

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA
BOARD AGENDA ITEM – July 13, 2021**

DEPARTMENT/SCHOOL INITIATED AGREEMENT

21-573-A-WH Lexia Reading

<input type="checkbox"/> (BW) Bids Waived <input checked="" type="checkbox"/> (A) Agreement
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REQUESTOR: Elementary Programs

Legal Review Required: Yes No

Standard Template Used with No Changes: Yes No

Standard Template Type: Software License Addendum

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Lexia Learning Systems, LLC	\$340,371.00	Lexia Core5 Reading Student Subscriptions and Related Products and Services
Total	\$340,371.00	

<input type="checkbox"/> Contract Renewal	New Contract Amount	\$340,371.00
<input type="checkbox"/> Recurring Contract	Previous Contract Amount	N/A
<input checked="" type="checkbox"/> New Contract	Variance	N/A

PRICE INCREASE / DECREASE EXPLANATION: N/A

DISCUSSION:

The district purchase of Lexia Core5 Reading will support elementary educators in providing differentiated literacy instruction for 5,722 students in K-3. Lexia Core5 has the highest level of evidence-base under ESSA guidelines. Lexia’s research-proven language-based program provides explicit, systematic, multisensory and personalized learning in the six areas of reading instruction. Lexia Core5 provides teachers with the data to target skill gaps as they emerge, as well as student-specific intervention resources they need for individual or small-group intervention instruction.

The standard Software License Agreement (SLA) template has been used, which does not require legal review.

CONTRACT TERM:

The contract term shall commence August 1, 2021 and continue until July 31, 2023.

RECOMMENDATION:

It is the recommendation of Jane Cline, Assistant Superintendent of Elementary Leading & Learning, and Tara Harris, Director of Elementary Leading & Learning to approve the attached agreement with Lexia Learning Systems, LLC in the amount of \$340,371.00.

AUTHORITY FOR ACTION:

Florida Administrative Code 6A-1.012 (11) (b)

QUOTE



Lexia Learning Systems LLC

300 Baker Avenue, Suite 320
Concord, MA 01742 USA
Phone: (978) 405-6200
Fax: (978) 287-0062

Quote #: Q-447789-4
Created Date: 5/21/2021 10:53 AM

Prepared By: David Traviesa
Email: david.traviesa@lexialearning.com

Quote To:
The School Board of Brevard County, Florida
Office of Accounting Services
2700 Judge Fran Jamieson Way
Viera, FL 32940-6601 US

Bill To:
The School Board of Brevard County, Florida
Office of Accounting Services
2700 Judge Fran Jamieson Way
Viera, FL 32940-6601 US

Start Date	End Date	Quantity	Line Item Description	Sales Price	Total Price
8/1/2021	7/31/2023	5,722	Lexia Core5 Reading Student Subscription	\$55.50	\$317,571.00
8/1/2021	7/31/2023	1	Lexia District Success Partnership	\$19,800.00	\$19,800.00
8/1/2021	7/31/2023	10	Lexia Core5 Reading Live Online	\$300.00	\$3,000.00

Total Price \$340,371.00

Fax or email Purchase Orders with quote number Q-447789-4 to the following:

Attn: David Traviesa
Email: david.traviesa@lexialearning.com
Fax: (978) 287-0062

PLEASE NOTE THE QUOTE NUMBER MUST APPEAR ON PURCHASE ORDER(S) IN ORDER TO PROCESS.

TERMS AND CONDITIONS

**Prices included herein are exclusive of all applicable taxes, including sales tax, VAT or other duties or levies imposed by any federal, state or local authority, which are the responsibility of Customer. Any taxes shown are estimates for informational purposes only. Customer will provide documentation in support of tax exempt status upon request. Pricing is valid 60 days. Lexia will invoice the total price set forth above upon Customer's acceptance. Payment is due net 30 days of invoice.

TERM

This quote serves as an Order Agreement and becomes effective upon its acceptance by both parties. The Product/Services purchased pursuant to this Agreement will begin on or about the start date set forth above and continue in effect for the Product/Service Term set forth above ("Subscription Period"). Unless otherwise set forth herein, all Product licenses shall have the same start and end dates, all Products are deemed delivered upon provisioning of license availability, and all Services must be used within the Subscription Period; unused Product licenses or Services are not eligible for refund or credit. Onsite training fulfilled with virtual training equivalency as needed. Virtual training equivalency = four (4) live online sessions for each onsite training day session. Without prejudice to its other rights, Lexia may suspend delivery of the Product/Services in the event that Customer fails to make any payment when due.

ORDER PROCESS

To submit an order, please fax this quote along with the applicable Purchase Order to: (978) 287-0062, or send by email to your sales representative's email address listed above.

NOTE: EACH PURCHASE ORDER MUST INCLUDE THE CORRECT QUOTE NUMBER PROVIDED ON THIS QUOTE, AND THE QUOTE SHOULD BE ATTACHED.

ACCEPTANCE

All Products and Services are offered subject to the Lexia K-12 Education Application License Agreement terms, available at <http://www.lexialearning.com/download> (the "License"), as supplemented by the terms herein. By placing any order in response to this quote, Customer confirms its acceptance of the License Terms and the terms and fees in this quote, which together, constitute the entire agreement between Customer and Lexia regarding the Products and Services herein (the "Agreement"). Customer and Lexia agree that the terms and conditions of this Agreement supersede any additional or inconsistent terms or provisions in any Customer drafted purchase order, which shall be void and of no effect, or any communications, whether written or oral, between Customer and Lexia relating to the subject matter hereof. In the event of any conflict, the terms of this Agreement shall govern.



Agreement #: 21-573-A-WH
Approval Date: _____

SOFTWARE LICENSE ADDENDUM

THIS SOFTWARE LICENSE ADDENDUM (“Software Addendum”) is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS”) and Lexia Learning Systems LLC, a Cambium Learning Group company whose business address is 300 Baker Avenue, Suite 320 Concord, MA 01742 USA, (hereinafter referred to as “Contractor”), and is intended to supplement the agreement entered into between the parties effective upon issuance of Purchase Order under Agreement #21-573-A-WH regarding software and/or Services to be provided by Contractor to BPS.

1. **TERM** – The term of this Software Addendum will coincide with the term of the agreement between the parties and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the parties.
2. **DEFINITION OF “AGREEMENT” AND CONFLICT** - As used herein, the term “agreement” shall mean Contractor’s standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor’s standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor’s agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor’s agreement, the following provisions as set forth in this Software Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency’s county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS’s rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State’s governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Annual licensing and maintenance costs are payable at the beginning of each renewal period. Payment for services will be in arrears. Any references to prepayment are deleted. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY** -BPS, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** -BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a “claims-made” basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S..

