

DATABASE AND TRADEMARK LICENSE AGREEMENT

This Database and Trademark License Agreement (“Agreement”) is made and entered into by and between MetaMetrics, Inc., a North Carolina corporation with offices located at 1000 Park Forty Plaza Drive, Suite 120, Durham, North Carolina 27713 (“Company”), and _____ a non-profit educational institution whose address is _____ (“User”), and made effective on the Effective Date written below.

The Company has developed, and owns all rights in, databases of books ranked using its proprietary LEXILE® measurement of reading difficulty (the “Content”), and is willing to grant a license to User to use the Content and certain Lexile Marks, subject to each of the provisions set forth in the attached Terms and Conditions which are incorporated herein by this reference.

SCOPE OF LICENSED RIGHTS: User may use the Content for educational purposes only. User cannot redistribute, sell or license the Content or any portion thereof to any third party, whether for commercial use or otherwise. User may display the LEXILE® measures from the Content for the purpose of identifying the LEXILE® measure associated with any given measured title, whether in an on-line catalog or other display means.

PROPER USE OF LEXILE MARKS: User may use the Lexile Marks to identify a LEXILE® measurement. User further agrees to use the Lexile Marks strictly in accordance with the LEXILE® Branding Guidelines, which are attached in pdf format and incorporated herein by this reference.

CONTACT INFORMATION: Company may update the Content from time to time. If you wish to be notified of such updates, you may provide a name and email address below:

Name: _____ Email: _____

The parties have executed this Agreement intending to be legally bound as of the Effective Date.

MetaMetrics, Inc.

By: _____
Timothy J. Klasson, COO

By: _____
Name: _____
Title: _____

_____, 2012 (“Effective Date”)

Terms and Conditions for Database and Trademark License Agreement

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and other mutual covenants contained herein, the parties hereby agree as follows:

1. License and Fees

(a) **Trademark License:** The term “**Lexile Marks**” shall mean the following registered trademarks owned by Company: LEXILE[®] (U.S. Reg. No. 2,231,125), LEXILE[®] (and design) (U.S. Reg. No. 2,706,910), and LEXILE FRAMEWORK[®] (U.S. Reg. Nos. 2,2180,729 and 2,180,702). User acknowledges and agrees that Company retains all rights in and to the Lexile Marks. Company hereby grants to User a limited non-exclusive, non-transferable license, without the right to sublicense, to use the Lexile Marks contained in the Content, for the term of this Agreement, and solely for User’s non-profit, educational purposes as set forth above (**Scope of Licensed Rights**). In the event that User uses or displays one or more of the Lexile Marks for any purpose, User shall clearly identify Company as the owner of all of the Lexile Marks and User further agrees to use the Lexile Marks as specified above (**Proper Use of Lexile Marks**).

(c) **Content:** Company hereby grants to User the right to use the Content solely for the limited purpose set forth above (**Scope of Licensed Rights**).

(d) **Fees:** There shall be no license fee due from User during the term of this Agreement for as long as User remains a non-profit educational institution and its use of the Content is for such non-profit, educational uses.

(e) **Updates to Content:** Company may from time to time update the Content in its sole discretion, and such updates shall be a part of the Content for all purposes.

(f) **Availability:** The Content is generally made available to User electronically through access to Company’s website (“**Portal**”). Such Portal shall generally be available to User except during periods of normally scheduled maintenance or unscheduled outages. Company shall use reasonable commercial efforts to notify User prior to performing any maintenance other than regularly scheduled maintenance that may affect User’s access to the Portal. Note however that access to the Portal is provided to User on an “AS IS, AS AVAILABLE” basis. Therefore, User’s access to the Portal may be limited by the actions or inactions caused by third party service providers, and such actions or inactions may disrupt or impair User’s connection to communications networks (or portions thereof) serving the Portal. Company shall not be responsible for and will have no liability whatsoever resulting from or related to outages caused by such circumstances.

2. Proprietary Information

User acknowledges that ownership of all right, title, and interest in and to all intellectual property rights, including trademark, service mark, copyright, trade secret rights, know-how and other proprietary rights in the Content and the Lexile Marks (including copyrights in the Content as a compilation and valuable trade secrets embodied in Company’s Portal and other systems used to generate and store the Content and design and coding methodologies thereof) are and shall remain exclusively in Company. User acquires only the limited right to use the Content and the Lexile Marks as set forth herein and does not acquire any ownership rights or title in or to the Content and/or the Lexile Marks. In addition, User shall not disclose, in whole or in part, any portion of the Content to any person, except to those of User’s employees, agents or consultants who require access for User’s authorized use of the Content and Lexile Marks, subject to the following additional limitations. Before disclosing any of the foregoing information to any such parties, User will require that each such party (i) expressly recognize Company’s confidential and proprietary rights in the Content and the Lexile Marks; and (ii) agree in writing to comply with the use and non-disclosure restrictions applicable to the Content and the Lexile Marks set forth in this Agreement. User will ensure that anyone who uses the Content and/or the Lexile Marks (accessed either locally or remotely) does so only for User’s authorized use and complies with the terms of this Agreement. User’s rights are limited to itself alone and do not extend to any third parties. Company reserves all rights and licenses not expressly granted to User under this Agreement.

3. Confidentiality

(a) **Definition:** “**Confidential Information**” shall mean any information or data that is disclosed by Company to User pursuant to this Agreement. Confidential information, however, does not include information that (i) is or becomes publicly known or available without breach of this Agreement; (ii) is received by User from a third party without breach of any obligation of confidentiality; (iii) was previously known by User as demonstrated by its written records; or (iv) is independently developed by User without access to or use of such Confidential Information as demonstrated by contemporaneously prepared documentation.

