

## LEXIA APPLICATION END USER LICENSE AGREEMENT

This Lexia Application End User License Agreement (“License”) is a contract between you, the individual completing the order for access to use of the products, materials and/or services described below (“Licensee”), Rosetta Stone Ltd. (“Licensor”), and Lexia Learning Systems Inc. (“Lexia”) and governs Licensee’s use of the Lexia products, materials, and/or services. The license granted hereunder is conditioned upon Licensee’s acceptance of the terms set forth herein. Licensee, Licensor and Lexia are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**Background:** Lexia has formed a strategic relationship with Licensor which allows Licensor to license the Lexia Application to individual users on the license terms described below.

### Definitions:

“Authorized User” means Licensee or any student for whom the Licensee is a parent or guardian.

“Lexia Application” means the specific proprietary products of Lexia for which Licensee has rightfully obtained a license or licenses which are accessible on, through or downloadable from the Lexia websites on the World Wide Web located at [www.lexialearning.com](http://www.lexialearning.com) or such other websites as Lexia may designate from time to time, together with all Lexia client applications installed on any third-party server related thereto. The term “Lexia Application” may also include certain third party applications that are embedded within or provided by Lexia together with such proprietary products of Lexia.

“Online” means the accessing of the Lexia Application using a web browser over the Internet.

### 1. IMPORTANT NOTICE ON LICENSE -- PLEASE REVIEW CAREFULLY

**A. General.** THIS LICENSE IS A LEGAL AGREEMENT BETWEEN LICENSEE, LICENSOR AND LEXIA. LICENSEE UNDERSTANDS AND ACKNOWLEDGES THAT LICENSOR AND LEXIA WOULD NOT HAVE ENTERED INTO THIS LICENSE WITH LICENSEE, WITHOUT LICENSEE’S AGREEMENT TO BE FULLY BOUND BY THE TERMS OF THIS LICENSE.

THIS LICENSE CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY (SEE SECTION 9 BELOW). THIS PROVISION IS AN ESSENTIAL PART OF THE PARTIES’ AGREEMENT.

**B. Online Acceptance.** BY CLICKING THE ACCEPTANCE BUTTON BELOW:

(i) LICENSEE ACKNOWLEDGES THAT LICENSEE IS ELECTRONICALLY SIGNING THIS LICENSE, AND SUCH ELECTRONIC SIGNATURE HAS THE SAME LEGAL FORCE AND EFFECT AS A HANDWRITTEN SIGNATURE.

(ii) LICENSEE AGREES TO BE LEGALLY BOUND BY ALL OF THE TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED HEREIN.

(iii) IF LICENSEE DOES NOT AGREE TO THESE PROVISIONS OR ANY OF THE OTHER TERMS OF THIS LICENSE, DO NOT CLICK THE ACCEPTANCE BUTTON AND DO NOT ENROLL THE ONLINE SUBSCRIPTION SERVICE. LICENSEE ALSO HAS THE RIGHT AT ANY TIME TO WITHDRAW LICENSEE’S CONSENT TO HAVE THIS LICENSE

PROVIDED TO LICENSEE IN ELECTRONIC FORM. SHOULD LICENSEE CHOOSE TO WITHDRAW LICENSEE'S CONSENT TO HAVE THIS LICENSE PROVIDED TO LICENSEE IN ELECTRONIC FORM, LICENSOR WILL TERMINATE LICENSEE'S RIGHT TO USE THE ROSETTA STONE PRODUCT.

**2. LICENSE.** The Lexia Application is licensed, not sold. The intended use of the Lexia Application is for educational purposes. Licensee may not use the Lexia Application for any purpose other than educational uses. If Licensee accepts this License, and for so long as Licensee complies with the terms of this License, Licensor grants Authorized User a nonexclusive and nontransferable license to access the Lexia Application Online and use the Lexia Application for a period of one (1) year subject to the limitations and restrictions set forth in this License.

**3. ONLINE ACCESS.** Licensee acknowledges that Online access to a Lexia Application on a workstation which Licensee owns or may lawfully access requires:

- (i) installation of additional third Party software (e.g., browser plug-ins); and
- (ii) access to the Internet.

Continuous internet access is required to access the Lexia Application, and is not provided by Licensor. Such access is the sole responsibility of Licensee.

#### **4. SECURITY AND PRIVACY**

**A. Security.** Licensee will not save Licensee's name/password on a workstation which may be used by multiple users, as doing so will cause Licensee to be in violation of this License.

**C. User Name and Password.** Licensee acknowledges that its access to the Lexia Application requires creating an account with Lexia (including selection of a username and password). Licensee acknowledges and agrees that Licensee is solely responsible for ensuring that his or her user name and password are secure.

