

**WASHINGTON LEARNING  
SOURCE  
Vendor Agreement WLS292**

**1. PARTIES**

Rosetta Stone Ltd.  
135 W. Market St.  
Harrisonburg, VA  
22801

**WASHINGTON LEARNING SOURCE**

Puget Sound ESD  
800 Oakesdale Avenue SW  
Renton, WA 98057

The parties agree to the following:

**2. PURPOSE**

- 3.** Through this Agreement, **Rosetta Stone Ltd. (“Rosetta Stone” or “Vendor”)** offers the Washington Learning Source (WLS) the opportunity to participate in the Rosetta Stone licensing program. Rosetta Stone will allow the Washington State ESDs’ Subscribers (as described herein) to purchase licenses to Rosetta Stone products as listed in Attachment B at the volume prices and prices set forth herein. The parties acknowledge that WLS is entering into this Vendor Agreement in order to assist the eligible Subscribers in procuring licenses for the Rosetta Stone Product under the volume pricing terms set forth herein. The Subscribers shall acquire license to use the Product directly from Rosetta Stone on the terms set forth herein.

**INCORPORATION OF DOCUMENTS**

The following documents are hereby incorporated by reference into this Contract:

- Vendor Contact Information
- Additional Resellers
- Products and Contract Pricing (Attachment B)
- Rosetta Stone K-12 EDUCATION APPLICATION LICENSE AGREEMENT (Attachment C)
- WLS Quarterly Reporting Template
- WLS Standard Terms and Conditions (Attachment A)

**4. DEFINITIONS**

4.1 **“Administrative Fee”** means the fee applicable to each Product for administrative services provided by WLS or Subscriber’s educational school district, which fee is set by schedules or other notices that WLS provides to the Rosetta Stone from time to time with respect to the Products. Administrative fee will be applied to all product or subscription prices, renewals, and maintenance fees.

4.2 **“Product”** means any product or service that is available to be sold, licensed, or otherwise provided pursuant to the Rosetta Stone contract.

4.3 **“Subscriber”** means any ESD office, public and private K-12 school and school district, Washington educator, the Office of State Superintendent of Public Instruction, or other accredited educational institution, as listed in the Washington Education Directory, that has entered into a contract with WLS, or Washington State public agency that has entered into an Intergovernmental Cooperative Purchasing Agreement between PSESD

and the public purchasing agency pursuant to which WLS authorizes such agency or entity to purchase or acquire access to products and/or services sold, licensed, or otherwise provided by Vendors of goods and/or services under one or more contracts WLS has entered into with such Vendors. "Subscriber" does not include any such agency's and entity's operations outside the State of Washington.

4.4 "**Vendor**" means the party with whom the WLS is contracting to fulfill orders for this contract.

4.5 "**ESD**" refers to "Educational Service District" as defined in RCW 28A.310.010.

4.6 "**FTE**" refers to a "Full-Time Equivalent" K-12 student as defined in WAC 392-121-122.

4.7 "**Head Count**" refers to all students regardless if they attend classes full-time in a high school building or attend work based learning programs "off site" or are enrolled in *Running Start* or *Virtual Academies*.

4.8 "**OEM**" means "Original Equipment Manufacturer".

4.9 "**Optional Use**" means that Washington State school districts that are members of the WLS may choose or not choose to use any vendors listed on the WLS site. The benefit for the Vendors is that their products and/or services will be listed on the Washington Learning Source website, a recognized purchasing cooperative that affords promotional benefits. For more information, visit WLS website at <http://www.wlearningsource.org/>

## 5. ADDITIONAL AND AMENDED TERMS AND CONDITIONS

The following terms and conditions hereby take precedence over any contrary provisions in the documents referenced in Section 2 and 3. Unless otherwise notated below, the following terms and conditions are in addition to WLS Standard Terms and Conditions.

- 1) **Term:** Each party represents that this Agreement has been executed by their duly authorized representatives. It will become effective on the date signed by all parties, and will continue for a period of one year. All times set forth in this Contract shall be based upon the time in Renton, Washington. For purposes of clarity and notwithstanding anything to the contrary, the term of any license acquired under this Agreement shall be as set forth in the applicable signed Order Form, as referenced in Section 6 below. The rights in such licenses shall not be transferred from the entity named as the receiving party in the applicable Order Form to any other entity.
- 2) **Renewal:** At the discretion of WLS, this Contract may be renewed in writing for four subsequent one-year periods by mutual agreement of the parties.
- 3) **Price and Products:** Under this Contract, Subscribers will qualify for purchases through the Vendor at or below the prices listed. All prices shall remain firm (no changes that increase prices) from the date the contract is awarded until the contract end date.
  - Upon optional annual contract renewals, the awarded vendor may request price increases from the WLS. Such requests shall require a justification in writing.
  - Throughout the entire contract term, price reductions are required if the OEM reduces the reseller's base price.
  - Upgraded products and services may be added to this contract upon WLS approval, but only if they replace products previously bid. All pricing must, at a minimum, reflect the same percentage discounts or better as established with this contract award.
  - Awarded vendors must provide on the first of each calendar quarter price decreases,

new products, discontinued items, and any other changes or additions in order to ensure accurate WLS advertised prices.

