

## 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 the Rosetta Stone contracting entity named in the applicable Order Form (i.e., Lexia Learning Systems LLC or Rosetta Stone Ltd.) (“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 Rosetta Stone®, Lexia® or other Rosetta Stone-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 Rosetta Stone Ltd. and/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.**

- i. 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.
- ii. 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.
- iii. 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.

**A. 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.

**B. 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 [Student Records Privacy Statement & Security Plan](#).

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.

## 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 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.

#### **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 (5<sup>th</sup>) 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.