Indexes, on-line subscriptions to access the Digital Materials and associated products and derivative works. All monies generated by or on behalf of Cengage from its use of the Digital Materials shall be for Cengage, and NARA shall have no right to share in or receive any part of the monies.

4. Privacy

4.1 NARA is responsible for protecting the privacy of living individuals mentioned in its records. For purposes of this Agreement we are concerned with sensitive personally identifiable information (PII) - i.e., information which, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. The most common type of sensitive PII is Social Security Numbers, particularly when linked to date of birth, mother's maiden name, or other types of identifiers; but sensitive PII can also include private medical information. NARA withholds from public access records that are less than 75 years old and contain sensitive PII.

4.2 NARA applies this standard to all NARA records before making them available to the public, including the Archival Materials made available to Cengage for digitization.

4.3 In the event sensitive PII is discovered in the Archival Materials, or in the Digital Materials following digitization, Cengage will immediately notify NARA in writing.

4.4 In the event NARA discovers that any Archival Materials contain sensitive PII, NARA will immediately notify Cengage.

4.5 At the direction of NARA's Senior Agency Official for Privacy, Cengage may be required to take mitigating actions to protect the sensitive PII, including but not limited to: removal of the information from public access, deletion of images containing sensitive PII from Cengage's electronic storage devices and backup systems, and immediate return of the Archival Materials for further screening. In such an event, NARA and Cengage will work together to ensure that as much information as possible remains available for

digitization and public access using available search and redaction technology to protect the privacy of living individuals.

5. Confidentiality

5.1 During the term of this Agreement and thereafter, each party agrees to maintain the confidentiality of the Confidential Information of the other. Without limiting the generality of the foregoing, each party shall make reasonable efforts to keep, file, and store such Confidential Information, together with any notes or other material incorporating or relating to the Confidential Information, in a manner consistent with its confidential nature and to take all appropriate action, whether by instruction, agreement or otherwise, to insure that its trustees, directors, officers and employees do not disclose or use the Confidential Information of the others, directly or indirectly, for any purpose other than the purpose of this Agreement.

Notwithstanding the foregoing, either party may disclose Confidential Information required to be disclosed by any requirements of law or any rule or regulation of any governmental authority. NARA agrees that any such disclosure will not, to the extent lawfully permitted, include any Confidential Information.

5.2 The foregoing confidentiality obligations shall not apply with respect to any information, even if denominated as Confidential Information, to the extent such information: (i) is or becomes publicly known through no wrongful act or omission of the recipient; (ii) was rightfully known by the recipient before receipt from the other; (iii) becomes rightfully known to the recipient without confidential or proprietary restriction from a source other than the disclosing party which does not owe a duty of confidentiality to the disclosing party with respect to such Confidential Information; or (iv) is independently developed by the recipient without the use of, or reference to, the Confidential Information of the discloser. In addition, the recipient may use or disclose Confidential Information to the extent (A) approved by the other in writing in advance of such use or disclosure, or (B) such party is legally compelled to disclose such Confidential Information.

5.3 Neither party will issue any public announcement regarding the existence or content of this Agreement or any Project Plan without the other party's prior written approval. Parties agree that this Agreement will be announced for public comment prior to signing.

6. Limitation of Liability

In no event shall either party be liable to the other for any incidental, consequential, special, exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of the subject matter of this Agreement, regardless of the cause of action, even if the party has been advised of the likelihood of damages.

7. Marks and Other Designations

NARA agrees that Cengage may make reference to NARA and use any NARA trade names, trademarks, service marks, seal, logos or other designations in connection with its activities contemplated under this Agreement, provided that Cengage obtain NARA's prior written approval for each usage, which approval will not be unreasonably delayed or withheld. Absent express written authorization, the use of the NARA trade names, trademarks, service marks, seal, logos or other designations shall not imply or state that NARA or any part thereof, or any NARA official or employee, endorses the policies, activities, products, services or opinions of Cengage or any third party.

8. Notices

Notices provided under this Agreement will be effective if delivered to the then current principal business address of the other party. The current addresses are:

If to Cengage: Cengage Group, Inc., 5191 Natorp Boulevard, Mason, OH 45040

With a copy to:

ATTN: General Manager, Gale

Cengage Learning

27555 Executive Drive

Farmington Hills, MI 48331

Paul Gazzolo

(248) 699-8080 Ext. 8080

paul.gazzolo@cengage.com

If to NARA: 8601 Adelphi Road, College Park, MD 20740-6001

Attention: Chief Innovation Officer

Notices may be given by mail (effective three business days after mailing) or by express courier (effective on actual delivery).