#### 4) Marketing

##### WLS Responsibilities:

- a. WLS will work with Rosetta Stone to develop and maintain a web page on the WLS web site to summarize the terms of the agreement and to prepare pricing information for Purchases.
- b. The WLS will work with ESDs to reference Rosetta Stone and said web page in its communications to ESD participants so as to inform them of the availability of this agreement
- c. The WLS will work with ESDs to use commercially reasonable efforts to disseminate information to Subscribers about the Products included in the agreement through email announcements, direct mail, websites, meetings, and newsletter articles.

##### Vendor Responsibilities:

- a. Rosetta Stone will provide the WLS with information to be used for marketing purposes, such as logos and copy.
- b. Rosetta Stone will use the WLS logo on materials if possible that market products on this contract.
- c. Rosetta Stone may sponsor and participate in events such as regional conferences, tradeshow, webinars, and showcases as appropriate.
- d. Rosetta Stone may co-host rollout events for Subscribers, such as lunch-and-learns and demonstrations.

##### WLS's Marketing Manager:

Angela Bolam  
800 Oakesdale Ave SW  
Renton, WA 98057  
Phone: 425-917-7901  
abolam@walearningsource.org

##### Rosetta Stone's Marketing Manager:

John Reynolds  
135 W. Market St.  
Harrisonburg, VA 22801  
Phone: 206-427-1866  
jreynolds@rosettastone.com

- 5) **WLS Membership:** Pursuant to RCW 39.34, an intergovernmental (Interlocal) purchasing agreement forms the basis for WLS membership. All public K-12 educational institutions and associations published in the Washington State Education Directory are eligible to become WLS members and purchase from this optional use contract. Interlocal purchasing contracts allow either party to make purchases at the other party's accepted proposal price. A list of current WLS members is posted on the Washington Learning Source website at <https://www.wlearningsource.org/members>. Rosetta Stone will consult this list of members to determine customer eligibility.
- 6) **WLS Administrative Fee:** All WLS sales realized or generated under or as a consequence of the WLS awarded contract shall include an Administrative Fee of \$7.00 per license. Purchasers shall reference the WLS contract number on their purchase orders at the time of purchase. As the administrator of the contract, Rosetta Stone must include the following data for each net sale or purchase through this contract:
- Invoice date
  - Name of subscriber (school, district, or organization)
  - ESD name where subscriber resides
  - Invoice number
  - Names and quantities of products purchased through each transaction
  - Single unit purchase price
  - Total purchase price
  - Amount of administrative fee
- 7) **Administrative Fee Payments:** During the term of this contract, Rosetta Stone will submit quarterly accounting and remit administrative fee payments to WLS within 30 days following the end of each calendar quarter in accordance with the terms outlined in the following payment schedule. The administrative fees percentage shall not increase during the life of the contract.

Payment Schedule	
July 31	October 31
January 31	April 30

- 8) **Products Included:** This Agreement covers the products listed in Attachment B. Rosetta Stone reserves the right to add to, delete, or change the products offered through this Agreement at its sole discretion. Product additions, deletions will be announced by written notification approximately 30 days prior to implementation of such change. The Products shall be available as an online subscription under an annual license. Nothing in this Agreement shall be interpreted as requiring Rosetta Stone to modify its existing, off-the-shelf Product to comply with any rule or requirement of WLS or any entity purchasing under this Agreement.

Rosetta Stone may provide certain alterations, modifications, upgrades or other changes ("Upgrades") to the Product licensed under this Agreement that Rosetta Stone determines to make generally available to user of such Product at no additional charge. Upgrades will exclude any new releases or new versions of the Product, and Rosetta Stone will have no obligation to make any such new releases or new versions available to the WLS under this Agreement. All Upgrades, upon delivery, will automatically become part of the applicable Product, subject to the terms of the applicable Rosetta Stone Order Form, this Agreement, and the Rosetta Stone License Agreement.