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION**

a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees (“Indemnitees”) from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys’ fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR’s performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR’s available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS’s sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of “solely negligent” should arise, a court agreeable to both Parties may be engaged to settle this dispute.

b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS’s sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS’s rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

25. **PUBLIC RECORDS** – **EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. RECORDSREQUEST@BREVARDSCHOOLS.ORG. THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Software Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Software Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Software Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor's agreement, a copy of Contractor's standard terms and conditions as they appear on the date of execution of this Software Addendum are attached hereto and incorporated herein as Exhibit "A."

28. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

IN WITNESS WHEREOF, BPS has made and executed this Software License Addendum and Contractor has made and executed this Software License Addendum on the day and year below written.

Signature Page to Follow

LEXIA LEARNING SYSTEMS LLC

By:  _____ Date: 11-Jun-2021
Authorized Representative Signature

Print Name: Brian McKean

Title: Vice President

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____ Date: _____
Misty Belford, Board Chairperson

EXHIBIT "A"
CONTRACTOR'S STANDARD TERMS AND CONDITIONS ATTACHED

EXHIBIT A

K-12 EDUCATION APPLICATION LICENSE AGREEMENT

This K-12 Education Application License Agreement (this “License” or “Agreement”) is a license and contract between you, the individual completing the order for access to and use of the licensed subscriptions, products, materials, and/or services described below and in the applicable Order Form, on behalf of your organization (“Licensee” or “Customer”), and Lexia Learning Systems LLC, a Cambium Learning Group company (“Licensor” or “Company”) and governs Customer’s access and use of the Company licensed subscriptions, products, materials, and/or services. The license granted hereunder is conditioned upon Customer’s acceptance of the terms set forth herein. Customer and Company are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

Definitions:

“Application” or “Product” means the K-12 educational language and literacy subscription product(s), applications, materials and/or services offered under the Lexia® or other Cambium Learning Group-owned brand, as specified in the applicable Order Form, including without limitation, Company’s online K-12 education subscription products, all of which are offered and provisioned by Company as SaaS-based subscriptions in a multi-tenant, shared database architecture, where individualized client-dedicated infrastructure and/or processing is not part of the Application or services offering, as well as any software, hosting or other services, companion materials, training, documentation or related products for the K-12 Education Application, accessed on or through, or downloadable from, password-protected access to a Company-designated website and/or mobile application (the “Site”), as well as any Company or third party applications embedded within or provided by Company to deliver or enable delivery of the functionality of the Application, including those installed on any third party server related thereto, along with all services, documentation, reports and/or other ancillary materials provided by Company in conjunction with the Application (together with any updates to, or new releases of, the foregoing that are made available to Customer by Company), licensed by Company to Customer under the applicable Order Form and pursuant to this License.

“Authorized User” means any student, participant, employee or other individual designated by Customer to receive access to the Company Application under this License.

“Company” or “Licensor” means Lexia Learning Systems LLC or any of subsidiaries or affiliates thereof, as set forth in the applicable Order Form.

“Enterprise Administrator(s)” means the Authorized User(s) designated by the Customer to act as administrators for the Customer, with responsibility on behalf of Customer for overseeing and managing the access of Authorized Users to the Application. Customer shall provide Company with the names of such Enterprise Administrators.

“Online” means the accessing of the Application or component thereof using a web or mobile browser on a desktop or mobile device over the Internet.

“Order Form” means each order form, quote, statement of work, or proposal provided by or on behalf of Company to Customer for Company’s K12 Education Application, subscriptions and/or services under this Agreement and accepted by or on behalf of Customer.

1. IMPORTANT NOTICE ON LICENSE PLEASE REVIEW CAREFULLY

A. General. THIS LICENSE IS A LEGAL AGREEMENT BETWEEN CUSTOMER/LICENSEE AND COMPANY/LICENSOR. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT COMPANY WOULD NOT HAVE ENTERED INTO THIS LICENSE WITH CUSTOMER WITHOUT CUSTOMER'S AGREEMENT TO BE FULLY BOUND BY THE TERMS OF THIS LICENSE.

THIS LICENSE CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY (SEE SECTION 10 BELOW). THIS PROVISION IS AN ESSENTIAL PART OF THE PARTIES' AGREEMENT.

B. Online Acceptance. BY PLACING AN ORDER WITH COMPANY, CLICKING ANY ACCEPTANCE BUTTON OF THE APPLICATION, PAYING AN INVOICE ANY COMPANY APPLICATION OR SERVICE, OR DOWNLOADING, INSTALLING OR OTHERWISE USING THE APPLICATION OR ANY PART THEREOF, CUSTOMER AGREES TO BE BOUND BY THE TERMS, CONDITIONS AND NOTICES OF THIS LICENSE, SHALL BE DEEMED TO HAVE ACCEPTED THIS LEGAL AGREEMENT IN FULL, AND SHALL BE DEEMED TO HAVE AUTHORIZED THE INDIVIDUAL COMPLETING THE ORDER OR AUTHORIZATION FOR, OR INSTALLATION, PAYMENT OR USE OF, THE APPLICATION, TO ENTER INTO THIS AGREEMENT AND ACCEPT THESE TERMS ON BEHALF OF CUSTOMER.

IF CUSTOMER DOES NOT AGREE TO THESE PROVISIONS OR ANY OF THE OTHER TERMS OF THIS LICENSE, DO NOT CLICK THE ACCEPTANCE BUTTON (IF ANY) AND DO NOT USE OR ACCESS, OR ENABLE ANY AUTHORIZED USER TO ACCESS THE APPLICATION.

2. LICENSE

The Application is licensed, not sold. The Application is intended to be used by Customer for the educational instruction and/or training of its Authorized Users only. Customer may not use the Application for any other purpose, or other than in accordance with the terms of this License, without the express prior written authorization of Company in each instance. If Customer accepts this License, Company grants Customer a limited, revocable, nonexclusive and nontransferable license to access and use, and to allow its Authorized Users to access and use, the Application licenses and/or receive and use materials and services, as identified and for the subscription service term specified in the applicable Order Form, subject to Customer's fulfillment of its payment obligations under each Order Form and the obligations, limitations, and restrictions set forth in this License. For purposes of the preceding sentence, "use" of the K-12 Education Application means access by an Authorized User to the functionality of the Application by means of password-protected access to a Company-designated Site, or, to the extent supported by Company and agreed by the Parties, via Customer's LMS, SSO or via such other arrangement or media expressly agreed to by Company in the applicable Order Form, for K-12 educational literacy or language-learning purposes only.

The specific subscription and/or service period and any maximum number of Authorized Users of the licensed Application shall be as provided in the applicable Order Form. Information regarding the counting mechanism may be accessible by the Customer from a Company online administrative portal, or may be obtained from Company customer support.

3. ADDITIONAL TERMS FOR THE LEXIA RAPID ASSESSMENT APPLICATION

Notwithstanding anything to the contrary, the following additional terms shall apply to any Order Form for, license to and/or use of the Lexia® Reading Assessment for Prescriptive Instructional Data Application (“Lexia RAPID Assessment”). The Lexia RAPID Assessment Application is owned by Lexia and/or its third party licensors, inclusive of copyrighted software and materials proprietary to Florida State University Research Foundation, Inc. (“FSU”). By accepting this License and/or using the RAPID Assessment Application, Licensee acknowledges that the FSU is a third party beneficiary to the terms and conditions herein with respect to the RAPID Assessment Application and Customer’s use thereof. Any and all rights in the Lexia RAPID Assessment Application not expressly granted by this License are hereby reserved by Company and/or its third party licensors.

4. INTERNET AND SYSTEMS REQUIREMENTS

Continuous Internet access, connectivity, and certain minimum systems and technical requirements, such as installation of additional third party software (e.g., browser plug-ins), may be required to access and use the Application, which are not provided by Company and are the sole responsibility of Customer. Information regarding minimum systems and technical requirements for the Application may be obtained by Customer from the Company Site or Company customer support.

5. AUTHORIZED USER LOGIN & ENTERPRISE ADMINISTRATOR

A. User Name and Password. Customer acknowledges that access to the Application by Customer and Authorized Users requires the creation of user accounts for the Application (which may include the selection or designation of a username and password). Customer acknowledges and agrees that Customer is solely responsible for the use and security of user names and passwords. Customer shall take such actions as may be necessary to maintain the confidentiality and security of user names and password information and prevent the unauthorized use of user names and passwords, and shall immediately notify Company in the event of a breach of Customer security. Customer will not save Customer’s user name(s) and/or password(s) on a workstation which may be used by multiple users, or permit Authorized Users to do so, as the sharing of user names and/or passwords to allow any other person to use the Application is prohibited.

B. Enterprise Administrator(s). Customer will designate at least one Customer Authorized User to act as Enterprise Administrator for the Application and Customer account. The Enterprise Administrator will be granted administrator privileges for the Customer’s account, enabling the Enterprise Administrator to assign, disable, and otherwise administer all other Authorized User access. Customer covenants and agrees that each Enterprise Administrator shall have authority, on behalf of Customer, to perform his or her duties, serve as primary point of contact to, and direct and instruct Company with respect to the Application and service operations provided to Customer and its Authorized Users. Enterprise Administrator and Customer staff information may be used for purposes of communicating to the Customer information relating to Company’s business and services (e.g., account activity reminders, best practices, activities to support Application usage and engagement by Authorized Users, downtime notices, products, services or feature notifications, technical and other support services, etc.). If, during the Term of the services under the applicable Order Form, a then-current Enterprise Administrator ceases to be an active employee or agent of Customer or ceases to serve as an Enterprise Administrator, and if there are no remaining Enterprise Administrators, Customer shall promptly appoint another Authorized End User as an Enterprise Administrator. When an Enterprise Administrator accesses the Application administrator portal using his or her password, the Application will provide the Enterprise

Administrator with certain administrative capabilities with respect to Customer's use of the Application that other Authorized Users will not have, including the ability to cancel password access and thereby deny access to the Application through use of such password. Using functionality provided within the Application administrator portal and/or with assistance from Company customer support, Customer agrees that the Enterprise Administrator will promptly deactivate and cancel password access of any Authorized User (including any Enterprise Administrator) who (i) ceases to be employed by Customer, (ii) Customer no longer wishes to have access to the Application, or (iii) Customer knows or reasonably believes is causing or may cause Customer to breach any provision of this Agreement or is in any way mishandling passwords or access. Customer will notify Company at the time an Enterprise Administrator's password access is deactivated or cancelled for any of the reasons specified in clauses (i) through (iii) above.

6. TRANSFER

Customer may not, and may not permit others to, directly or indirectly sell, rent, lease, loan, timeshare, or sublicense all or any part of the Application.

7. LIMITATIONS ON USE

Customer agrees not to, and not to permit others to, directly or indirectly (a) reverse assemble, reverse compile, or otherwise reverse engineer or attempt to access or derive the source code or object code or any associated computer algorithms or models of all or any part of the Application, including but not limited to any methods, algorithms, or models relating to language, literacy or other assessments; (b) copy, modify, translate, alter, change, or collect information that can be used to create derivative works of all or any part of the Application; (c) download, copy, or collect information that could be used to copy all or any part of the Application; or (d) access or use all or any part of the Application for any purpose other than for the educational and/or assessment purposes set forth herein, except as and only to the extent expressly authorized by applicable law notwithstanding this limitation, and/or as expressly authorized in writing by Company. Any such authorization supplied by Company, and any information obtained by Customer through any such authorized use, may only be used by Customer for the purpose expressly authorized by Company and may not be disclosed to any third party or used to create any software or work that is substantially similar to the Application or any component thereof. If the applicable Order Form specifies a maximum number of Authorized Users or concurrent users that may access the Application, Customer agrees not to exceed such maximum number without the prior written approval of Company. Customer agrees, upon request by Company, to exchange its current version of the Application or any component thereof, for an updated version, and to discontinue use of the replaced version.

8. OWNERSHIP OF INTELLECTUAL PROPERTY

Company reserves all rights in the Application (including all components thereof and materials provided therewith) not expressly granted to Customer in this Agreement. Customer acknowledges and agrees that Company or its third party licensors own all rights, title, and interest in and to the Application (including all software, code, algorithms, models, interfaces, text, photographs, graphics, animation, applets, music, video and audio incorporated therein, and any related user guides, documentation or materials), the Company trademarks, the URLs that incorporate all or any portion of Company's marks, and other marks owned by Company and/or related to the Application and components thereof, all of

which are covered by various protections including, without limitation, copyright, trademark, and trade secrecy law. Customer agrees not to alter, remove, conceal, or otherwise change any trademarks, logos or other marks of Company or its third party licensors contained within the Application. If Customer suggests new features or functionality that Company, in its sole discretion, adopts for the Application, such new features or functionality will be the sole property of Company and any and all claims of Customer as to the same are hereby waived and released. Company reserves the right, in its sole discretion and without incurring any liability to Customer, to update, improve, replace, modify or alter the specifications for and/or functionality of all or any part of the Application from time to time. By using the Application, Customer agrees to automatically receive updates.

9. SUPPORT

Company offers support to customers of the Application in accordance with its published support policies. The hours of support operations and means of accessing Company customer support are provided and available from Company's customer support page on Company's website. Support hours and methods of submitting support requests may vary for certain Company Applications and/or for certain geographic regions or territories. Company reserves the right to change its support policy at any time and provide notice to Customer by updating the policy on Company's support page on its website.