9. Term: Termination: Survival

9.1 This Agreement is effective as of the Effective Date and will remain in effect for a period of five years or one year after the completion date of any project defined in a Project Plan, whichever is longer (the "Expiration Date"). After the expiration Date, the Agreement will automatically renew for additional one-year periods unless either party provides a written request to open discussions on a new Agreement.

9.2 The Agreement may be terminated by either party for any reason by providing ninety days prior written notice; provided, however, that termination of the Agreement, except if based on a material breach (as discussed below), will not affect any ongoing

Project Plan (e.g., a Project Plan for which digitization of the Archival Materials has begun but publication on the Cengage website has not been accomplished).

9.3 Either party may terminate the Agreement for a material breach by the other party by giving ninety calendar days written notice, provided that such termination shall not be effective if such alleged material breach is cured within the ninety calendar day notice period and the allegedly breaching party provides notice of such cure to the other party. Notice of termination under this sub-Section will immediately halt work on the creation of Digital Images on all ongoing Project Plans, and on all signed Project Plans under which digitization has not begun. In the event of breach by either party: a) all Archival Materials must be returned to NARA custody immediately upon notice of termination under this sub-Section; b) a copy of all Digital Materials related to such Archival Materials existing at the time of the breach must be turned over to NARA; and c) Cengage shall retain all Digital Materials and the right to use them consistent with the terms of this Agreement. A termination under this sub-Section 9.3 shall not affect any Digital Materials already published by Cengage.

9.4 In the event of a termination under sub-Section 9.3, Cengage retains all rights to Cengage owned scanning equipment.

9.5 The provisions of Sections 1.6, 1.9, 1.12-1.15, 2, 3, 4, 5 and 6 shall survive termination subject to the provisions above; however, Cengage's obligations under Section 2 shall survive termination to the extent NARA has incurred costs prior to the date of termination.

10. Choice of Law

This Agreement shall be governed by and in accordance with the laws of the United States. In the event federal law does not address an issue, the applicable law shall be District of Columbia law without application of conflict of laws provisions.

11. Relationship of the Parties

This Agreement does not constitute, and is not intended to give rise to, a partnership or joint venture between the parties. Each party will operate under the terms of this Agreement as an independent entity and not as an agent for, or an employee of, the other.

12. Assignment

Neither NARA nor Cengage may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Cengage may, without the consent of NARA, assign (a) this Agreement or (b) any of its rights and obligations under this Agreement, to any of its Affiliates, or to the purchaser of all or substantially all of the assets to which this Agreement pertains or its equity, through merger, consolidation or otherwise; provided, however, that if the assignee of this Agreement pursuant to this Section 12 is not an existing affiliate of Cengage in the ninety days immediately prior to the transaction resulting in the assignment hereof, Cengage

shall, within thirty days of such transaction, give notice of such assignment to NARA, and NARA will have the right, within thirty days of receipt of such notice from Cengage, to provide thirty days' written notice to Cengage of termination of this Agreement. NARA will not unreasonably terminate this Agreement. If NARA does not provide such notice within such thirty-day period, then this termination right shall expire and be of no further force or effect. Subject to the foregoing limitation, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

13. Entire Agreement: Modification

This Agreement is the entire agreement of the parties regarding the subject matter set forth herein, provided that nothing in this Agreement will limit any other rights of Cengage to access the Archival Materials. The parties agree that any modifications to this Agreement will be made only in writing duly executed by their duly authorized representatives, effective of the Effective Date.

In the event of a conflict between an approved project plan and this Agreement, the terms of this Agreement will apply.

14. Effective Date

This agreement will become effective when signed by all parties. Separate signature pages for each party is acceptable, and delivery via electronic signature or facsimile or physical delivery is acceptable.

**NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION**

CENGAGE

BY: _____

BY: _____

**Name: Dr. Colleen Shogan
Title: Archivist of the United States**

**Name: Seth Cayley
Title: VP, Global Academic Product**

Date:

Date: