



Kenton County School District | It's about ALL kids.

## Issue Paper

**DATE:**

August 21, 2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a sales contract between Lexia and Ryland Heights Elementary School for the 2023-2024 school year.

**APPLICABLE BOARD POLICY:**

01.1 - Legal Status of the Board

**HISTORY/BACKGROUND:**

Lexia is a leader in the science of reading through a singular focus on literacy to help learners read, write and speak with confidence. This program delivers systematic and explicit instruction learners need to truly comprehend, retain, and apply literacy foundations with embedded assessments. Lexia will be used as a tiered intervention as well as with the EL student population. The software data and embedded assessments will allow staff to evaluate the program effectiveness.

**FISCAL/BUDGETARY IMPACT:**

\$3,575.00 (ESSER)

**RECOMMENDATION:**

Approve a sales contract between Lexia and Ryland Heights Elementary School for the 2023-2024 school year.

**CONTACT PERSON:**

Jena Smiddy

Principal/Administrator

District Administrator

Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.*

*Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

# QUOTE



## Lexia Learning Systems LLC

300 Baker Avenue, Suite 320

Concord, MA 01742 USA

Phone: (978) 405-6200

Fax: (978) 287-0062

Quote #: Q-565671-7

Created Date: 8/24/2023

Prepared By: Brad Hilton

Email: brad.hilton@lexialearning.com

Quote To:  
Jena Smiddy  
Kenton County School District  
1055 Eaton Drive  
Fort Wright, KY 41017 US

Bill To:  
Jena Smiddy  
Kenton County School District  
1055 Eaton Drive  
Fort Wright, KY 41017 US

### Group1

### OPTION 1

Start Date	End Date	Quantity	Line Item Description	Sales Price	Total Price
7/1/2023	7/31/2024	75	Lexia Core5 Reading Student Subscription Renewal Ryland ES	\$47.67	\$3,575.00
Group1 Total Price:					\$3,575.00

**Fax or email Purchase Orders with quote number Q-565671-7 AND Option Number to the following:**

Attn: Brad Hilton

Email: brad.hilton@lexialearning.com

Fax: 978-287-0062

**PLEASE NOTE THE QUOTE NUMBER AND OPTION 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

# K-12 Education Application License Agreement

## Education Application License Agreement

This 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 educational 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 educational subscription products, all of which are offered and provisioned by Company as SaaS-based or SaaS-supported subscriptions and services 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 Educational 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

#### Why Lexia

Our Approach  
Customer Success  
Case Studies  
Awards

#### Lexia by State

#### Products

Lexia® Core5<sup>®</sup>  
Reading  
Lexia® PowerUp  
Literacy®  
Lexia® English  
LETRS® Suite  
Lexia Aspire™  
Professional  
Learning  
Success  
Partnerships  
Lexia® Academy  
Voyager Sopris  
Learning

#### Solutions

Solutions By Topic  
Solutions By  
Audience  
Solutions By State

#### Research

Product Efficacy  
ESSA Evidence  
Pandemic Recovery

#### Resources

Research  
White Papers  
Webinars  
Infographics  
Guides  
Podcasts  
Blog Posts  
Videos

#### Company

Careers  
History  
News  
Customer Advisory  
Board  
Educational  
Leadership Council  
FAQs

#### Need Help?

For quotes, products information, and more

Contact Sales

For product help and technical assistance.

Contact Support

## Wartman, Tina

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**From:** Brad Hilton <Brad.Hilton@lexialearning.com>  
**Sent:** Wednesday, July 19, 2023 12:13 PM  
**To:** Wartman, Tina  
**Subject:** RE: Quote Update Please  
**Attachments:** Q-565671.3 - KY - Kenton County - Consolidated Renewal 6-30-23 & 7-31-23.pdf

You don't often get email from brad.hilton@lexialearning.com. [Learn why this is important](#)

### External Message

Tina,

Thank you for reaching out yesterday morning. Thank you for your patience as I returned from out of office today. I'm so happy to hear several schools have expressed how much they love Lexia and would love to support more schools in the district moving forward.

Thank you for the Vendor Assurance form, I have sent it to our Contracts Team who will then complete and I will follow up with it when ready.

Please find the attached updated quote that removes the Bronze Success Partnership that was sent to Joe on 5/23. You will find at the bottom of the quote the Terms and Conditions. Do you have standard "Opt Out" clause you use or example that I can provide our Contracts Team? I will then take this to them.

Please find the "Governing Law" portion of our License Agreement that Joe and I emailed about. Our Contracts Team wants the district to understand that you are already covered as this document serves all an dis posted on our website here <https://www.lexialearning.com/eula>. The highlighted green portion below was shared by our team to pass along from the License Agreement.

**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.

Please let me know anything additional you may need.

Brad

**BRAD HILTON**

Account Executive – Kentucky & West Virginia



# Education Application License Agreement

This 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 educational 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 educational subscription products, all of which are offered and provisioned by Company as SaaS-based or SaaS-supported subscriptions and services 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 Educational 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, adult learner, participant, staff, employee or other individual or user 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 Educational 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 OR TERMS THEREOF, PAYING AN INVOICE FOR ANY COMPANY APPLICATION OR SERVICE, OR DOWNLOADING, INSTALLING, ACCESSING 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 ACCEPTING, 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 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 the education and instruction of Customer's Authorized Users 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. INTENTIONALLY OMITTED**

## **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, authorize and instruct Company with respect to the Application and service operations provided to Customer and its Authorized Users. Customer acknowledges and agrees that Enterprise Administrator and Customer staff information to the Customer may be used by Company 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/or 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, which may include the ability to cancel password access for Authorized Users 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. If we make a material change to our support policy, we will also



provide notice of same to the Enterprise Administrator(s) for Customers with active subscriptions.

## 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.

**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.

(<https://legal.lexialearning.com/legal/application-privacy.html>), and Student Records Privacy Statement & Security Plan (<https://legal.lexialearning.com/legal/student-records-privacy.html>).

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 (<https://legal.lexialearning.com/legal/i-dpa.html>), 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 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.

*updated July 1, 2023*





Kenton County School District | It's about ALL kids

## THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

### VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

#### Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific



student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Lexia Learning Systems LLC

Vendor Name

300 Baker Avenue, Ste. 202 Concord, MA 01742-2131

Vendor Address

800-435-3942

Vendor Telephone

contracts@lexialearning.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Nick Gaehde, President

Print Name

2-Aug-2023

Date