10. LIMITED WARRANTY, DISCLAIMERS, AND LIABILITY LIMITATIONS

A. LIMITED WARRANTY

1. General: Company represents and warrants to Customer that it will provision and perform the Application and any associated services in a professional and workmanlike manner, conforming in all material respects to industry standards and practices.
2. Hosted Application: Company warrants that the hosted Application will perform substantially in accordance with the descriptions and specifications applicable to such Application for the subscription period (as provided in the applicable Order Form) of the relevant Application license (the "Hosted Application Warranty Period") under normal use. Notwithstanding anything to the contrary, Company makes no representation or warranty with respect to any third party software, and undertakes no obligations with respect to any third party software, and Company makes no representation or warranty of any kind relating to any Customer-provided content, its quality or any use thereof. Company's sole liability and Customer's sole remedy for breach of the foregoing Hosted Application Warranty during the Hosted Application Warranty Period will be, at Company's option, the repair or replacement of the Application, or a refund of the prepaid subscription fees received by Company from Customer for the remaining unused portion of the Application subscription licenses under the applicable Order Form(s) from the date written notice of deficiency was received from the Customer by Company.
3. Headset units: Company warrants that any headset units included under any Order Form will perform substantially in accordance with the descriptions applicable to such unit for thirty (30) days following delivery ("Headset Warranty Period") under normal use. Except for the foregoing limited warranty, Company provides the headset units "as is," and all other representations and warranties regarding the headset units, express or implied, are hereby disclaimed. Company's sole liability and Customer's sole remedy for breach of the foregoing headset unit warranty will

be limited to replacement of the defective headset unit, including, at Company's option, with an alternative headset unit of similar quality and functionality. Defects must be reported within the Headset Warranty Period.

B. DISCLAIMER OF WARRANTIES OTHER THAN AS STATED IN SECTION 10A ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY AND ITS THIRD PARTY LICENSORS MAKE NO OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED, OR BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, ABOUT THE APPLICATION, THE EMBEDDED SOFTWARE OR ANY SERVICES PROVIDED HEREUNDER, AND PROVIDE THE APPLICATION AND SUPPORT SERVICES (IF ANY) "AS-IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFECTS OF SUCH APPLICATION (IF ANY) SHALL BE WITH CUSTOMER. THERE IS NO REPRESENTATION OR WARRANTY HEREIN AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OR AGAINST INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY AND COMPANY'S THIRD PARTY LICENSORS DISCLAIM ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE APPLICATION AND ANY SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY OR COMPLETENESS OF DATA, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR THAT CUSTOMER'S USE OF THE APPLICATION WILL BE UNINTERRUPTED, VIRUS-FREE, OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ARE MADE BY ANY THIRD PARTY LICENSORS HEREIN.

C. CUSTOMER ASSURANCE Customer warrants to Company: (i) that it has all rights, licenses, permissions, and authorities necessary to enter into this Agreement; and (ii) that its provision of Customer Data (as defined herein) to Company and its authorizations and instructions to Company relating to the processing of such Customer Data shall at all times be in compliance with all applicable laws and regulations, including data protection laws and any notice and/or consent requirements.

D. LIMITATIONS OF LIABILITY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL COMPANY OR COMPANY'S THIRD PARTY LICENSORS, OR ANY OTHER PERSON OR ENTITY, BE LIABLE TO CUSTOMER OR ANY AUTHORIZED USER FOR (A) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING REPLACEMENT COSTS AND/OR ANY LOSSES RELATING TO CUSTOMER OR CUSTOMER'S BUSINESS, SUCH AS LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST SAVINGS, EVEN IF COMPANY OR ITS THIRD PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) ANY CLAIM BY ANY THIRD PARTY. IF CUSTOMER COULD HAVE AVOIDED DAMAGES BY TAKING REASONABLE CARE, NEITHER COMPANY NOR COMPANY'S THIRD PARTY LICENSORS WILL BE LIABLE FOR SUCH LOSSES. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL COMPANY'S TOTAL LIABILITY UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, EXCEED THE CUMULATIVE PAYMENTS RECEIVED BY COMPANY FROM CUSTOMER UNDER THIS AGREEMENT. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, IN SUCH STATES OR JURISDICTIONS, COMPANY'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

11. TERMINATION AND SURVIVAL

A. Term Subject to the terms hereof, this License Agreement is effective for the term of each Order Form and all Application subscription and service periods thereunder ("Term"). Customer may terminate

any Order Form and its rights under this License at any time by providing thirty (30) days prior written notice to Company, *provided however*, that, except in the event of Customer's termination of an Order Form for Company's uncured material breach, Customer will not be entitled to any refund of any license, subscription, service, or other fees set forth in the Order Form, or any portion thereof, unless otherwise expressly agreed by Company in writing in the applicable Order Form. For clarity, except in the event of Company's termination of an order or this License due to material breach by Customer, the term of any individual subscription license acquired under this License shall be as set forth in the applicable accepted Order Form, and the rights in such subscription licenses shall not be transferred from the Customer entity named as the receiving party in the applicable Order Form to any other entity. By accepting this License, Customer authorizes Company to immediately suspend and/or terminate Customer's and/or any Authorized User's rights, without notice, under this License, including access to the Application, if Customer or any Authorized User fails to comply materially with any terms of this License, including the prompt payment of fees set forth in the applicable Order Form. Restrictions imposed by Company for a breach of this License may include, but are not restricted to:

- (i) Terminating the IP address of a non-compliant workstation; and
- (ii) Terminating account access to the Application.

B. Termination Subject to the terms herein, upon receipt of notice of termination, Customer and any Authorized User shall cease all use of the Application. Company may require Customer to certify in writing that Customer has complied with this requirement. Customer Data (as defined herein) is available for export in reports by Customer's designated Enterprise Administrator(s) at any time during the applicable Application subscription period through self-service tools within the Application administrator portal. Upon termination of this Agreement and all access to the Application and/or service, and/or upon Customer's written request, Company will, unless otherwise legally required, initiate its processes to securely remove, delete and/or otherwise render unreadable or undecipherable Customer Data in its possession within sixty (60) days from the date such written request was received by Company in accordance with Company's then-current data removal protocols; otherwise, Company will remove such Customer Data within a commercially reasonable period of time. Upon completion of such removal and upon written request, Company will provide written confirmation to Customer that such Customer Data has been disposed of in accordance with the foregoing. All terms, provisions, obligations, or restrictions herein that expressly or by their nature are to continue after termination shall survive the termination of this License for any reason, but this sentence shall not imply or create any continued right to use the Application after termination of this License.

