

RENAISSANCE[®]

Terms of Service and License Renaissance Learning, Inc.

These Terms of Services and License (“Terms”) govern Your access to and use of the Products. The exact Products are described in Your Quote, which is also a part of these Terms.

1. Definitions. Capitalized words have special meaning and are defined below.

2. License to Products

2.1 We grant You a license to access and use the Products, if You agree to these Terms. Some Products such as Star Reading, myIGDIs and Accelerated Reader must be used in Your buildings (“In-School Products”). Other Products such as Freckle and myON Reader may be used outside of school (“Anywhere Products”).

2.2 We will also host the Products (“Hosting Services”), which You may access via the Internet.

2.3 Who May Use the Products and Where.

- a. In-School Products. Your students, including Homebound Students, faculty and staff may use the Products with assessment tools in Your buildings, unless we agree in advance that In-School Products may be used in other locations.
- b. Anywhere Products. Your students, faculty and staff may use Content Products anywhere that they may access them.
- c. SmartStart. You will have access to Renaissance SmartStart, a free on-demand, in-product training program that includes resources to help Your faculty and staff use Your Products.
- d. Access. Your access starts on the date shown in Your Quote. Access will be for all the Products in Your Quote and will run through the end of the Term. Because we need to protect ourselves (and You), we may temporarily stop Your access due to a threat from a hacker, virus or other cyber-attack. We will make reasonable efforts to promptly protect and/or repair the Products and restore your access to the Products after such threats or attacks.
- e. Student Capacity. The maximum number of Your students authorized to use the Products during the Subscription Period is identified in Your Quote. You may increase that number, during the Subscription Period, provided we agree to do so in writing.

2.4 Account Set Up.

- a. We will create Your administrator account and give You access, along with Your identification number, password, encryption key, and any other access codes. You should safeguard this information.
- b. We will also help You load Your Data. You remain responsible for creating user names and passwords for Your students, faculty and staff. You agree not to transfer or sell this login information to anyone other than the intended user at Your institution.

2.5 Your Hardware, Other Software and Services. Our Products should work well with most of Your hardware, and other software and services that You use (“ThirdParty Services”). We work with You to try and configure

Your Products to work with Third-Party Services, but we cannot guarantee that Third-Party Services will operate correctly or that the Third-Party Services will be available during Your Term.

2.6 Maintenance. We may need to update Your Products to maintain their performance. These Terms apply.

3. Professional Services

3.1 Professional Services. If identified in Your Quote, Renaissance-provided Professional Services will be governed by these Terms, including **Exhibit B**.

3.2 Deliverables and Ownership. We own all Deliverables created as part of Renaissance-provided Professional Services. However, You may use all Deliverables during Your Subscription Period; Your use is non-transferable, non-sublicensable and non-exclusive.

4. Fees. You agree to pay us the amount in the Quote (“Fees”) within 30 days of our invoice unless we agree in advance on alternate payment terms. Amounts not paid within that time (and, not subject to a good faith dispute), bear interest from the time payment was due until the time paid, at the higher rate of (a) 1% per month compounded monthly, or (b) the highest rate allowed by law in Your state. You also agree that no terms or conditions in Your purchase order (or other order documentation) form override these Terms. If You do not pay Your Fees, You are materially breaching these Terms and Your access to the Products will end.

5. Term; Termination; Effect of Termination

5.1 Term. These Terms start on the first date written in Your Quote and continue until the end of Your Subscription Period (the “Term”).

5.2 Termination.

- a. For Convenience. You may terminate in the first 60 days of the Term by notifying us in writing. We will refund Your Fees other than those for Professional Services.
- b. For Breach. A party that receives written notice of a material breach has 30 days to cure the breach. If the breach is not cured, the notifying party may terminate these Terms by giving written notice. We will refund Your Fees on a prorated basis through the end of Your Term.

- c. For Bankruptcy. Either party may terminate these Terms immediately upon the other party's filing of an application for bankruptcy, whether voluntary or involuntary.