If, during the term of the Agreement, Rosetta Stone offers a new release or new version of the Product listed in this Agreement, or if Rosetta Stone no longer offers the version of the Product

listed in this Agreement for any reason, Rosetta Stone may, at its option, identify a substitute offerings, notify the WLS that such new offering shall be made available under this Agreement, and submit a revised Product description to update the offering and associated prices. Upon approval by the WLS, such new offering and prices shall apply only to prospective purchase orders. If the WLS disapproves such new substitute offering or the prices, the parties will negotiate in good faith for a mutually agreeable resolution. If no agreement can be reached, either party shall have the right to terminate the Agreement and any undelivered purchase order upon written notice to the other party, with no liability or penalty.

- 9) Pricing and General Offer Conditions: Under this Agreement, WLS is authorized to place orders on behalf of Subscribers with Rosetta Stone in accordance with the pricing terms set forth in Attachment B. The parties understand and agree that WLS will not be eligible to receive additional promotional discounts that Rosetta Stone may offer to similarly situation entities under its standard terms of sale, and Rosetta Stone shall be solely responsible for making the determination about eligibility for any additional promotional opportunities.

Rosetta Stone agrees to use commercially reasonable efforts to inform K-12 entities within the State of Washington that seek to purchase the Product of the option of using this Agreement. The foregoing sentence does not in any way mandate any particular marketing efforts or expenditures on Rosetta Stone's part, or restrict Rosetta Stone from soliciting or accepting sales orders directly from eligible Subscribers without reference to this Agreement, nor does it restrict or impact Rosetta Stone's rights or obligations under any existing contracts with Washington State K-12 clients. For purposes of clarify, nothing in this Agreement is intended to make this Agreement the exclusive purchasing or sales vehicle for sales to eligible Subscribers within the covered territories, or to prohibit Rosetta Stone from soliciting or accepting sales order(s) from eligible Subscribers apart from this Agreement. To the extent Rosetta Stone's participation in this Agreement conflicts with or negatively impacts any existing purchasing contracts, agreement or obligations between Rosetta Stone and any third party, the parties agree that Rosetta Stone shall have the option to decline the applicable purchase request(s) and/or terminate this Agreement in accordance with the terms herein.

Should it wish to confirm a claimed WLS membership, Vendor may consult the WLS Membership list at [www.walearningsource.org](http://www.walearningsource.org).

**Order Processing: Orders will be submitted to Rosetta Stone and paid for in the following manner:**

- a. WLS and Rosetta Stone will announce and conduct two buying windows per calendar year, one to be held from May to mid-June and the other from August to mid-October, (a "Buying Window") during which periods eligible Subscribers may submit letters of commitment to WLS specify the number of Product licenses each Subscriber desires WLS to order on its behalf.
- b. At the ending date of the Buying Window, WLS will provide Rosetta Stone with a consolidated list of Subscribers which have committed during that Buying Window to purchase Product licenses, specifying the appropriate ESD# and the contact/school name/address/telephone/email or fax number of each ordering subscriber and the number of licenses to be purchased by each Subscriber per the Order Form.
- c. Based on the information provided by WLS, Rosetta Stone will issue one Order Form per Buying Window to WLS which will incorporate in one order al the individual Subscriber commitments received by WLS and shall specify the number of license ordered on behalf of each participating Subscriber. Pricing in the Order Form will be in accordance with Attachment B and based on the aggregate number of licenses.

- d. Upon WLS execution and delivery to Rosetta Stone of the Order Form as prepared by Rosetta Stone, each Subscriber listed in the Order Form shall be granted the number of Product licenses specified in the Order Form and subject to the terms of the Rosetta Stone License Agreement shall have the right to access and use the Products for the durations set forth in the Order Form.
- e. WLS will issue a purchase order to Rosetta Stone in the amount stated in the Order Form, and Rosetta Stone will invoice WLS for the purchase price specified in each order Form and Rosetta Stone will invoice WLS for the purchase price specified in each Order Form upon execution of such Order Form by the parties, and WLS shall pay the invoiced amounts to Rosetta Stone within 30 days following the invoice date. Shipping charges and Washington State sales tax will be added to the invoice, if applicable. Shipping charges shall be FOB Destination.
- f. WLS shall be responsible for invoicing the collecting from each Subscriber participating in any order accepted by Rosetta Stone such Subscribers pro rata share of the purchased price based on the licenses being purchased by that Subscriber plus an additional order administrative fee, and applicable taxes payable to WLS.
- g. Each Subscriber which orders and accepts Product license pursuant to this Agreement shall be deemed to have agreed to be bound by the License Agreement with response to the Product Licenses that it orders. Any reference to any additional terms or conditions contained in any individual purchase order or otherwise shall be on no effect.

