XtraMath License Agreement and Terms of Service

This License Agreement (this Agreement) is made effective as of **December 21, 2022**, between XtraMath, of 4700 42nd Ave SW, Suite 535, Seattle, WA 98116 ("Vendor"), and _____the **Board of Education of Lincolnwood School District No 74, Cook County, Illinois _** ("Customer").

1. Privacy.
XtraMath takes user privacy seriously. XtraMath's Privacy Policy explains how XtraMath collects, uses and discloses user data. It also covers our data storage, security, retention, and deletion practices. XtraMath's Privacy Policy is incorporated into these Terms of Service (collectively, the "Terms").

2. User Accounts.
No person under the age of 13 in the United States, or under the age of 16 outside of the United States, may create their own account. A parent, guardian, or teacher must create a Student account for any child below these age thresholds before they can use XtraMath.

You agree that the information you provide to XtraMath, whether at registration or at any other time, will be true, accurate, current, and complete. As a parent, guardian, or teacher, you represent and warrant that you will not provide us with information about any child/student unless you have the legal authority to do so. By registering your child/student, you agree to be bound by the Terms on behalf of your child/student, including without limitation being liable for all use of XtraMath by the child/student. You acknowledge that XtraMath cannot guarantee the accuracy of any information submitted by any user and that XtraMath is not obligated to verify the accuracy of any such information, including any user's claim to be the parent or teacher of a child/student.

Customer must: (i) keep their passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify XtraMath promptly of any such unauthorized access; and (iv) use the software as described in XtraMath's written guides. Customer authorizes its integrators and other third-party vendors and XtraMath to conduct initial setup and to allow continued access to the software for the sole benefit of the Customer. Customer is solely responsible for ensuring compliance by its authorized integrators or other third-party vendor(s) with all federal, state, and local privacy laws and regulations. XtraMath hereby disclaims for all purposes and circumstances any responsibility or liability for the use of the products, including the customization thereof.

All data and materials uploaded or entered during use of the software by Customer, including student information and student records, remain the property of the Customer. All student-generated content and personally identifiable information about any students shall remain the property of the student or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants XtraMath the right to use the Customer Data and Student Data solely for purposes of performing under these Terms.

3. Prohibited Conduct.
You agree not to use XtraMath services for any unlawful purpose, for commercial gains, or in ways prohibited by these Terms. This includes, without limitation:

1. You will not use XtraMath in violation of any local, state, national, or international law, including, without limitation, laws governing data protection and privacy.

2. You will not impersonate any person or entity, falsely claim an affiliation with any person or entity, access the XtraMath accounts of others without permission, or perform any other fraudulent activity.
3. You will not use XtraMath for any commercial use or purpose unless expressly permitted by XtraMath in writing.
4. You will not intentionally interfere with or damage the operation of XtraMath by any means. Such interference includes, without limitation, participating in any denial-of-service type attacks and uploading or otherwise disseminating cheats, viruses, adware, or other malicious code.

4. Termination of Services. You may terminate the Terms, and any account you created for yourself or your child/student, at any time. If an account for your child was created under the "school official" exception of the U.S. Family Educational Rights and Privacy Act (FERPA), you must request such termination from your child's school that established the account. To terminate an account, you must email info@xtramath.org and discontinue your (or your child's/student's) use of any and all parts of XtraMath.

XtraMath, in its sole discretion, has the right to suspend or terminate any account and refuse any and all current or future use of XtraMath, with or without cause (such as a violation of these Terms). Such termination will result in the deactivation or deletion of your account, or your access to your account, and the forfeiture and relinquishment of all records in your account.

XtraMath also reserves the right to modify or discontinue, temporarily or permanently, any or all of XtraMath's services. You agree that XtraMath will not be liable to you or any third party for any such termination.

For a period of up to ninety (90) days after termination, upon request, XtraMath will make available for Customer to access and export Customer Data and Student Data. Alternatively, Customer may submit a written request to XtraMath up to sixty (60) days after termination to request the deletion of Student Data per the XtraMath's Privacy Policy.

Upon termination of the Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration.

5. Intellectual Property. XtraMath graphics, images, logos, source code, designs, software, workflow processes, user interface, and content are protected by intellectual property laws as copyrights, trademarks, and trade dress. The XtraMath name is a registered trademark under United States law.

Your use of XtraMath does not give you license to use our marks or create derivative works. You will not modify, adapt, translate or create derivative works based upon XtraMath, except and only to the extent expressly permitted by XtraMath or to the extent the foregoing restriction is expressly prohibited by applicable law.

You will not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of XtraMath or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

6. Confidentiality. Definition of Confidential Information. Confidential information means all non-public information including Personally Identifiable Information ("PII") as defined by applicable law, disclosed by a party ("Discloser") to the other party ("Recipient"), whether orally or in writing, that is designated as confidential, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("Confidential Information"). XtraMath's Confidential

Information includes without limitation the Service, its user interface design and layout, and pricing information.

The Customer must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of these Terms. The Customer must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with Recipient no less restrictive that the confidentiality terms of these Terms.

Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance written notice to seek a protective order.

7. Warranty Disclaimer. Your and/or your child's/student's use of XtraMath is at your sole risk.

XtraMath and all parts and services thereof are provided on an "as is", "as available", and "with all faults" basis. XtraMath disclaims any and all warranties and conditions, whether statutory, express or implied, to the fullest extent permitted by applicable law. No advice or information obtained by you from XtraMath will create any warranty not expressly stated herein. Specifically, but without limitation, XtraMath expressly does not warrant that: a) XtraMath will meet any specific requirements or expectations, including but not limited to yours; b) XtraMath or any data, user content, functions or any other information offered on or through XtraMath will be uninterrupted, timely, secure, or free of errors, viruses or other harmful components; c) The results that are obtained from the use of XtraMath will be accurate or reliable; d) The quality of any products, services, information, or other material purchased or obtained by you through XtraMath will meet your expectations; or e) Any errors or any issues with XtraMath's services will be corrected.