5.3 Effect of Expiration or Termination: Survival.

- a. Access. Once Your Subscription Period is over, your access to Your Products will terminate, unless we have agreed in advance to continue our relationship.
- b. Survival. Some provisions in these Terms naturally survive termination in Your jurisdiction. You agree that Sections 5.3, 6-10 and 12 survive termination.

6. Intellectual Property Rights; Ownership

6.1 As part of Your Subscription, You are authorized to use our trademarks, copyrights and patents. You own and control Your Data, and as part of Your Subscription, You grant us a non-exclusive, royalty free, worldwide license to use, store, edit, re-format Your Data in order for the Products to function.

6.2 To avoid any doubt, we are not expressly or implicitly granting you any other rights, license, release, covenant or immunities, including by estoppel, to the Products.

7. **Confidentiality**. You and Renaissance agree to take reasonable steps to keep each other's Confidential Information secret and not to disclose it to, or allow it to be used by, anyone who does not work for one of us. You also agree to treat our Confidential Information as if it was Yours; and, we will treat Your Confidential Information as if it was ours.

8. Data Protection and Security

8.1 Data You Need to Avoid. Your Products are not meant for data not related to academics and assessments.

Accordingly, You agree that You will not provide to us any social security numbers, financial account numbers, protected health information, driver's license information, passport or visa number, or credit card information.

8.2 Data Protection. Data security and privacy of Your Data is important to us and is governed by the provisions here <https://doc.renlearn.com/KMNet/R62068.pdf>, or as Renaissance and You may agree separately, as required by law, or as set forth in the applicable Privacy Notice. We may need to access Your account and any data contained within that account in the event You submit a support request. Any such access will be governed by the Privacy Notice.

9. Indemnification

9.1 Renaissance Indemnification. We agree to indemnify You against any Action alleging that Your use of the Products infringes a United States copyright, trademark, or patent. You agree that our indemnification will be limited to paying the amount stated in a final nonappealable judgement or a mutually acceptable settlement agreement. You also agree that we are not responsible

for any Action against You solely arising from: (i) unauthorized modification of Products by, or directed by, You; (ii) Your continued alleged infringement after being notified; (iii) any third-party software or services; or, (iv) Your use of the Products in violation of these Terms. If the Products are enjoined from use, in a final non-appealable decision, we may, at our sole expense and option: (i) negotiate a license for Your continued use of the Products; (ii) replace or modify the Products with non-infringing Products; or, (iii) terminate Your access to the Products without any liability to You, subject to Your right to terminate. We also reserve the right to modify the Products to avoid potential infringement.

We agree to defend, indemnify, and hold Making Waves Academy, its Board, officers, directors, employees, contractors and agents harmless from and against any Loss resulting from any Action arising from or related to Renaissance's breach or violation of these Terms, its Privacy Notice, Data Protection Addendum or applicable California or federal law or regulation.

9.2 Your Indemnification. Making Waves Academy agrees to defend, indemnify, and hold Renaissance harmless from and against any Loss resulting from any Action arising from or related to Making Waves Academy's breach or violation of these Terms or applicable California or federal law or regulation.

9.3 Indemnification Procedure. Renaissance and You agree: (a) to promptly notify the other in writing of any Action; (b) to provide exclusive control and discretion to the indemnifying party (including choice of counsel and settlement authority); and (c) to cooperate (at indemnifying party's expense) with reasonable requests in support of the defense against any Action.

9.4 Sole Remedy. The indemnity provided in this section shall be Your sole and exclusive remedy regarding Actions based on third-party Intellectual Property Rights.

10. Limitation of Liability and Disclaimer of Warranties

10.1 PRODUCTS ARE "AS IS"; NO WARRANTY THAT THEY WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE OR THAT POSSIBLE DEFECTS WILL BE CORRECTED; AND; WE SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THEM, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE OR ANY ARISING FROM COURSE OF DEALING OR PERFORMANCE. NOTWITHSTANDING THE ABOVE DISCLAIMERS, WE AGREE TO MAKE REASONABLE EFFORTS TO MAINTAIN THE SECURITY OF THE PRODUCTS AND TO PROMPTLY REPAIR OR CORRECT ANY ERRORS OR DEFECTS IN THE PRODUCTS.