Rosetta Stone's Sales Representative Contact Information:

John Reynolds  
135 W. Market St.  
Harrisonburg, VA 22801  
Phone: 206-427-1866  
Fax: 571-206-1079  
[jreynolds@rosettastone.com](mailto:jreynolds@rosettastone.com)

- 10) Contract Administration:** Each party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of the Contract. As of the Effective Date, WLS's and Rosetta Stone's Contract Managers are as follows:

WLS's Contract Manager:  
Doug Wilson  
Puget Sound ESD 800  
Oakesdale Ave SW  
Renton, WA 98057  
Phone: 425-917-7783  
dwilson@psed.org

Rosetta Stone's Contract Manager:  
Shawn Leed  
Sales Manager  
135 W. Market St.  
Harrisonburg, VA 22801  
Phone: 540-280-9575  
sleed@rosettastone.com

- 11) Monitoring:** Rosetta Stone shall continuously monitor and record its Services to make sure they meet or exceed all contractual provisions and Service Level Requirements. WLS shall have the right to examine Rosetta Stone's records associated with purchases in order to ensure compliance with all requirements this Optional Use contract. Rosetta Stone's failure to meet or exceed these Service Standards may result in corrective action or termination.

- 12) Incorporation of General Terms and Conditions:** This agreement includes and incorporates as if fully set forth herein the Standard Terms and Conditions.

We the undersigned agree to the terms of the foregoing contract agreement.

**PSESD Superintendent or Designee**

Joli Valentino  
Signature

Joli Valentino  
Printed Name

Executive Director - Business & Operations  
Title

8/30/2020  
Date Signed

**Washington Learning Source**

Angela F Bolam  
Signature

Angela Bolam  
Printed Name

Learning and Development Support Systems Director  
Title

9/1/2020  
Date Signed

**Rosetta Stone Ltd.**

DocuSigned by:  
Sean Hartford  
Signature

Sean Hartford  
Printed Name

VP Controller and PAO  
Title

September 2, 2020  
Date Signed

## Attachment A – WLS STANDARD TERMS AND CONDITIONS

The submission of a Proposal is an offer to enter into a Contract that, upon acceptance by WLS, obligates the Vendor (and their authorized agents) to comply with the Terms and Conditions set forth below, and all the requirements in the RFP documents. If there is an inconsistency with a requirement or special condition in the RFP documents, the Terms and Conditions shall govern.

Upon acceptance of an award, the Vendor agrees to the following:

1. **Compliance.** By submitting a Proposal, the Vendor agrees to comply with WLS Vendor Agreement terms, including offering the Proposal products for the WLS Contract price when it sells its products to the eligible Subscribers until the expiration of the Contract.
2. **Contract Execution.** The Vendor Agreement is considered fully executed at the time that the WLS Superintendent signs and the Vendor signs.
3. **Assignment.** Neither this Vendor Agreement nor any interest therein may be assigned by either party without the prior written consent of the other party, provided, however, that either party may assign its rights, obligations, or interests under this Agreement in connection with a merger, acquisition, divestiture, sale of business, reorganization or similar corporate transaction involving such party without such written permission provided that such successor entity shall be bound by the terms of this Agreement.
4. **Indemnification / Hold Harmless.** Vendor shall defend, indemnify and hold the WLS, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with Vendor's performance of this Vendor Agreement, except for injuries and damages caused by the sole negligence of the WLS.
5. **Insurance.** The Vendor shall procure and maintain for the duration of the Vendor Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by Vendor, their agents, representatives, employees or subcontractors.

Vendor shall provide a Certificate of Insurance evidencing:

- a) **Commercial General Liability** insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.
- b) **Cyber Liability** insurance or coverage with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or corruption or destruction of electronic information, intentional and/or unintentional release of private information, internet media liability, alteration of electronic information, extortion, and network security. This coverage is required to remain in effect for as long as necessary to cover any and all such claims.

The WLS shall be named as an additional insured on the Commercial General Liability insurance policy, as respects activities of Vendor and a copy of the endorsement naming The WLS as additional insured shall be attached to the Certificate of Insurance. The WLS reserves the right to receive a certified copy of all required insurance policies.

The WLS shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.



