

Terms and Conditions of Use

Please read these terms and conditions carefully before activating your ExploreLearning Gizmos account.

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By creating an account or subscribing to ExploreLearning.com, you agree to the terms and conditions of use set forth below.

This Agreement is a legal document that governs the terms and conditions of your subscription to ExploreLearning.com. Please read this Agreement carefully. By activating your account, you acknowledge your agreement with these terms and conditions, as such terms and conditions may be amended from time to time. You are also agreeing to accept a non-exclusive, non-assignable right and license to use ExploreLearning Gizmos. ExploreLearning reserves the right to change these terms and conditions at any time.

ExploreLearning Gizmos are offered and sold on a subscription basis; however certain areas are available to visitors without cost on a trial or demonstration basis.

Registering and Using ExploreLearning

As part of the registration process, each User will select a password and user name ("User Name"). You agree to provide us with accurate, complete, and updated Account information. Failure to do so will constitute a breach of this Agreement, which may result in immediate termination of your rights to use the Account. You may not (a) select or use a User Name of another person with the intent to impersonate that person, (b) use a name subject to the rights of any other person without authorization, or (c) use a User Name that we, in our sole discretion, deem inappropriate or offensive. You are responsible for maintaining the confidentiality of your User Name and password, and you will be responsible for all uses of your User Name and password, whether or not authorized by you.

In order to use the Website, you need to obtain a pass code (consisting of a username and a password. Pass codes are issued only to individual subscribers and learning institutions or teachers (collectively, "Users") who have registered.

Pass codes that have been issued to learning institutions or teachers may not be shared. They may only be used by the administrators, teachers and students to whom they are assigned. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers may share their access codes with their, spouse, children or grandchildren ("Immediate Family") only. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers who intend to share their pass codes with Users of their Immediate Family under 13 years of age agree to supervise the minors' use of the Website.

Using Your Account

All Users are entirely liable for all activities conducted through that Account, and are responsible for ensuring that any other person who uses the Account is aware of, and complies with, the terms of this Agreement. Each person who uses the Account agrees to be bound by the terms of this Agreement, whether or not such person is a Member. You will notify us of any known or suspected unauthorized use(s) of your Account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your User Name and password. We will have no liability for any circumstances arising from the unauthorized use of a User Name, Member's password or your Account. Any fraudulent, abusive, or otherwise illegal activity on your Account may be reported to appropriate law-enforcement agencies by us.

If you have reason to believe that your Account is no longer secure (for example, in the event of a loss, theft, or unauthorized disclosure or use of your User Name, password, or any credit, debit, or charge card number stored on the Service), you must promptly change your password and notify us of the problem by sending an email to support@ExploreLearning.com.

Browsers, Equipment and Accessibility

Users are solely responsible for obtaining and maintaining equipment and software, including without limitation operating system and browser software, that conforms to ExploreLearning's specifications in effect, as revised from time to time, in order to connect to, communicate with and use the ExploreLearning website.

ExploreLearning shall use commercially reasonable efforts to maintain the accessibility of the Website at all times, but may discontinue some or all of the Website features or services at any time, with or without notice, in order to perform hardware or software maintenance and/or upgrades or problem resolution. Additionally, to the extent that use of the Website is prevented, hindered, delayed or made impracticable by reason of force majeure (including any cause that cannot be overcome by reasonable diligence and without unreasonable expense) or due to

ExploreLearning's compliance with its commercially reasonable standard operating procedures or with any laws, rules, policies, practices or regulations of any industry association or organization, or any jurisdiction or governmental authority, ExploreLearning and its affiliates will be excused from such delay or performance.

Communications Authorities

Use of the Website is subject to the requirements, rules, regulations, operations and procedures of any relevant public communications authorities and/or private communications carriers. ExploreLearning (and its affiliates) shall not be liable for any losses, costs, liabilities, damages, expenses and/or claims arising from or relating to the delay, alteration or interruption of telecommunications between Users and ExploreLearning caused by the failure for any reason of any communications facilities which User or ExploreLearning (or any of affiliate) has contracted from any public communications authority or private communications carrier.