**5. TRANSFER.** Licensee may not, and may not permit others to, directly or indirectly sell, rent, lease, loan, timeshare, or sublicense the Lexia Application. The transmission of Licensee's user name, password or Activation ID to allow any person other than Licensee or an Authorized User to use Lexia Application is expressly forbidden and failure to comply with this prohibition may result in the suspension or termination of the right to continue to use the Lexia Application or receive support.

**6. LIMITATIONS ON USE.** Licensee agrees not to, and not to permit others to, directly or indirectly (a) reverse assemble, reverse compile, or otherwise reverse engineer or attempt to derive the source code of all or any part of the Lexia Application, (b) copy, modify, translate, alter, change, or collect information that can be used to create derivative works of all or any part of the Lexia Application, (c) download, copy or collect information that could be used to copy all or any part of the Lexia Application, or access or use all or any part of the Lexia Application for any purpose other than for educational uses except as and only to the extent expressly permitted by applicable law, notwithstanding this limitation or expressly authorized in writing by Licensor. Any such information supplied by Licensor, and any information obtained by Licensee by any such expressly permitted decompilation may only be used by Licensee for the purpose expressly authorized by Licensor and may not be disclosed to any third party or used to create any software that is substantially similar to the Lexia Application.

**7. OWNERSHIP OF INTELLECTUAL PROPERTY.** Licensor and Lexia reserve all rights in the Lexia Application not expressly granted to Licensee in this License. Licensee acknowledges and agrees

that Lexia or its third-party licensors own all rights, title and interest in and to the Lexia Application (including all software, code, interfaces, text, photographs, graphics, animation, applets, music, video and audio incorporated therein and any related user guides and documentation), the Lexia trademarks, the URLs, and other marks related to the Lexia Application, all of which are covered by various protections including, without limitation, copyright, trademark, and trade secrecy law. If Licensee suggests new features or functionality that Lexia, in its sole discretion, adopts for the Lexia Application, such new features or functionality will be the sole and exclusive property of Lexia and any and all claims of Licensee as to the same are hereby waived and released. Lexia reserves the right, in its sole discretion and without incurring any liability to Licensee, to update, improve, replace, modify or alter the specifications for and functionality of all or any part of the Lexia Application from time to time. By using the Lexia Application, Licensee agrees to automatically receive updates.

**8. SUPPORT.** Lexia offers support for the Lexia Application for those of its customers who have completed the online registration process. Lexia reserves the right to change its support policy (and to discontinue support for any Software product) at any time and without notification to Licensee. Licensee's use of Lexia's customer support is governed by the hours of operation, and other terms and conditions set forth at Lexia's website. Lexia reserves the right to make changes to the support policy at any time, and will post those changes on the support pages on Licensor's website.

#### **9. LIMITED WARRANTY, DISCLAIMERS, AND LIABILITY LIMITATIONS:**

**A. Limited Warranty and Disclaimer.** Lexia warrants that the Lexia Application will perform substantially in accordance with the descriptions and specifications in the documentation accompanying such Lexia Application for the term of the license granted hereby. Notwithstanding anything to the contrary, Licensor and Lexia make no representation or warranty with respect to any third party software, and undertake no obligations with respect to any third party software.

**B. DISCLAIMER OF WARRANTIES.** OTHER THAN AS STATED SECTION 9A ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR AND LEXIA MAKE NO OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED, OR BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, ABOUT THE LEXIA APPLICATION, THE EMBEDDED SOFTWARE OR ANY SERVICES PROVIDED HEREUNDER, AND PROVIDE THE LEXIA APPLICATION AND SUPPORT SERVICES (IF ANY) "AS-IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT OF SUCH LEXIA APPLICATION (IF ANY) SHALL BE WITH LICENSEE. THERE IS NO REPRESENTATION OR WARRANTY HEREIN AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OR AGAINST INFRINGEMENT. LICENSOR, LICENSOR'S THIRD PARTY LICENSORS, AND LEXIA DISCLAIM ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE LEXIA APPLICATION AND ANY SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR THAT LICENSEE'S USE OF THE LEXIA APPLICATION WILL BE UNINTERRUPTED, VIRUS-FREE, OR ERROR-FREE. LICENSEE ACKNOWLEDGES THAT NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ARE MADE BY ANY THIRD PARTY LICENSORS HEREIN.

**C. LIMITATIONS OF LIABILITY.** IN NO EVENT WILL LICENSOR, LICENSOR'S THIRD PARTY LICENSORS, LEXIA, OR ANY OTHER PERSON OR ENTITY BE LIABLE TO LICENSEE OR ANY AUTHORIZED USER FOR (a) ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING ANY LOSSES RELATING TO LICENSEE, OR LICENSEE'S BUSINESS, SUCH AS LOST DATA, LOST PROFITS, BUSINESS

INTERRUPTION, OR LOST SAVINGS, EVEN IF LICENSOR OR ITS THIRD PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIM BY ANY THIRD PARTY. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, SO THE FOREGOING LIMITATIONS MAY NOT APPLY. IF LICENSEE COULD HAVE AVOIDED DAMAGES BY TAKING REASONABLE CARE, NEITHER LICENSOR, LICENSOR'S THIRD PARTY LICENSORS NOR LEXIA WILL BE LIABLE FOR SUCH LOSSES.