6. **Non-Exclusive Relationship.** The Vendor Agreement is not exclusive as to the products or goods or services similar to the products. Nothing in the Agreement prohibits WLS from entering into contracts with other Vendors or suppliers for the provision of the products or goods or services similar to the products in this contract.
7. **Compliance with FERPA.** Vendor will comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its associated implementing regulations with respect to any information received by Vendor from WLS or any Subscriber. For the avoidance of doubt, this section does not create any obligations for Vendor with respect to information that is not in Vendor's possession or control.
8. **Prohibited Employees.** Vendor will prohibit any employee of Vendor from working at a Subscriber school if he or she would have contact with children at a Subscriber school during the course of his or her employment and if he or she has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction.
9. **Limitations on Confidentiality.** Vendor agrees that WLS may disclose to Subscribers the prices, payment terms, and delivery terms provided in this contract for the products, and such other terms of this Vendor Agreement that Vendor wishes to make available to Subscribers (through WLS). The Vendor acknowledges and agrees that WLS' obligation to comply with any confidentiality provisions under this Vendor Agreement is subject to and limited by applicable law, including the Washington Public Records Act (chapter 42.56 RCW).

**Applicable Law: Jurisdiction.** This Vendor Agreement will be governed by and construed in accordance with the laws of the State of Washington. Any dispute arising under, in connection with, or incident to this contract will be resolved exclusively in the state or federal courts located in King County, Washington.

10. **Termination.** WLS may terminate this Vendor Agreement for convenience at any time after the first anniversary of this contract Effective Date upon 30 days prior written notice to Vendor. In the event of such termination for convenience, Vendor shall have no obligation to provide a refund of any unearned pre-paid fees. WLS may terminate this Vendor Agreement immediately upon notice for any failure by Vendor to comply with the terms of Section 10. Either party may terminate this Vendor Agreement immediately upon written notice at any time if the other party is in material breach of any material term of this Agreement and has failed to cure that breach within 30 days after written notice.
11. **Licensed to do Business in Washington.** Vendor must be licensed to do business in the State of Washington. Upon award of contract, Vendor will provide WLS with Vendor's Washington State Department of Revenue Tax Registration Number.
12. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Vendor certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency.
13. **Survival Clause.** All purchase transactions, applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiler shall survive expiration or termination of the Vendor Agreement.
14. **Warranty of Accessibility.** Vendor warrants that the system and services provided to Subscriber will comply with all local, state, and federal laws. Vendor further agrees that the system and services provided to Subscriber will comply with all laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age, or the presence of any sensory, mental, or physical disability. Vendor will furnish such documents and information as may be reasonably requested by Subscriber to evidence Vendor's compliance with the terms of this agreement.

**Attachment B - PRODUCT AND PRICING INFORMATION**Rosetta Stone Ltd.

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Item #	Item	Description	Req.	Opt.	Educ List Price	WLS Disc %	WLS Customer Price
1	Rosetta Stone Foundations for K-12 (Silver)	12 Month Fixed-Term Subscription for One Student			\$125.76	44%	\$83.00
2	Rosetta Stone English for Education	12 Month Fixed-Term Subscription for One Student			\$159.09	44%	\$105.00

## Attachment C - 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.





**Amendment to Agreement #WLS292**

Between

**Rosetta Stone Ltd.**

And

**Washington Learning Source**

**Amendment #1**

This Amendment to the Agreement signed 9/2/2020, entered into by and between Washington Learning Source and Rosetta Stone Ltd. is hereby amended as follows:

- Add products (see attached)
- Change prices (see attached)
- Renew
  - Extend contract to 9/2/2022
- Other (describe below)

All other terms and conditions of this Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**Washington Learning Source**

**Rosetta Stone Ltd.**

Angela F. Bolam 8/3/21  
WLS Director Date

Joli Valentino  
Superintendent or Designee  
8/23/2021  
Date

Paul M. ...  
Rosetta Stone Ltd.  
8/2/2021  
Date

*PSESD Business Office Use Only*

Doug Wilson  
Business Office

8/3/21  
Date





## Amendment to Agreement #WLS292

Between

**Rosetta Stone Ltd.**

And

**Washington Learning Source**

### Amendment #2

This Amendment to the Agreement signed 9/2/2020, entered into by and between Washington Learning Source and Rosetta Stone Ltd. is hereby amended as follows:

- Add products (see attached)
- Change prices: Administrative Fee to \$10.00 per license
- Renew  
Extend contract to 9/2/2023
- Other (describe below)

All other terms and conditions of this Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**Washington Learning Source**

**Rosetta Stone Ltd.**



5/27/22

WLS Director

Date



Superintendent or Designee

6/2/22

Date



Rosetta Stone Ltd.

5/31/2022

Date

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*PSESD Business Office Use Only*



Business Office

6/2/22

Date