12. CONFIDENTIALITY

1. **Obligations** Subject to any legal obligations on Customer with respect to public/open records requirements, each Party agrees to hold Confidential Information, as defined herein, of the other Party in confidence, and not use or disclose it to an unauthorized third party as long as the information is confidential. The receiving party will protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of Confidential Information as the receiving Party uses to protect its own Confidential Information of like nature. "Confidential Information" means any proprietary information exchanged between the Parties, which is (i) marked "confidential" or "proprietary" at the time of disclosure by the disclosing Party; or (ii) by its

nature or content is reasonably distinguishable as confidential or proprietary to the disclosing Party, and includes, without limitation, information regarding a Party's technology, designs, techniques, research, know-how, current or future products or business plans, pricing, customers, employee information, data, policies or practices, and other business and technical information, and shall include, to the extent permitted under applicable law, the terms and conditions of this Agreement or of any Order Form and the pricing provisions thereof. The receiving Party may disclose the Confidential Information to its employees, agents, contractors, and legal or financial advisers only as necessary and in relation to the performance of such Party's obligations with respect to this Agreement, and provided such parties have executed written nondisclosure commitments protecting the Confidential Information consistent with the terms and obligations under this Agreement, or as may be required under regulatory requirements.

2. **Exclusions** Confidential Information will not include information that (a) is made generally available in the public domain prior to time of disclosure; (b) is or becomes publicly available through no act or omission by the receiving Party; (c) was already in the receiving Party's possession without restriction before receipt from the disclosing Party and was not subject to a duty of confidentiality; (d) is rightfully disclosed to the receiving Party by a third party without confidentiality restrictions; or (e) that the receiving Party independently developed without use of or reference to Confidential Information. The receiving Party may disclose the disclosing Party's Confidential Information as required by law or court order provided: (i) the receiving Party reasonably notifies the disclosing Party in writing of the requirement for disclosure, unless such notice is prohibited by law; and (ii) discloses only that portion of the Confidential Information legally required.

13. DATA COLLECTION, PROCESSING, PRIVACY & SECURITY

The Parties understand and agree that use of the Application and associated services involves the receipt, processing, review, and analysis by Company of personally identifiable information of Customer's Authorized Users ("Customer Data"). As between the Parties, Customer Data is, and remains, the property of Customer as controller of the Customer Data, and Company acts as service provider and processor of the Customer Data under this Agreement.

Company confirms that it will use Customer Data solely to enable Company to provision and support its Applications and associated services and operations, to fulfill its obligations to Customer under and in accordance with this Agreement, and as provided under applicable law.

Company covenants and agrees that it has and will at all times during the Term of this Agreement and while Company is in possession of Customer Data, maintain an information security program that includes reasonable and appropriate administrative, technical, physical, organizational and operational safeguards, and other security measures designed to safeguard Customer Data while in Company's systems from unauthorized access, loss, misuse and/or alteration, consistent with standards in the educational technology service provider industry and the requirements of applicable law. Company agrees that it will restrict access to Customer Data to Company employees and authorized agents and providers who require access to such information to enable Company to provision and support its Applications and services to its customers, and who are under contractual obligations of confidentiality

to Company. Company shall at all times be fully responsible to Customer under this Agreement for Company employees, authorized agents, and providers.

If Customer is a U.S. school, U.S. school district, or U.S. state or federal agency, and Customer Data includes personally identifiable information about a student protected under the Family Educational Rights and Privacy Act of 1974, as amended (20 U.S.C. § 1232g et seq.) or other applicable state student educational records privacy law (“FERPA Protected Data”), Company covenants and agrees that shall use and process such FERPA Protected Data in compliance with FERPA and such applicable state student records privacy law. Customer agrees that Company shall be considered a “School Official” for its institution for purposes of the performance of services under this Agreement in accordance with FERPA, and Company shall provide reasonable assistance to Customer with respect to Customer’s compliance obligations thereunder. In addition to any other terms entered into between Customer and Company with respect to Company’s handling of Customer Data including FERPA Protected Data, Company shall process such Customer Data in accordance with Company’s [Application Privacy Policy, and Student Records Privacy Statement & Security Plan](#).

If Customer and its Authorized Users are located in countries outside the U.S., including but not limited to Customers and Authorized Users from the European Economic Area and/or its member states, United Kingdom and/or Switzerland, and as required or acceptable to satisfy cross-border transfer and processing obligations under applicable law, Company’s processing of Customer’s Personal Data shall also be governed by the Company’s [International Data Transfer & Processing Addendum](#), the terms of which are fully incorporate and made part hereof by this reference.

If an Authorized User (that is not the Customer Enterprise Administrator), or if a parent, legal guardian, or student contacts Company with a request to review, modify, export, or delete Customer Data, or if an agency, court, law enforcement or other entity requests access to Customer Data, Company will (unless prohibited by writ or compulsory legal process) promptly direct the requesting individual or entity to contact the Customer, and/or notify Customer of the request, and thereafter, Company will use reasonable and good faith efforts to assist Customer in fulfilling any such requests, as directed by the Customer.

Notwithstanding the foregoing or anything to the contrary, the Parties acknowledge and agree that, consistent with applicable law, Company may collect, use, analyze, and retain data generated through the use by Customer and Authorized Users of the Application and services from which all personally identifiable information and individually identifying attributes have been removed (“De-identified Data”) for benchmarking, development of best practices, improvement or development of Company’s educational products and services, and/or for educational research and statistical purposes, without reimbursement to or prior notice or authorization from Customer. Company agrees that it will not use or publish materials utilizing such De-identified Data in any way that identifies Customer or any Authorized User as the source of that data without the prior written consent of Customer or Authorized User. Company shall in no event attempt to re-identify De-identified Data or authorize others to do so.

14. FEES AND PAYMENTS

Customer agrees to pay Company the fees for the Application and services as set forth on the applicable Order Form. Unless otherwise expressly agreed in writing, Company shall invoice Customer for the total amount stated on each Order Form. Unless otherwise specified in the Order Form, all invoiced amounts

shall be due and payable within thirty (30) days of date of invoice. Payments due hereunder shall be made by Customer without any deduction, setoff or bank charges, to Company at the banking institution in the United States designated by Company in U.S. dollars, unless otherwise mutually agreed and expressly set forth in the applicable Order Form. Except as expressly provided herein, all payments made by Customer are non-refundable. Unless expressly prohibited under applicable law, overdue payments (other than amounts that are the subject of a legitimate dispute) shall accrue interest at the lesser of one and one half percent (1.5%) per month or the maximum allowable interest under applicable law from the due date until paid, and Customer shall pay Company's costs of collection, including Company's reasonable attorneys' fees and court costs. The amounts due to Company as set forth in the applicable Order Form do not include, and Customer shall be solely responsible for payment of, any sales, use, property, value-added or other taxes (including any amounts to be withheld for the purpose of paying the foregoing) relating to, resulting from or based on Customer's purchase and/or use of the Application. If Company is required to pay any of the foregoing taxes, then such taxes shall be billed to and promptly paid by Customer.