10.2 Limitation of Liabilities.

Provided the laws of Your State permit it, the parties agree:

- a. to limit liability under these Terms to direct damages, specifically excluding liability for any other damages;
- b. to cap each party's aggregate liability arising out of these Terms to the lesser of (i) Your Fees; or, (ii) \$100,000;
- c. that we have no responsibility for Third-Party Services;
- d. to limit our liability with respect to Professional Services or Deliverables to correction of such Professional Services or Deliverables. If correction is impractical, we will refund the pertinent Fees;
- e. that the fees and rights granted to each party, along with the allocation of risk in these Terms reflect the economic basis of the parties' relationship. Absent the economic basis, these Terms would not have been made.

This Section does not apply to the indemnification obligations set forth in Section 9.

11. Force Majeure. If You or we need to delay (or, fail) to perform an obligation under these Terms due to an act of God or a natural disasters ("**Force Majeure**"), we will avoid a potential breach by: (a) promptly notifying the other Party in writing of the Force Majeure; (b) using reasonable efforts to mitigate delay or failure; and, (c) promptly resuming performance after the Force Majeure. If Renaissance is not able to perform under these Terms due to force majeure, Making Waves Academy will be released from its obligation to pay any costs/charges under these Terms until such time as Renaissance is able to commence performance again, and Making Waves Academy shall be entitled to a proportional refund of any costs/charges paid by Making Waves Academy under these Terms for the period of Renaissance's nonperformance due to force majeure.

12. Miscellaneous

- 12.1 Entire Agreement. These Terms constitute the entire agreement between Renaissance and You and supersede all previous agreements. Any changes to these Terms must be in writing and signed by both parties.
- 12.2 Severability. If a provision of these Terms is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable as if such provision had not been set forth herein. You and we agree to substitute a valid provision, most closely approximating the intent of the severed provision.
- 12.3 Waiver. If a party fails to exercise a right (or insists on strict compliance by the other of an obligation) under these Terms, the other may still exercise such right (or insist on compliance). Also, waiver by one party of a particular default by the other is not a continuing waiver that impairs the aggrieved party's rights to subsequent default.
- 12.4 Working Through Issues and Governing Law. If either party has a misunderstanding or disagreement, the parties agree to meet to try and work it out. While we hope we

can work it out amongst ourselves, if the parties cannot, then the parties can use Your state's laws and system to guide us.

- 12.5 Notices. Notices under these Terms shall be in writing and shall be deemed received when delivered (a) in person, (b) via the USPS, postage prepaid, (c) via UPS, FedEx or DHL, or (d) via e-mail, with receipt of confirmation of delivery, addressed to the addresses set forth in the Quote.
- 12.6 Assignment. The rights and obligations of either party under these Terms may be transferred only with the prior written consent of the other party, except that we reserve the right to assign without restriction to an entity that acquires substantially all of our stock, assets, or business. Upon valid transfer, these Terms inure to the benefit of, and bind, the successors, assigns, heirs, executors and administrators of the parties.
- 12.7 Relationship of the Parties. The parties are independent contractors, having no other business affiliation. Neither party may assume or create any obligation nor make any representation or warranty on behalf of the other Party. There are no third-party beneficiaries to these Terms.
- 12.8 Limitation of Action. Any action by either party in connection with these Terms must be brought (a) within two years after the cause of action arose or (b) such longer period of time as required by applicable law.
- 12.9 Duplicates. These Terms may be signed separately by the parties and the signature pages combined to create an original. Authorized electronic signatures are valid. Digitized copies of an original copy of these Terms shall be treated as an original for all purposes.
- 12.10 Export Law Assurances. You may not use or export the Products except as authorized by U.S. law. In particular, You agree not to export the Products (i) into (or to a national or resident of) any U.S. embargoed country (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Products, You represent and warrant that You are not located in, under control of, or a national or resident of any such country or on any such list.
- 12.11 Representations. Each party represents and warrants that it is duly authorized to enter into these Terms.
- 12.12 Equitable Rights. Each party acknowledges that a breach (or threatened breach) of Section 6 (Intellectual Property Rights; Ownership) or Section 7 (Confidentiality) may cause the non-breaching party irreparable damage, entitling it to seek equitable relief, in addition to any other remedy, without posting bond.