XtraMath will comply with and will cause each of its employees, agents, and contractors to comply with all state, federal, and municipal laws and regulations applicable to its performance under this Terms of Service, including without limitation the U.S. Family Educational Rights and Privacy Act ("**FERPA**"), and the Children's Online Privacy Protection Act ("**COPPA**"). [XtraMath's Privacy Policy](#), which is incorporated by reference into these Terms of Service, contains additional terms regarding Xtramath's use of and commitment to safeguarding Student Data and compliance with other student privacy laws. Customer is responsible for providing notice of its own privacy policy to parents of its students and obtaining any necessary parental consents for students to use the software as may be required by applicable law.

You understand and agree that your or your child's/student's use of XtraMath is at your own discretion and risk, and that you will be solely responsible for any damage to your property, including your computer system, phone or personal electronic device, or loss of data that results therefrom.

7. Limitation of Liability. To the fullest extent permitted by applicable law, under no

circumstances, including but not limited to negligence, will XtraMath or its affiliated contractors, employees, agents and its third-party suppliers, licensors, and partners be liable for any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath.

In no event will XtraMath's or its affiliated contractors', employees', agents' and its third-party suppliers', licensors', and partners' total liability to you for all damages, losses, and causes of action arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, exceed the amount paid by you, if any, for accessing XtraMath during the twelve months immediately preceding the date of the claim.

You and XtraMath agree that any cause of action arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, must commence within one year after the cause of action accrues. Failure to commence a cause of action within this time limit will result in a permanent bar on the cause of action.

8. Indemnification. You agree to indemnify, defend, and hold harmless XtraMath, its affiliated contractors, employees, agents and its third-party suppliers, licensors, and partners from any claims, losses, damages, liabilities, and expenses (including legal fees and expenses), arising out of any use or misuse of XtraMath, any violation of the Terms, or any breach of the representations, warranties, and covenants made herein, whether by you or by any child/student associated with you. XtraMath reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify XtraMath, and you agree to cooperate with XtraMath's defense of these claims. XtraMath will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

9. Modification of Terms. XtraMath reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time. We will provide notice of such changes on our website and in our mobile apps. Your or your child's/student's continued use of XtraMath after the posting of changes constitutes your binding acceptance of such changes. For any material changes to the Terms, XtraMath will make a reasonable effort to provide advance notice to you of such amended Terms, such as by an email notification to the address associated with your account (subject to your email delivery preferences) and/or by posting a notice on the XtraMath website. Disputes arising under these Terms will be resolved in accordance with the version of the Terms in place at the time the dispute arose.

10. Governing Law and Jurisdiction. These Terms will be governed by and construed in accordance with the laws of the State of Washington, without giving effect to any principles of conflicts of law. You agree that any action at law or in equity arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, will be filed only in the state or federal courts in and for King County, Washington, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action.

All claims you bring against XtraMath must be resolved in accordance with this Section 10. All claims filed or brought contrary to this Section 10 shall be considered improperly filed. Should you file a claim contrary to this Section 10, XtraMath may recover attorneys' fees and costs related to dismissal of the claim, provided that XtraMath has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

11. Waiver. The failure of XtraMath to exercise or enforce any right or provision of the Terms will not constitute a waiver of such right or provision. Any waiver of any provision of the Terms will be effective only if in writing and signed by XtraMath.

12. Severability. If any provision of these Terms is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from the Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

13. Entire Agreement. These Terms and the Privacy Policy constitute the entire agreement between you and XtraMath relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to the Terms or Privacy Policy as set forth herein.

14. Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you without XtraMath's prior written consent, but may be assigned by XtraMath without consent or any restriction. Any assignment attempted to be made in violation of the Terms shall be null and void.

15. Paid Subscription. Using XtraMath Basic is free for all users. However, users have the option of purchasing a Paid Subscription to receive additional benefits detailed on our public website.

You may cancel your Paid Subscription at any time and without reason. No refunds are issued unless expressly provided by law. No refunds are issued if your account is terminated by XtraMath because you have breached these Terms of Service or when you have requested the termination of your account yourself. When you cancel your Paid Subscription, you will lose access to all additional benefits received in connection with that Paid Subscription.

XtraMath reserves the right to change the Paid Subscription fees at any time. We will give you an advance notice of 30 days on our public website and via email before we change any fees.

16. Payment, Invoicing, and Taxes. Unless otherwise provided in the Price Quote, Customer will pay the amount of each invoice net 60 days after the invoice date. Except to the extent that the customer provides XtraMath with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Paid Subscription purchase.

17. Other terms. The parties may modify this Terms of Service only by written agreement signed by both parties.

By submitting ideas, suggestions, or feedback to XtraMath, Customer agrees that items submitted do not contain confidential or proprietary information. Customer also grants XtraMath an irrevocable, unlimited, royalty-free, and fully paid perpetual license to use such items for any business purpose.

If any term of these Terms is invalid or unenforceable, the other terms remain in effect. Except for the payment of fees, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events, failure of Internet services, any third-party service, and telecommunications services.

Any breach by a party of these Terms or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

SIGNATURES. This Agreement shall be signed by Roy King, Executive Director on behalf of XtraMath and by an authorized representative on behalf of Lincolnwood School District No 74.

Customer: Board of Education of Lincolnwood School District No 74.

Vendor: XtraMath

_____
Signature

_____
Signature

_____
Printed Name

Roy King
Printed Name

_____
Title

Executive Director
Title

_____
Date

9/20/2022
Date