**D. STATUTORY CONSUMER RIGHTS.** NOTHING IN THIS LICENSE SHALL AFFECT THE STATUTORY RIGHTS, IF ANY, DETERMINED TO BE APPLICABLE TO ANY PARTY DEALING AS A CONSUMER.

## **10. TERMINATION AND SURVIVAL**

**A. Term.** Subject to the terms hereof, this License is effective for a period of one (1) year. Licensee may terminate this Agreement at any time; provided however that Licensor will not refund any license, subscription, hosting or order fees, or any portion thereof, unless Licensor agrees to do so in writing in advance of termination. By accepting this License, Licensee authorizes Licensor to immediately terminate Licensee's rights, without notice, under this License, including access to the Lexia Application, if Licensee fails to comply with any terms of this License. Restrictions imposed by Licensor for a breach of this License include, but are not restricted to:

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

**B. Termination.** Upon receipt of notice of termination, Licensee and any Authorized User must immediately cease all use of the Lexia Application. Licensor may require Licensee to certify in writing that Licensee has complied with this requirement. The provisions of Sections 7, 9, 10, 11, 12 and 14 shall survive the termination of this License for any reason, but this sentence shall not imply or create any continued right to use Lexia Applications after termination of this License.

## **11. DATA PRIVACY AND COLLECTION.**

**A.** Any 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.) and disclosed to Lexia by Licensee or by an Authorized User ("FERPA Protected Data") shall be used solely for the purposes of the disclosure to fulfill obligations under this Agreement and shall not be disclosed to any other party (except to Lexia's employees and authorized agents under an obligation of confidentiality) without the prior written consent of the student's parent (or of the student if he/she is age 18 or older). Upon Licensee's written request upon termination of the Agreement, Lexia shall destroy any FERPA Protected Data in its possession within sixty (60) days from the termination date; otherwise, Lexia shall destroy any FERPA Protected Data within a commercially reasonable period of time. Lexia may, at its sole election, provide Licensee with the FERPA Protected Data in its possession.

**B.** Notwithstanding the foregoing, Lexia reserves the right to collect and retain data generated by Licensee and Authorized Users from which all personally identifiable information has been removed and attributes about such data ("De-identified Data"). De-identified Data is not subject to any legal restrictions, and Lexia may use and disclose De-identified Data for any lawful purposes, including without limitation benchmarking, development of best practices, product and services development, and research and statistical purposes without reimbursement or notification to, or consent or authorization from, Licensee or Authorized Users. All De-Identified Data collected by Lexia in connection with

Licensee or Authorized User's use of the Lexia Application shall be owned by Lexia. Lexia shall not use or publish such De-Identified Data in any way which identifies Licensee or Authorized User as the source of that data without the prior written consent of Licensee or Authorized User.

## **12. GOVERNING LAW AND FORUM**

**A. Governing Law.** This License 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. Each of the Parties agree that any action arising out of or related to this License must be brought exclusively in a US state or Federal court in the Commonwealth of Virginia. Each of the Parties consent to the personal jurisdiction of the Commonwealth of Virginia and acknowledge that venue is proper in any US state or Federal court in the Commonwealth of Virginia. Each of the Parties waive any objection it has or may have in the future with respect to the foregoing. If the laws of Virginia are expressly determined not to be applicable to this License by a court of competent jurisdiction, then the applicable law will be the law of the jurisdiction where the Licensee acquired this License and the jurisdiction of such court shall be non-exclusive.

**B. 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.

**C. Injunctive Relief.** Notwithstanding the above, Licensor 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 Licensee in the event that, in the opinion of Licensor, such action is necessary or desirable.

## **13. 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 Lexia Application by Licensee 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 unless in writing and signed by Licensor and Lexia.

**B. Language.** In the event of a dispute between the English and any translated version, the English version of this License shall prevail.

**C. Assignment.** Licensor and/or Lexia may assign this License, in whole or in part, at any time with or without notice to Licensee. Licensee may not assign, delegate or otherwise transfer this License, or assign, transfer or sublicense any rights in the Lexia Application.

**13. 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.

**14. EXPORT.** Licensee acknowledges that the Lexia Applications are subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Lexia 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.

**15. 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.

**16. WAIVER.** Failure by a Party 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 or 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.

Last Revised October 7, 2013