

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

This Amendment is entered into as of June 1, 2023, 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 # 1341051-2023-001-4 dated January 30, 2023, the Sales Contract, and the Terms and Conditions of Sale (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/termsofservice>) 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 agrees to this exclusive venue, to personal jurisdiction of this court, and to service of process in accordance with its rules of civil procedure, and IXL waives any objection that this venue is not convenient. Any references to binding arbitration, the waiver of the right to a jury trial, or the waiver of claims which may be litigated on a class or representative basis shall be deleted from the Agreement as it currently exists or as it may be modified or amended in the future.

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, the School District

has separately executed an Exhibit E "General Offer of Privacy Terms" to join in the IL-NDPA Agreement between IXL and another Illinois public school district.

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 and Conditions of Sale, 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: Paul M. ...

Its: _____

Its: Chief Executive Officer

Date: _____

Date: 5/22/2023