Reseller Orders. If Customer has procured licenses to access the Applications or any Services through a Company-authorized distributor or reseller ("Reseller"), then different terms regarding invoicing, payment and taxes may apply as specified between Customer and its Reseller. Customer acknowledges that: (a) Company may share information with the Reseller related to Customer's use and consumption of the subscriptions and Services for account management, support and billing purposes; (b) the terms and provisions of this License and incorporated policies, exhibits or addenda, apply between Customer and Company; and (c) Reseller is not authorized to make any changes to this License or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Company or in any way concerning the Application or Company Services.

15. GOVERNING LAW AND FORUM

A. Governing Law This License and each Order Form will be governed in all respects, by and construed in accordance with the laws of the Commonwealth of Virginia, USA, without reference to its principles relating to conflicts of law, and each Party agrees that any action arising out of or related to this License must be brought exclusively in a U.S. state or Federal court in the Commonwealth of Virginia, *provided however*, that if Customer is a U.S. public school or school district, or an agency or department of the U.S. federal or any state government, then any claims or disputes between the Parties related to this License shall be governed by the laws of the state identified in Customer's address as set forth in the applicable Order Form, and all actions shall be brought in the appropriate state or federal courts located in such state.

B. Notwithstanding Section 15A above, if the Company address specified on the Order Form is in Canada, this Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the federal laws of Canada applicable thereto, excluding those provisions relating to conflicts of laws. The Parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario or the Federal Court of Canada sitting in that province.

C. Exclusion This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

D. Injunctive Relief Notwithstanding the above, Company shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against Customer in the event that, in the opinion of Company, such action is necessary or desirable.

16. ENTIRE AGREEMENT, TRANSLATION, ASSIGNMENT

A. Entire Agreement. Except as expressly provided herein, this License constitutes the entire agreement between the Parties with respect to the use of the Application by Customer and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License, or action, or delay, will be binding upon Company unless in writing and signed by Company.

B. Language. In the event of a dispute between the English and any translated version, the English version of this License and the applicable Order Form shall prevail. *It is the express wish of the Parties that this agreement, as well as all correspondence and documents relating to this agreement, be written in English. The following is a French translation of the preceding sentence: Il est de la volonté expresse des parties que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.*

C. Assignment. Neither Party may assign or transfer this License and/or any rights or obligations hereunder, in whole or in part, to another Party at any time without the prior consent of the other Party; provided, however, that, unless otherwise expressly required under applicable law, prior consent shall not be required for an assignment by Company to an affiliate and/or in connection with a name change, merger, acquisition, reorganization or transfer of all or substantially all of its stock, assets or business.

17. SEVERABILITY

All provisions of this License apply to the maximum extent permitted by applicable law. If any part of this License is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this License will continue in effect.

18. EXPORT

Customer acknowledges that the Application is subject to U.S. export jurisdiction. Customer agrees to comply with all applicable international and national laws that apply to the Application, including the U.S. Export Administration Regulations and Office of Foreign Assets Control Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

19. FORCE MAJEURE

No failure or omission by either Party to carry out or observe any of the terms and conditions of this License (other than payment obligations) shall give rise to any claim against such Party or be deemed a breach of this License if such failure or omission arises from an act of God or any other force majeure, an act of any government, or any other cause beyond the reasonable control of the affected Party.

20. WAIVER

Failure to insist upon strict compliance with any of the terms, covenants, or conditions of this License shall not be deemed a waiver of that term, covenant, or condition or of any other term, covenant, or condition of this License. Any waiver of relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

21. THIRD PARTY RIGHTS

Except as expressly set forth herein, nothing in this License shall be construed as giving any person or entity, other than the Parties hereto and their successors and permitted assigns, any right, remedy, or claim under or in respect of this License or any provision hereof.

22. U.S. GOVERNMENT RIGHTS

If Customer is a U.S. government entity, Customer acknowledges that elements of the Company Application constitute software and documentation and are provided as "Commercial Items" as defined at 48 C.F.R. § 2.101, and are being licensed to U.S. government end users as commercial computer software subject to the restricted rights described in 48 C.F.R. §§ 2.101, 12.212.

23. NOTICES

Notices, requests, or other communications hereunder shall be in writing, addressed to the Parties at the addresses set forth in the Order Form and/or in the case of Customer, to the Customer Enterprise Administrator. Notices mailed by registered or certified mail shall be conclusively deemed to have been received by the addressee on the fifth (5th) business day following the mailing of sending thereof. If either Party wishes to alter the address to which communications to it are sent, it may do so by providing the new address, in writing, to the other Party.

updated March 3, 2021

Website Privacy Policy

Lexia Learning Systems LLC, a Cambium Learning® Group company (“Lexia”) is the developer of the Lexia® technology-based learning solutions. We take the privacy of our customers seriously. We are committed to safeguarding your privacy while providing a personalized and valuable service.

1. Overview

This Privacy Policy explains the data processing practices of Lexia, and how Lexia collects and uses your personal information when you visit or access www.Lexialearning.com or our other commercial websites (“Websites”), or when you interact with us in other on-line and off-line sales or marketing activities. This privacy policy also describes how Lexia shares and secures your personal information, as well as your choices regarding the use, access and correction of your personal information. For our privacy policies concerning the collection and use of personal information of school or district students or staffs that is collected within and through use of our online subscription products and related services, including www.mylexia.com and the MyLexia mobile application, please refer to our Application Data Privacy Policy. If you have any requests concerning your personal information or any questions about these practices please contact our Privacy Officer by e-mail at privacy@lexialearning.com.

Information provided by you may be requested from one of our Websites or those of our affiliates under the Lexia, the Cambium Learning Group or one of the Cambium Learning Group brands, or from one of our reputable co-marketing partner sites that represent our brands on their own websites under their company and/or brand name. In the event that you provide us with personal information for the purposes of free registration and you later make a purchase, whether directly from us or facilitated by one of our e-commerce partners, we will collect and use your personal information according to our stated policies that are posted and available for your review at the time of purchase.

As described in this Privacy Policy, we use your personal information to provide and improve our services. By visiting our Website or using our services, you agree to the collection and use of information in accordance with this Privacy Policy.

We encourage you to periodically review this privacy policy as it may change at any time at our sole discretion. Our Website may contain links to third party sites, which are not subject to this privacy policy. Lexia does not endorse and is not responsible for the privacy practices or content on these sites. We recommend that you read the privacy policy of any such sites that you visit.

