

# Lexia Software Support Agreement

THIS AGREEMENT is made and entered into as of <date> between Lexia Learning Systems, Inc., a Massachusetts corporation with its principal place of business at 200 Baker Avenue , Concord MA 01742 01773 ("Lexia"), and <customer> with its principal place of operation <address> ("Customer").

For a period of three (3), three years from the date hereof (the "Maintenance Term") and any renewal Maintenance Term, Lexia will supply the services described in Section 1 below ("Services") to Customer with respect to the products described in Section 4 below ("Products") for which Lexia has granted a license to Customer pursuant to a software license agreement (the "Software License Agreement") by and between Lexia and Customer.

## 1. Included Services

- Free Software Upgrades
- Web downloads for all Maintenance Updates and Bug Fixes
- Unlimited calls and emails to technical support 8 AM-6 PM EST Monday-Friday
- \$20 (including shipping) for replacement CDs for the first unit, and then \$5 for each additional CD. Customer must return damaged CDs at their own cost.
- Eligibility to buy additional software with discounts based on cumulative school purchases.

## 2. Lexia's Responsibilities

During the Maintenance Term:

- Lexia will use commercially reasonable efforts to assist Customer to resolve problems in its use of Products as described in Section 1. Lexia makes no guarantee that it can, or will, solve any problems with respect to the Products presented by Customer, and further disclaims any warranties above and beyond any limited warranties expressly made by Lexia in the Software License Agreement.
- Lexia will provide access on its web site to all Maintenance Updates of Products to Customer as soon as practical in the ordinary course of business after commercial release of the same. Upon request, Lexia will ship CDs of the same to Customer at no charge.
- Lexia will provide Customer with Maintenance Updates, which, in Lexia's sole determination, correct application problems that are reasonably likely to prevent substantially full utilization of Product(s).
- Lexia will offer Services for the then current version of Product(s). For not less than twelve (12) months from the release date of the then current version, Lexia will also offer Services for the immediately preceding version of the then current version.

## 3. Customer's Responsibilities

- Customer is responsible for (i) hardware, (ii) operating systems, (iii) network setup, (iv) network maintenance and (v) setup and use of any file access control systems.
- Customer is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the Products.
- If Lexia determines, in its sole discretion, in responding to a Customer request for Telephone Support, that the solution is provided in the Teacher's Guide, Lexia may direct Customer's personnel to the Teacher's Guide for the solution to the problem.

#### **4. Lexia's Software Products**

Listed for each customer

(This Agreement does not apply to third party products, such as controllers, that may be bundled with the listed Products.)

#### **5. Renewal**

This Agreement shall automatically renew at the then-current rate and subject to the then-current terms unless Customer notifies Lexia in writing sixty (60) days in advance.

#### **6. Disclaimer; Limitation of Liability**

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, RELATING TO PRODUCTS OR SERVICES FURNISHED TO CUSTOMER HEREUNDER. LEXIA SPECIFICALLY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, WHETHER MADE BY LEXIA EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT WILL BE DEEMED TO BE A WARRANTY BY LEXIA FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF LEXIA WHATSOEVER.

IN NO EVENT (i) SHALL LEXIA'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC PRODUCT OR SERVICE COMPLAINED OF, (ii) SHALL LEXIA'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED THE TOTAL AMOUNT OF FEES PAID HEREUNDER, OR (iii) SHALL LEXIA BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND THE LOSS, DAMAGE OR DESTRUCTION OF DATA) EVEN IF LEXIA HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. No limitation as to damages for personal injury is hereby intended. Some states do not allow the exclusion or limitation of incidental or consequential damages under certain circumstances and the above exclusion or limitation may not apply.

#### **7. Miscellaneous**

Lexia and Customer are independent parties, and nothing in this Agreement shall be construed as making them partners or as creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on

its behalf. All notices given under this Agreement shall be effective upon receipt and shall be in writing and sent to the address of the other party set out at the beginning of this Agreement or to any replacement address of which the other party has been given notice in accordance with this Section. In no event shall either party be liable for any delay or failure to perform under this Agreement which is due to causes beyond the reasonable control of such party. This document contains the entire agreement between the parties relating to the matters covered by it, superseding all other oral or written representations, understandings, proposals or other communications between the parties. This Agreement may be modified only by a written instrument signed by an authorized representative of each party. In the event that any provision of this Agreement is for any reason void or unenforceable in any respect, such provision shall be without effect to the extent of the voidness or unenforceability without affecting such provision in any other respect and without affecting any other provision. No action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has been or reasonably should have been discovered, or, in the case of an action for nonpayment, more than two years after the date the last payment was due. This Agreement shall be governed by the substantive laws (but not the conflicts of laws provisions) of The Commonwealth of Massachusetts.

**LEXIA LEARNING SYSTEMS, INC.**

**CUSTOMER:**

By:

**Nicholas C. Gaehde  
President and CEO**

Date

By:

Authorized Signature  
Name(Print or Type)  
Title

Date

Primary Contact for Software Releases (Print)

## **Glossary of Terms**

### **Bug-Fix Updates**

Bug-Fix Updates are made available to customers who cannot get a program to work properly, either as downloads or by CD upon request. Sometimes customers are sent a different, “higher” version than the one that they purchased; sometimes customers are provided with specific download files with a fix for their particular problem.

### **Software Update**

A software update is a new release that fixes bugs and/or includes changes to accommodate new operating systems, but generally doesn't add major new activities or features. Software updates are made available for free under our Software Support Plan. Updates can be downloaded from the Internet, if the file size for the update is small enough. If the customer cannot download the file, Lexia will send an update CD at no charge upon request.

### **Software Upgrade**

A software upgrade is a new release that fixes bugs, includes changes to accommodate new operating systems, and/or adds new features. Software upgrades are made available for free under our Software Support Plan (unlike Software Conversions, which must be purchased). Upgrades can be downloaded from the Internet, if the file size for the update is small enough. If the upgrade is too large for downloading, or the customer cannot download the file, Lexia will send an upgrade CD at the customer's request free of charge.