(b) **Limitations:** User (i) agrees to hold Company's Confidential Information in confidence and (ii) except as expressly authorized under this Agreement, agrees not to directly or indirectly use, disclose, copy, transfer, or allow access to the Confidential Information by any third party.

(c) **Injunctive and Other Relief:** User acknowledges and agrees that any violation of this Section 3 by User may cause the Company irreparable harm for which the Company would have no adequate remedy at law, and that the Company shall be entitled to preliminary and other injunctive relief against User for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that the Company shall have at law or in equity.

(d) **Return of Confidential Information:** Upon the termination or expiration of this Agreement, the User will return to the Company all the Confidential Information delivered or disclosed to the User, together with all copies in existence thereof at any time made by the User, or destroy such Confidential Information and all copies thereof as directed by the Company.

4. Indemnification

User agrees to indemnify, defend and hold harmless Company, its officers, directors, employees, successors and assigns, from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees and costs) arising out of any Claims alleging (i) User's unauthorized use of the Content and/or the Lexile Marks or (ii) any negligent or wrongful act or omission of User.

5. Term and Termination

(a) **Term:** This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term ending one (1) year from the Effective Date. It shall be User's responsibility to request a renewal of this Agreement.

(b) **Termination:** Notwithstanding the provisions of subsection 6(a), Company shall have the right, immediately upon giving notice, to terminate this Agreement upon the occurrence of any failure by User to comply with any other material obligations hereunder or the breach by User of any of the material provisions hereof, which failure or breach is not cured within thirty (30) days after dispatch of written notice by Company. Any change in User's status as a non-profit educational institution or any use of the Content by User that is for any purpose other than non-profit educational use shall constitute a material breach of this Agreement, and Company shall have the right to immediately terminate this Agreement and the rights granted hereunder, and User's right to cure such a breach is thereby deemed waived.

6. Obligations upon Termination

(a) **Lexile Marks:** Upon the expiration or termination of this Agreement, User shall promptly discontinue all use of the Lexile Marks, and destroy all materials, whether electronic or papers upon which the Lexile Marks appear; provided, however, that subject to the terms and conditions of this Agreement, User shall have the right to retain such materials that already are marked with the Lexile Marks prior to the effective date of termination of this Agreement.

(b) **Content:** Upon the expiration or termination of this Agreement (i) User's access to the Content, whether through the Portal or otherwise, shall cease, and User shall discontinue any further use of the Content in User's possession, and (ii) User shall destroy all copies of the Content in its possession and deliver an affidavit to Company stating the means of such destruction and verifying the completion of the same.

(c) **Confidentiality:** Neither the expiration nor termination of this Agreement shall relieve User of its obligations regarding confidentiality set forth herein or any nondisclosure agreement between the parties.

7. Representations and Warranties

(a) **By Company:** Company represents and warrants that Company has full authority to enter into this Agreement;

(b) **By User:** User represents and warrants that (i) User has full authority to enter into this Agreement; and (ii) User will not use the Content except as otherwise set forth herein. Any breach of this section 8(b) by User shall constitute grounds for immediate termination under Section 6(b).

8. LIMITATION OF LIABILITY

(a) USER AGREES AND ACKNOWLEDGES THAT ACCESS TO COMPANY'S PORTAL AND THE CONTENT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER, WHETHER AS TO THE PERFORMANCE OF THE PORTAL, OR THE RESULTS OBTAINED

FROM USING THE PORTAL OR THE CONTENT, OR OTHERWISE. COMPANY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USER ASSUMES THE ENTIRE RISK AS TO ACCESSING THE PORTAL, USING THE CONTENT, AND ANY RESULTS OBTAINED OR CONTENT DOWNLOADED AND THE CONSEQUENCES OF ANY ACTION TAKEN BY USER BASED UPON THE SAME.

(b) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, OR ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF ANTICIPATED PROFITS, SAVINGS OR BUSINESS, LOSS OF COMMERCIAL REPUTATION OR OTHER ECONOMIC LOSS, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) EXCEPT WITH RESPECT TO CLAIMS FOR BREACH OF CONFIDENTIALITY UNDER SECTION 3, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR DIRECT DAMAGES ARISING OUT OF BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

9. Miscellaneous

(a) **Assignment and Delegation:** User may not assign this Agreement or its obligations hereunder without the prior written consent of the Company.

(b) **Waiver of Compliance:** Any failure by either party to enforce any term or condition of this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

(c) **Entire Agreement, Amendments:** Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This instrument states the entire agreement of the parties with respect to its subject matter. Any modification or amendment of any provisions of this Agreement shall not be binding on either party unless in writing and signed by the authorized representatives of both parties.

(d) **Notice:** Any notice given under this Agreement shall be in writing and addressed to the other party at the address shown for such party on the initial page of this Agreement, or to such other address as either party shall have designated in writing to the other from time to time, and sent by registered or certified mail return receipt requested, hand delivery or facsimile transmission. Notices shall be deemed to have been given on the date of receipt when sent by registered or certified mail, upon receipt by the addressee when delivered by hand, or upon confirmed receipt when sent by facsimile transmission.

(f) **Governing Law:** This Agreement and the rights, obligations and relations of the parties under this Agreement shall be governed by and construed in accordance with the substantive laws of the State of North Carolina regardless of its place of performance and without regard to any conflict of law provisions.

(h) **Severability:** If any provision of this Agreement is declared illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.

(i) **Counterparts:** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute a single agreement.

(j) **Survival:** The provisions of Sections 2, 3, 4, and 9 shall survive the cancellation, termination or expiration of this Agreement.

LEXILE® BRANDING GUIDELINES

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