

## **AMENDMENT TO AGREEMENT BETWEEN THE BOARD OF EDUCATION OF LINCOLNWOOD SCHOOL DISTRICT 74 AND IXL LEARNING, INC.**

This Amendment is entered into as of August 5, 2021, by and between the Board of Education of Lincolnwood School District No. 74 (“School District”) and IXL Learning, Inc. (“IXL”) pursuant to the Renewal Quote dated January 19, 2021, and the Terms of Service (collectively, the “Agreement”), and shall continue in force for any extensions of the Agreement or subsequent renewals or order forms, unless otherwise agreed by the Parties.

1. **Terms and Conditions.** This Amendment modifies the Agreement entered into by the Parties. Terms and conditions not amended herein shall have the same meaning as in the Agreement. If there is conflict between this Amendment and the Agreement, the terms of this Amendment will prevail. IXL shall not materially modify or amend the Agreement (see <https://www.ixl.com/termservice>) or Privacy Policy (see <https://www.ixl.com/privacypolicy/serviceprivacypolicy>) during the term of this Agreement or any extension thereof, without providing written notice.
2. **Auto-Renewal.** The term of the Agreement between the parties shall not automatically renew. Subsequent extensions of the Agreement shall require notice to and approval of the School District.
3. **FOIA/OMA.** School District shall not be required to make any claim of privilege that may be applicable to prevent disclosure in response to, and will not be required to notify IXL prior to any disclosure in response to, a valid FOIA request for information that is not confidential or proprietary. IXL acknowledges and agrees that the Agreement is not confidential or exempt from disclosure under the Illinois Freedom of Information Act or Open Meetings Act.
4. **Governing Law/Venue.** This Agreement will be governed and construed in accordance with the laws of the State of Illinois, without regard to any conflicts of law provisions. Venue for all actions between the parties shall lie solely in the Circuit Court of Cook County, Illinois, and IXL hereby submits to the jurisdiction of that court. Any references to binding arbitration shall be deleted from the Agreement.
5. **Illinois Student Privacy Laws.** In addition to its obligation to maintain student data in accordance with applicable federal laws, IXL shall also maintain all student data obtained from School District in accordance with any applicable Illinois laws, including (without limitation, and only to the extent applicable) the *Illinois School Student Records Act* (105 ILCS 10/1 *et seq.*); and the *Illinois Student Online Personal Protection Act* (105 ILCS 85/1 *et seq.*) (herein “SOPPA”). In accordance with SOPPA, IXL and the School District agree as follows:

- a. The categories or types of SOPPA-covered information, as defined in Section 5 of SOPPA, to be provided to IXL pursuant to this Agreement may include:

- i. Information created by or provided to IXL by a student or the student's parent or legal guardian in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K through 12 school purposes;
  - ii. Information created by or provided to IXL by an employee or agent of School District for school purposes; or
  - iii. Information gathered by IXL through the operation of its site, service, or application for K through 12 school purposes and which personally identifies a student, including, but not limited to, information in the student's electronic mail, first and last name, electronic mail address, other information that allows online contact, or test results.
- b. The products or services being provided to School District by IXL are as described in the documents that comprise this Agreement.
- c. Pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), IXL is acting as a school official with a legitimate educational interest, is performing an institutional service or function for which the school would otherwise use employees, under the direct control of the school, with respect to the use and maintenance of covered information, and is using the covered information only for an authorized purpose and may not re-disclose it to third parties or affiliates, unless otherwise permitted under SOPPA, without permission from the school or parent, or pursuant to court order.
- d. If a breach is attributed to IXL under SOPPA, any and all costs and expenses incurred by School District in investigating and remediating the breach will be allocated to IXL, except for the cost of School District personnel. The costs and expenses may include, but are not limited to, all items described in Section 15(4)(D) of SOPPA, as now written or as may be amended from time to time. IXL shall indemnify and defend School District, and its individual Board members, officers, employees, agents, and successors against third-party claims, charges, causes of action, and liability of any kind, including but not limited to attorney's fees, arising directly and specifically from any security or privacy breach involving SOPPA-covered information as a result of negligent or intentional acts or omissions of IXL, and any damages limitations in the Agreement shall not apply to School District in this regard.
- e. IXL must delete or transfer to School District all SOPPA-covered information within ninety (90) days if the information is no longer needed for the purposes of this Agreement. IXL must delete, within a reasonable time period, a student's SOPPA-covered information if the School District requests deletion, unless the student or student's parent consents to the maintenance of the SOPPA-covered information.

- f. Because School District maintains a website, SOPPA requires that School District must publish a copy of this Agreement on the website.
- g. In case of any breach, within the most expedient time possible and without unreasonable delay, but no later than 30 calendar days after the determination that a breach has occurred, IXL shall notify the Superintendent of Schools of any breach of the students' SOPPA-covered information.
- h. IXL shall provide to School District a list of any third parties or affiliates to whom IXL is currently disclosing SOPPA-covered information or has disclosed SOPPA-covered information. This list must, at a minimum, be updated and provided to the school by the beginning of each fiscal year and at the beginning of each calendar year.

6. **Insurance.** During the term of this Agreement and any renewal thereof, IXL shall maintain a cyber-liability insurance policy insuring against data breaches. School District shall be named as an additional insured on such policy. Any damages limitations in this Agreement shall not apply to School District in its capacity as an additional insured.

7. **Limitation of Liability.** Section 7 of the Terms of Service, regarding limitation of liability, is hereby stricken in its entirety.

8. **Authority to Execute.** Each signatory hereto represents and warrants that he or she has the proper corporate authority to execute this Amendment and bind his or her entity to the terms and conditions hereof.

**WHEREAS**, this Amendment and its terms and conditions are agreed upon by the Parties on the date set forth above.

**BOARD OF EDUCATION OF  
LINCOLNWOOD SCHOOL DISTRICT 74**

**IXL LEARNING, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_