2. Information Collected

Personal information is collected by Lexia. We collect personal information about you (your “Personal Information”) through:

The use of inquiry and registration forms

The purchase process when you buy any of our products or services

The provision of your details to us either online or offline

The elements of your Personal Information that we collect under this policy may include:

Name

Job title

Company name

Personal or professional contact and demographic information, shipping and billing addresses, phone and fax number

Mobile telephone number

E-mail address

IP address, device information, activity information and browser information

Payment details such as credit card information and transaction history

Market research data such as customer usage patterns

3. Use and Disclosure of Personal Information

We use Personal Information under this privacy policy for various business purposes which may include:

Providing our customers with a personalized service and support.

Engaging in transactions and communications with our customers.

Processing orders, registrations and inquiries.

Conducting market research and surveys.

Running competitions.

Measuring interest in and improving our website, products, and services.

Providing our customers with information about products and services we offer. You may stop the delivery of marketing emails by following the instructions accompanying a particular communication or by contacting us at privacy@lexialearning.com.

Protecting rights or fulfilling obligations required by law, regulation or contract.

Resolving disputes, collecting fees, protecting against fraud, and troubleshooting problems

We use the information you provide when placing an order to complete that order and to service your account. We do not share this information with outside parties except: 1. to the extent necessary to complete that order or to provide you with services by way of our service providers or contracted partners (e.g., payment processing, sales partners servicing your account, third-party shipping, cloud computing infrastructure and hosting providers, business analytics, customer support); or 2. to successors in title to our business; or 3. in accordance with legal and regulatory requirements or to respond to a government subpoena or other government request; or 4. as necessary, in Lexia's sole discretion, to protect the perceived rights, safety and property of Lexia, users of our Websites or services, and the public; or 5. with the parent organization, affiliate or subsidiary entities of Lexia to manage the personal information as joint controllers. We may also disclose your personal information to any other third party with your prior consent.

You may sign-up to receive email or newsletter or other marketing communications from us. If you would like to discontinue receiving this information, you may update your email preferences by using the "Unsubscribe" link found in emails we send to you or at your member profile on our website or by contacting us at privacy@lexialearning.com.

Other than as set out above, you will be notified when personal information about you will be shared with third parties, and you will have an opportunity to choose not to have us share such information.

We also use information in aggregate form (so that no individual user is identified):

To build up marketing profiles

To aid strategic development

To audit usage of the Website

4. Use of Cookies and Other Tracking Devices

We use cookies or similar tracking devices to help personalize your use of our Websites. A cookie is a small piece of information which is sent to your computer's hard drive by the web server so that the website can remember who you are. This information may include information relating to your use of our Websites, information about your computer such as the computer's IP address and browser type, demographic data, Internet service provider (ISP), referring/exit pages, the files viewed on our site (e.g., HTML pages, graphics, etc.), operating system, date/time stamp, and/or clickstream data and, if you arrived at our Website via a link from a third party site, the URL of the linking page. We do not use tracking devices to track your usage of the Internet on other sites not operated by Lexia.

We use cookies and other tracking devices to analyze trends, administer the Website, understand and analyze our users' movements around the Website, and to gather demographic information about our user base as a whole.

We also use information from cookies for purposes, which may include:

Identifying returning users and registrants

Enabling users to move more easily around our Websites

Tracking how our users use of our Websites to better develop our sites in accordance with user requirements

Building up a demographic profile of our Website users

If you do not want to help us learn how to improve our Websites, products, offers and marketing strategy, you may indicate your preference on the cookies preference center on the Website, and/or you may choose to set your Web browser to not accept certain cookies. Similar preference settings options may be available on your mobile device. You can control the use of certain cookies at the individual browser level, but if you choose to disable cookies, it may limit your use of certain features or functions on our Website or service. Further information on how to prevent cookies from being stored on your computer can be found on <http://www.allaboutcookies.org> under the 'manage cookies' section. Alternatively, go to the help menu within your Internet browser.

From time to time we may permit third party companies to set cookies on Lexia Websites for purposes which may include market research, revenue tracking or to improve functionality of the site.

From time to time we may permit third party companies to set cookies on Lexia Websites for purposes which may include market research, revenue tracking or to improve functionality of the site.

We may place or recognize technology on your browser or device when you visit our Sites for purposes of serving you targeted advertising (also referred to as "online behavioral advertising"). We also work with third party advertising companies who place their own cookies or similar technology on your browser or device when you visit our Sites and other websites to serve customized advertisements to you as you browse the Internet. As noted above, you can set your device or browser to accept or reject most cookies, or at least notify you in most situations that the technology is offered. As an additional step, these advertising companies may participate in one of the following self-regulatory programs for online behavioral advertising, with corresponding user opt-outs:

Networking Advertising Initiative (<http://www.networkadvertising.org/choices/>) (US Only)

Digital Advertising Alliance (<http://www.aboutads.info/choices/>) (US Only)

European Interactive Digital Advertising Alliance (<http://www.youronlinechoices.eu/>) (EU Only)

Digital Advertising Alliance - Canada (<http://youradchoices.ca/choices>) (Canada Only)

DAA App Choices Mobile App (Mobile Devices Only) - For mobile devices (e.g., smartphone, tablets), you may consider downloading the DAA AppChoices Mobile App to manage such technology.

Please note that even if you reject such technology, you may continue to receive advertisements, but the advertisements will not be tailored to your browsing activities and interests.

5. Security

Lexia has implemented an Information Security Program and security measures designed to help ensure that our users' Personal Information is protected against unauthorized access or use, alteration, unlawful or accidental destruction, or accidental loss. Although we make reasonable efforts to protect your Personal Information from loss, misuse, or alteration by third parties, you should be aware that there is always some risk involved in transmitting information over the Internet. There is also some risk that thieves could find a way to thwart our security systems. If you have any questions about the security of your personal information, you can contact us at privacy@lexialearning.com.

6. Transfer of Personal Information

The Internet is a global environment. Websites, software, services and programs delivered and accessed through the Internet necessarily involve the transmission and processing of personal data, sometimes on an international basis, depending, for example, on where the user is located. When personal information is provided to Lexia through the Websites, the information will be processed from and stored on servers located in the United States and globally, and by using the Websites, you acknowledge and give Lexia authorization to such transfer, processing and storage.

Lexia participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. Lexia is committed to subjecting all personal data received from European Union (EU) member countries and Switzerland, respectively, in reliance on the Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce's Privacy Shield List at <https://www.privacyshield.gov/list>.