13. Insurance

Without in anyway limiting Renaissance's liability pursuant to these Terms, Renaissance will maintain policies of workers compensation, automobile liability, general liability, professional liability and errors and omissions applying to the Products provided by

Renaissance to Making Waves Academy for the entire duration of the Subscription Period.

If any policies are written on a claims-made form, Renaissance agrees to maintain such coverage continuously throughout the Subscription Period and, without lapse, for a period of at least one year beyond the expiration of the Subscription Period, such that should occurrences during the Subscription Period term give rise to claims made after expiration of the Subscription Period, such claims shall be covered.

Such insurance shall have a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Such insurance shall be issued by an insurance company or companies authorized to engage in such insurance business in the State of California and rated not less than A-VIII in Best's Insurance Guide. In addition, Renaissance shall maintain a policy of cyber liability coverage, with a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Renaissance shall provide thirty (30) days advance written notice to the Making Waves Academy of cancellation, non-renewal or reduction in coverage.

General Liability and Business Automobile Liability policies must provide the following: (1) name as Additional Insured Making Waves Academy, its Board, officers, authorized volunteers, agents, and employees and the Contra Costa County Office of Education; and (2) that such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of these Terms and that such policies apply separately to each insured against who claim is made or suit is brought.

Upon execution of these Terms and before any payment is due to Renaissance by Making Waves Academy, Renaissance must provide the Making Waves Academy with the certificates of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative, and additional insured policy endorsements in form (CG 20 10 11 85 or its equivalent) as applicable, evidencing all coverages set forth above and shall furnish complete copies of policies promptly upon the Making Waves Academy's request. Renaissance also understands and agrees that the Making Waves Academy may withhold payment for Products or services for any violation of or noncompliance with this Section.

14. Education Code 49073.1

Renaissance shall not use personally identifiable information in pupil records to engage in targeted advertising.

Renaissance shall not use any information in a student educational record for any purpose other than those required or specifically permitted by these Terms or the Data Protection Addendum.

Students may retain possession and control of their own student-generated content and transfer student-generated content to a personal account, consistent with the functionality of the Products, by submitting a written request to Making Waves Academy. After receiving written authorization from Making Waves Academy, Renaissance will provide the option to transfer student account data into a family account (to be paid for by the student or parent/guardian separately).

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below.


RENAISSANCE LEARNING, INC.	MAKING WAVES ACADEMY (2906698)
Signature: 	Signature:
Name: Debra C. Schoenick	Name:
Title: VP Proposal Solutions	Title:
Date: 5/28/2020	Date:

EXHIBIT A

Definitions “**Action**” means a third-party claim, suit, or arbitration.

“**Products**” means the commercial software products (including all related intellectual property) being provided to You under these Terms, including, in all cases, executable program modules thereof, as well as related documentation, Content and computer readable media, regardless of how Products are accessed or used. The Products are set forth in the Quote and shall include all Renaissance Product and related content.

“**Authorized User**” means Your faculty and staff (including administrators and teachers), students accounted for in Your Quote (including Homebound Students) and the parents of such students.

“**Confidential Information**” means proprietary, technical, financial information and student educational records that one of us discloses to the other. Renaissance confidential information includes trade secrets, technology, information related to our business operations, and any technical information related to the Products or Hosting Services.