Billing Policies

1. All subscriptions must be pre-paid annually.
2. Payment Options: You must pay in US Dollars via Purchase Order, Credit Card (Visa or MasterCard), check or money order, or wire transfer.
 - Purchase Orders (US Residents Only): Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902 or FAX to (877) 829-3039.
 - Credit Card Billing: ExploreLearning will bill your designated credit card (Visa or MasterCard only) and is subject to any restrictions imposed by your credit card issuer. If payment cannot be charged to your credit card or your charge is returned to ExploreLearning for any reason, including charge back, ExploreLearning reserves the right to either suspend or terminate your access and account, thereby terminating this Agreement and all obligations of ExploreLearning hereunder, and thereafter to collect any amount due.
 - Checks or Money Orders: Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902.
 - Wire Transfers: Call (866) 882-4141 option 2 or e-mail support@ExploreLearning.com for more information
3. Revision of Subscription Fees. ExploreLearning reserves the right to change the amount of, or basis for determining, any fees or charges for the ExploreLearning service, and to institute new fees or charges effective upon prior notice, by posting such changes on the ExploreLearning site, and by sending e-mails to Users.
4. Account Termination. Purchasers may terminate accounts at any time by sending a signed request to ExploreLearning via e-mail sales@ExploreLearning.com , fax to (877) 829-3039 or mail to ExploreLearning Customer Service, 110 Avon Street, Charlottesville, VA 22902.
5. Refund Policy. We take great pride in supplying a quality product at a reasonable price. In general, it is our policy to provide a refund for anyone who has been unable to use the site. A refund must be requested in writing within 30 days of purchase of your account and the account cannot have been accessed numerous times. Email a refund request to sales@ExploreLearning.com or fax a request to (877) 829-3039. Please include the username, full name of subscriber, product, and reason you are requesting a refund. We will not be able to refund a license after 30 days, or for an account with heavy usage, except for problems accessing the service. Refunds will be issued according to the original payment method.

Billing Security

All communication between our servers, the acquiring bank, and the issuing bank are encrypted to assure server authenticity and invulnerability to man-in-the-middle attacks.

Administering the Service

ExploreLearning may change, modify, suspend, or discontinue any aspect of the Website at any time, including, without limitation, access policies, the availability of any Website feature, hours of availability, content, data, or software or equipment needed to access the Website. We may also impose limits on certain features or restrict your access to parts or all of the Website without notice or liability. We reserve the right to change prospectively the amount of, or basis for determining, any fees or charges for the Website, and to institute new fees or charges for access to portions of the Website effective upon prior notice to Users by posting such changes on its web site or by sending e-mails to Users. You hereby agree to pay all charges to your account, including applicable taxes, in accordance with billing terms in effect at the time the fee or charge becomes payable.

We may, from time to time, have special events, software or content available on the Service, which will be subject to additional terms and conditions that will be made available for your review. You agree that if you or any User uses or accesses such special events, software or other content, such additional terms and conditions will be binding.

We reserve the right, at our sole discretion, to change, modify, add, supplement or delete any of the terms and conditions of this Agreement at any time. We will post notification of any such changes on the Service, or give notice of them to you via e-mail, postal mail or by pop-up screen, at our sole discretion. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you may terminate your Account. The continued use of the Service by you following your receiving a notice of changes to this Agreement will mean you accept any and all such changes.

Posting Material by Users

ExploreLearning may permit its Users to post materials on the Website. Users shall not upload to, distribute through or otherwise publish, via e-mail, message boards or otherwise, any content which is libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal or otherwise objectionable, that would constitute a criminal offense, violate the rights of any third party, or that would give rise to liability or violate any law.

ExploreLearning reserves the right to suspend or terminate any screen name it reasonably believes is being used by an adult, is being used for commercial purposes, or is otherwise in violation of this Agreement.

By uploading materials to any message boards, lesson plans or other posting areas, or otherwise submitting any materials to us, you automatically grant (or warrant that the owner of such rights has expressly granted) us a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate or create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed throughout the World. In addition, you warrant that all so-called "moral rights" in those materials have been waived.

Use of Materials & Restrictions

Permitted Use: You have our permission to print a reasonable number of copies of ExploreLearning content displayed on the Website for noncommercial personal or classroom use, provided that any copies you print continue to show all notices concerning copyright, trademark and other proprietary rights that appear in the material you reproduce.