Lexia is responsible for the processing of personal data it receives under the Privacy Shield Framework and subsequently transfers to a third party acting as an agent on its behalf. We comply with the Privacy Shield Principles for all onward transfers of personal data from the EU and Switzerland, including the onward transfer liability provisions.

With respect to personal data received or transferred pursuant to the Privacy Shield Framework, Lexia is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. In certain situations, we may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

If you have an unresolved concern about personal data that we have not addressed satisfactorily, we have committed to cooperate with the panels established by the EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) to serve as our independent dispute resolution bodies for the Frameworks. In addition, under certain conditions, more fully described on the Privacy website, European residents may invoke binding arbitration for non-monetary issues when other dispute resolution procedures have been exhausted.

While the European Court of Justice has held that the Framework is no longer "adequate" for the transfer of personal data from the EU to the U.S., Lexia continues to abide by the privacy principles and other requirements of the Framework with respect to personal data we process in the U.S. from data subjects in the European Union. In addition, Lexia has implemented other appropriate cross-border transfer solutions, notably in accordance with Article 49 of the General Data Protection Regulation, to provide adequate protection for transfers of certain personal data, including notably from EEA and the UK to the U.S. To the extent permitted by applicable law, your use of this site constitutes your consent to the transfer of your personal data to Lexia in the United States.

7. Access to Personal Information & Request Process

Upon request and as provided herein, Lexia will provide you with information about whether we hold any of your personal information. You may access, correct, or request deletion of your personal information by contacting us. We will respond to your request within a reasonable timeframe.

Where required by applicable law, and notably by the General Data Protection Regulation (GDPR) for residents of the UK and European Union, you have the right to obtain confirmation of the existence of certain Personal Data relating to you, to verify its content, origin, and accuracy, as well as the right to access, review, port, delete, or to block or withdraw consent to the processing of certain Personal Data (without affecting the lawfulness of processing based on consent before its withdrawal), by contacting us as detailed below. In particular, you have the right to object to our use of Personal Data for any

direct marketing and in certain other situations at any time. Please note that certain Personal Data may be retained as required or permitted by applicable law.

We may charge the allowable fee under applicable law for provision of this information. We will respond to your request within a reasonable timeframe. Please note that additional information may be required to confirm and enable us to assist with your request. The timeframe to address the request may vary depending on the nature of the request, however, we will endeavor to address the request as promptly as possible, typically within thirty (30) days and as may be required by law.

Notice to California Consumers

If you reside in California, we are required to provide additional information to you about how we use and disclose your information, and you may have additional rights with regard to how we use your information. We have included this California-specific information below.

CA Personal Information. Consistent with Section 2 of this Lexia Website Properties Privacy Policy, we collect certain categories and specific pieces of information about individuals that are considered "Personal Information" in California ("CA Personal Information"), specifically:

Personal and Other Identifiers or Characteristics: such as first name and last name, personal or professional contacting information, mailing address, telephone number, e-mail address, unique personal identifier, IP, device, and online activity information, age, date of birth, gender, demographics, username and password to our Websites or services;

Commercial Information: such as payment details, credit card information and purchase or transaction history.

Sources. We may collect certain categories of CA Personal Information from you and other third parties as described in Sections 2 and 4 of this Lexia Website Properties Privacy Policy.

Use of CA Personal Information. Consistent with Section 3 of this Lexia Website Properties Privacy Policy, we may use CA Personal Information for business or commercial purposes. Please see Section 3 for more details.

CA Personal Information Sold or Disclosed For Business Purposes.

In the preceding twelve months, we may have shared CA Personal Information for business purposes, or we may have "sold" (as defined under CCPA) some categories of CA Personal Information.

California Consumer Rights. Subject to certain exceptions, as a California resident, you may have the following rights to your CA Personal Information: (i) Access. Request access to your CA Personal Information that we collect, use, disclose, or sell; (ii) Deletion. Request deletion of your CA Personal Information; and (iii) CA Personal Information Sold or Disclosed For Business Purposes. Request information about the CA Personal Information we have "sold" (as defined under CCPA) or disclosed for business purposes within the preceding 12 months. To the extent permitted by applicable law, we may

be required to retain some of your CA Personal Information and certain CA Personal Information is strictly necessary in order for us to fulfill the purposes described in this Privacy Policy.

Exercising California consumer rights. If you are a California resident and wish to exercise any of these rights, please: (a) submit your request using our California webform available [here](#); (b) log into your account to make any updates or submit a request; (c) contact us as described in this Lexia Website Properties Privacy Policy, or (d) call the following toll-free number 800-507-2772. When submitting your request, you may be asked to provide certain information, which may include additional proof of identification, so that we can verify your identity and validate the request. We are not responsible for requests that are not sent or submitted properly, or that do not have complete information. Please note that you are limited by law in the number of requests you may submit per year. We will not discriminate against you by offering you different pricing or products, or by providing you with a different level or quality of products, based solely upon you exercising your rights to your CA Personal Information.

Do Not Sell My Personal Information. If we “sell” (as defined by CCPA) your CA Personal Information to a third party, as a California Resident, you have the right to opt-out of the sale of your CA Personal Information. If you wish to exercise this right, please [click here](#), contact us as described in this Lexia Website Properties Privacy Policy, or call the following toll-free number 800-507-2772. To the extent that you elect to designate an authorized agent to make a request on your behalf, they must identify that they are contacting us as agent and will be required to provide appropriate documentation including written signed authorization by you, proof of your identity, and verification of their identity; or a valid, designated power of attorney as required under the California Probate Code. We may require additional proof of authority or may need to contact you directly to validate the request. If you are under the age of 16, we will not sell your CA Personal Information without proper consent.

If you have questions or concerns regarding your privacy, please contact us by contacting the Privacy Officer at privacy@lexialearning.com or writing to:

Privacy Officer

Lexia Learning Systems LLC

300 Baker Avenue, Suite 320

Concord Massachusetts 01742

Email: privacy@lexialearning.com

Phone: (978) 405-6200

8. Personal Information – Retention

We may retain your Personal Information for as long as your account is active or as needed to provide you with our services, comply with our legal and regulatory obligations, verify performance, resolve disputes and enforce our rights and agreements.

9. Children Under 13

We do not intentionally collect any information on children under 13 years of age from our Websites. We will undertake to delete any details of such users where a parent, guardian or authorized school official has notified us that any such details have been obtained.

10. Changes to this Policy

This policy is effective as of the date indicated below. We will review and may update this privacy policy from time to time to reflect changes to our privacy practices and in accordance with changes in legislation, best practice or Website enhancements. We will notify you about material changes to this privacy policy by posting the new privacy policy on this page with the “Last Updated” date indicated, by sending a notice to the email address you provided to us, or by placing a prominent notice on our Website.

Last reviewed: March 9, 2021

Last updated and effective as of: March 9, 2021