“**Content**” means all types of information including, without limitation, books, articles, recordings, documentation, photographs, graphics, video, databases or any other compilations rendered available by Renaissance or accessible through the Products or Deliverables. For the avoidance of doubt, Content includes any and all original expression in any media, as well as any derivations of such original expressions.

“**Deliverables**” means any work product or materials to be developed or delivered by Renaissance in connection with the Services.

“**Homebound Student**” means one of Your students that cannot attend school due to conditions adequately substantiated by a provider or authority in Your jurisdiction.

“**Intellectual Property Rights**” means worldwide intangible assets including (a) patents (design, utility or other), patent disclosures, Products and inventions (patentable or not), (b) trade and service marks, trade dress, trade names and domain names, including associated goodwill, (c) original expressions in any fixed medium (registered and unregistered) copyrights and copyrightable works (including Products) and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) other intangible assets (registered or unregistered) and (f) Products for, and renewals or extensions of, (a) – (e) and/or similar or equivalent rights or assets.

“**Loss**” means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Marks**” mean any word(s) and/or symbol(s) used alone or in combination as trade names, trademarks, logos and service marks, in all cases, registered or unregistered.

“**Privacy Notice**” means the applicable Product Privacy Notice located at www.renaissance.com/privacy - we update these from time to time to stay current.

“**Products**” means the commercial educational online software products being provided to You under this Terms of Service & License Agreement. Our products include: Accelerated Reader, Accelerated Math, Star Assessments, Star 360, Star Reading, Star Early Literacy, Star Math, Star Custom, Star CBM, Freckle, myON, myIGDIs and Schoolzilla.

“**Professional Services**” means those professional services identified in the Quote and further described in **Exhibit B** and any other professional, technical or support services that Renaissance provides to You. Professional Services expire at the end of the Subscription Period.

“**Quote**” means the quote You and Renaissance signed to provide You access to Your Products during Your Subscription Period.

“**Renaissance**”, “**We**” or “**Us**” means Renaissance Learning, Inc., a Wisconsin corporation, and its affiliates, as well as their respective directors, officers, employees, contractors and agents.

“**Terms of Service and License**” or “**Terms**” means these Terms of Service and License and the Privacy Policies, as amended by the parties.

“**Subscription Period**” means the time during which You have access to the Products. The Subscription Period starts on the first date and ends on the last date written in Your Quote, unless these Terms are terminated early by You or us. Then, Subscription Period ends on the date of termination.

“**You**” means the entity identified in the Quote. “**Your Data**” includes: (i) Authorized User rostering information; (ii) Authorized User information or content generated within the Products (ex, scores, assessments, assignments, essays, notes); (iii) Authorized User sign-on information; (iv) student information that You send to Us in connection with a research study request; (v) feedback Your teachers share with Us. Your Data includes both

“personally identifiable information” and “personal information” as defined in the applicable Data Protection Legislation. Renaissance considers Your Data to include any information that can be used on its own or with other information to identify Your Authorized Users as individuals.

EXHIBIT B

Additional Terms and Conditions - Professional Services

You agree to the following for any Professional Services ("Training") made available to You either remotely or on-site:

- a. To provide facilities that are conducive to adult learning, including a computer, broadband Internet connection and two-way sound for each of Your participants;
- b. To participate in a pre-planning meeting with us (at least four weeks for on-site; and, at least three days for remote) before the Training, allowing us to tailor the Training content to the specific needs of Your participants. We will focus our Training on learning outcomes agreed to during the pre-planning meeting. We will also strive to adapt our Training to meet needs raised at the Training;
- c. To absorb actual out-of-pocket travel expenses incurred due to Your last-minute rescheduling or cancellation of the Training and to pay a one-time cancellation fee of up to \$750;
- d. To use any Professional Services within the Subscription Period. Otherwise, You risk losing those services;
- e. To our using third parties to assist with Renaissance-provided Professional Services (we will be responsible for ensuring their integrity and compliance with these Terms, as well as their compensation and expenses);
- f. To refrain, without our written consent, from recording the Training and from copying any materials or Content.