Prohibited Uses: Except as expressly permitted by copyright law and except as permitted in the preceding paragraph, you must obtain written permission from ExploreLearning, or the third-party owner of material appearing on the Website, for any other copying, redistributing or publishing of any ExploreLearning or "Third Party Content." The downloading to a server or personal computer of ExploreLearning or Third Party Content displayed on the Website

and the downloading of any code from the Website is strictly prohibited. You may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works from, distribute, perform, display or in any way exploit, any of the ExploreLearning or Third Party Content, in whole or in part, for commercial purposes without the express permission of ExploreLearning.

Linking to and framing the Website: You may create and publish links to the ExploreLearning.com homepage at <http://www.ExploreLearning.com/>. Creating and publishing links to any other pages within the Website (except bookmarking such pages for your personal noncommercial use) is not permitted. Framing the Website is strictly prohibited.

Additional Restrictions: You may not: (a) access the Website by any means other than means supporting secure and encrypted communications; (b) copy, reverse engineer, disassemble, decompile, translate, or modify any Website application or service; (c) sublicense, rent, lease, or permit any third party, to access any Website application or service through the use of User's password, except as permitted hereunder; (d) publish the results of benchmark tests of any Website application or service, or use any Website application in any manner which is competitive with services provided by ExploreLearning; and (e) knowingly use or permit any others to use any facilities or services of ExploreLearning or its Licensors in connection with any effort that the User knows seeks to breach the security or confidentiality of any other digital or on-line environment.

Users understand that except for ExploreLearning Content, ExploreLearning does not control, provide, operate, and is not responsible for, any content, goods or services available on the Internet other than the ExploreLearning Content on the Website. Internet content made accessible on the Internet by independent third parties is not part of, and is not controlled by, ExploreLearning. ExploreLearning neither endorses nor is responsible for the accuracy or reliability of such Internet content, goods or services.

Users should be aware that the Internet contains content, goods and services that you may find obscene, improper, hurtful or otherwise offensive and that may not be suitable for certain users of the Website. Because of the nature of the Internet, we cannot control where children may go while using the Website. Parents, guardians or teachers should supervise children when using the Website and the Internet at all times.

Any unauthorized use may subject you to civil liability and criminal prosecution under applicable laws.

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ExploreLearning is committed to protecting the privacy of website visitors and does not share personally identifiable information with third parties without your consent. Please consult our Privacy Policy for more information on our information collection, use and disclosure practices. You acknowledge that, although ExploreLearning agrees to use its best efforts to comply with and to ensure that its users, content providers, distributors and licensees comply with our Privacy Policy, ExploreLearning cannot be held responsible for the actions of third parties who violate our Privacy Policy.

Submissions

If you send us creative suggestions, ideas, notes, stories, messages, narratives, drawings, concepts, or other information or content ("Submissions"), the Submissions will be deemed, and shall remain, the sole and exclusive property of ExploreLearning, and ExploreLearning will be entitled to the unrestricted use of the Submissions for any purpose whatsoever, without compensation to you. None of the Submissions shall be subject to any obligation of confidence on the part of ExploreLearning, and ExploreLearning shall not be liable for any use or disclosure of any Submissions. Without limiting the generality of the foregoing, ExploreLearning shall exclusively own all now known or hereafter existing rights to the Submissions of every kind and nature throughout the World, and shall be entitled to unrestricted use of the Submissions for any purpose whatsoever, commercial or otherwise.

DISCLAIMERS

DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXPLORELEARNING EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

EXPLORELEARNING MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, (V) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED, (VI) OR THAT THIS WEBSITE, ITS CONTENT, AND THE SERVERS ON WHICH THE WEBSITE AND CONTENT ARE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EXPLORELEARNING OR THROUGH, OR FROM, THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

INFORMATION CREATED BY THIRD PARTIES THAT YOU MAY ACCESS ON THE WEBSITE OR THROUGH LINKS IS NOT ADOPTED OR ENDORSED BY EXPLORELEARNING AND REMAINS THE RESPONSIBILITY OF SUCH THIRD PARTIES.

LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT EXPLORELEARNING SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF EXPLORELEARNING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE. IN

NO EVENT SHALL EXPLORELEARNING'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE, TORT OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING EXPLORELEARNING.

Links to Third Party Sites

ExploreLearning may contain links to other websites operated by parties that are not affiliated with it. These links will let you leave ExploreLearning to visit websites not under ExploreLearning's control. ExploreLearning is not responsible for the contents of any linked website or any link contained in a linked website. We provide these links to you only as a convenience, and the inclusion of any link does not imply endorsement of the linked site by ExploreLearning.

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Remedies for Breach

In the event that ExploreLearning determines, in its sole discretion, that a User has breached any portion of these terms and conditions, or has otherwise demonstrated inappropriate conduct, we reserve the right to (i) warn the User via e-mail that she or he has violated this Agreement; (ii) delete any content provided by the User (or anyone accessing User's account); (iii) discontinue the User's account and/or any other ExploreLearning service; (iv) notify and/or send content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or (vi) take any other action that ExploreLearning deems appropriate.

Miscellaneous

In the event any provision of this Agreement conflicts with the law or if any such provisions are held invalid by a court with jurisdiction over the parties to this Agreement, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

The laws of the State of Texas will govern this Agreement. The laws of the State of Texas will govern any dispute arising from the terms of this agreement or breach of this agreement and you agree to personal jurisdiction by the state and federal courts sitting in Dallas, Texas. The parties hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of, or in any way connected with, these Terms and Conditions and agree to submit to binding arbitration.

ExploreLearning makes no representation that materials on ExploreLearning are appropriate or available for use in all locations. Those who choose to access ExploreLearning do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Materials from ExploreLearning are further subject to United States export controls. No materials from ExploreLearning may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Syria or any other country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the materials, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same will be and remain in full force and effect.

ExploreLearning may assign its rights and obligations under this Agreement and upon such assignment ExploreLearning may be relieved of any further obligation hereunder. You represent to ExploreLearning that you have the authority to subscribe to and/or use ExploreLearning according to the terms and conditions of this Agreement. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

Acceptance

By using and/or subscribing to the Service, you hereby acknowledge that you have read and understand the foregoing Agreement, as may be amended or modified from time to time according to its terms, and agree to be bound by all of the terms and conditions hereof. You further specifically permit ExploreLearning to use the email entered during the registration process to deliver support, sales, and product information related to your Free Trial or paid subscription.

Questions

If you have any questions about this Agreement, please email us at: support@ExploreLearning.com.



**AMENDMENT TO THE AGREEMENT BETWEEN THE
BOARD OF EDUCATION OF LINCOLNWOOD SCHOOL DISTRICT 74
AND EXPLORELEARNING, LLC**

This Amendment is entered into as of January 1, 2021, by and between the Board of Education of Lincolnwood School District No. 74 (“District”) and ExploreLearning, LLC (“ExploreLearning”) (collectively, the “Parties”) and amends the Proposal and the ExploreLearning Terms and Conditions of Use (collectively “the Agreement”) entered into by the Parties as of the same date, and shall continue in force for any extensions of the Agreement or subsequent 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. ExploreLearning shall not materially modify or amend the Terms and Conditions of Use, which are currently located at <https://www.explorelearning.com/index.cfm?method=Controller.dspTerms>, 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 District.

3. **FOIA/OMA.** The 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 ExploreLearning prior to any disclosure in response to, a valid FOIA request for information that is not confidential or proprietary. ExploreLearning acknowledges and agrees that the Agreement, Order Form, Terms of Services and License, billing and cost information are not confidential or exempt from disclosure under the Illinois Freedom of Information Act or Open Meetings Act.

4. **Governing Law/Venue.** The Agreement shall be construed and enforced under the laws of the state of Illinois, USA without reference to the choice of law principles thereof. The District and ExploreLearning hereby consent to and submit to the jurisdiction of the Circuit Court of Cook County, Illinois, which shall be the venue for the resolution of any disputes between the parties. Any references to binding arbitration in the Terms and Conditions of Use shall be deleted.

5. **Compliance with Illinois Laws.** In addition to its obligation to maintain Student Data in accordance with applicable federal laws, ExploreLearning shall also maintain all Student Data obtained from the 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.*). ExploreLearning shall promptly notify the Superintendent of Lincolnwood School District No. 74 in the event of a security or privacy breach involving Student Data and respond to any such security or privacy breach according to industry standards; shall indemnify and defend the 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 Student Data as a

result of negligent or intentional acts or omissions of ExploreLearning; and shall destroy all Student Data when the Student Data is no longer needed by ExploreLearning or upon termination of the Agreement, as requested by the District.

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

7. **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
COOK COUNTY, ILLINOIS**

EXPLORELEARNING, LLC

By: 

By: 

Its: Asst. Supr. for Curriculum & Instruction

Its: Julia M Given, VP Finance

Date: 12/11/2020

Date: 12/3/20