

**ADDENDUM TO IXL LEARNING TERMS AND CONDITIONS OF SALE  
FOR Making Waves Academy**

**IN CONSIDERATION** of the mutual promises by IXL Learning, Inc. ("IXL") and Making Waves Academy ("you") in this Addendum, IXL and you agree to the following changes to IXL's Terms and Conditions of Sale ("TCOS"), as follows:

**The preamble is amended as follows:**

"THIS IS A LEGAL DOCUMENT ("SALES CONTRACT" OR "AGREEMENT") BETWEEN THE PURCHASER SHOWN ABOVE ("YOU") AND IXL LEARNING ("SELLER"). PLEASE READ THIS AGREEMENT CAREFULLY. YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT, AS WELL AS BY THE WEBSITE TERMS OF SERVICE, WHICH ARE INCORPORATED BY REFERENCE. NO VARIATION OF THESE TERMS AND CONDITIONS ARE BINDING ON SELLER UNLESS AGREED TO IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF IXL LEARNING."

1. **Section 2 (Payments)** is hereby amended by removing the following statement:

"Termination does not relieve the Purchaser of the obligation to pay fees due to the Seller."

2. **Section 3 (Cancellation and Refund)** is hereby amended as follows::

"No cancellation will be accepted, and no refund issued, if it is more than sixty (60) days beyond the date of purchase for the license referenced in this Sales Contract. For cancellations and refunds of the license tendered under this Sales Contract to be accepted, the Seller must receive written notification of the cancellation within sixty (60) days of purchase. Cancellations requested outside of the 60-day period will not be refunded, and the Purchaser will be responsible for completing the purchase as stated in the Sales Contract. Seller shall not terminate or cancel this Sales Contract unless Purchaser breaches the terms of this Sales Contract including but not limited to the terms of payment."

3. **Section 4 (Licenses)** is hereby amended to read as follows:

"IXL grants you the right to provide access, through unique log-in IDs, to no more individuals than the quantity indicated on the first page. The terms and conditions of use for each of these individuals are governed by our websites Terms of Service.

Classroom and Site licenses will be activated immediately upon receipt of your payment unless another date is specified or agreed to by IXL. Activation confirmation will be sent to the e-mail address provided by the school or individual completing the purchase.

If an individual who has an IXL account through a Classroom or Site license purchased by you is no longer affiliated with you, IXL will deactivate the individual's account, or no longer associate it with your license, upon your request so that that license can be reassigned to another individual associated with your institution.

If you are a teacher, you represent and warrant that you have permission and authorization from your school and/or district to use the Services as part of your curriculum, and for purposes of Childrens Online Privacy Protection Act ("COPPA") compliance, you represent and warrant that you are entering into these Terms on behalf of your school and/or district."

4. **Section 5 (Indemnification)** is hereby added to the IXL Terms and Conditions of Sales with the following:

**“Seller’s Obligations.** Seller will hold harmless, indemnify and defend Purchaser, Making Waves Academy and its employees, directors, officers, agents and representatives from and against any losses, claims, penalties, fines, judgments, damages, liabilities or expenses, including reasonable attorneys’ fees and costs (“Losses”), or threatened Losses arising out of third party claims relating to, incurred in connection with, or based in whole or in part upon any claim, threatened claim, suit, action or proceeding (“Claim”) made against Purchaser or Making Waves Academy:

- (a) that the Services infringe any Intellectual Property Rights of a third party enforceable in the U.S. (“Infringement Claim”) or violate any applicable law, regulation or ordinance; or
- (b) any Claim for injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts or omissions of Seller or its employees, directors, officers, agents, representatives, or subcontractors.

Seller will have no liability or obligation to indemnify Purchaser from any Losses to the extent that such Losses solely arise out of or result from any:

- (a) alteration or modification of the Seller’s product or services by or on behalf of Purchaser without Seller’s authorization (each, a “Purchaser Modification”), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such Purchaser Modification and provided further that any alteration or modification made by or for Seller at Purchaser’s request will not be excluded from Seller’s indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to Purchaser’s written specifications and (ii) the Seller’s products or services, as altered or modified in accordance with the Purchaser’s specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Seller;
- (b) Purchaser’s access to or use of the Seller’s products or services that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement;
- (c) breach of this Agreement by Purchaser; or
- (d) wrongful act or omission of the Purchaser or their officers, employees or agents.

**Purchaser’s Obligations.** Purchaser will hold harmless, indemnify and defend Seller and its employees, directors, officers, agents and representatives from and against Losses arising out of a Claim made against Seller relating to, incurred in connection with, or based in whole or in part upon:

- (a) Purchaser’s use of the Seller’s products or services in breach of this Agreement; or
- (b) any Infringement Claim asserted by any third party based upon Purchaser materials provided to Seller; or
- (c) any Claim for injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts or omissions of Purchaser.

Purchaser will have no liability or obligation to indemnify Seller from any Losses to the extent that such Losses solely arise out of or result from any:

- (a) breach of this Agreement by Seller; or
- (b) wrongful act or omission of the Seller or their officers, employees or agents.

The obligations set forth in this Section are conditioned upon the party entitled to a defense of a third party claim (“Indemnified Party”) notifying the other party (“Indemnifying Party”) promptly in writing of any covered action, giving the Indemnifying Party sole control over the defense thereof and any related settlement negotiations, and cooperating and, at the Indemnifying Party’s request and expense, assisting in such defense. The Indemnified Party may also participate in the defense at its own expense.

5. **Section 6 (Privacy)** is hereby amended to read as follows:

"Seller and Purchaser agree to comply with all applicable laws, regulations and ordinances including but not limited to the Children's Online Privacy Protection Act (COPPA), the Student Online Personal Information Protection Act (SOPIPA), the Family Educational Rights And Privacy (FERPA), and California Education Code section 49073.1. Purchaser agrees to obtain advance written consent from all parents or guardians whose children under 13 will be accessing the website and services and provide parents and guardians with Seller's Privacy Policy. Purchaser will keep all consents on file and provide them to Seller upon request."

6. **Section 7 (Disclaimer of Warranties.** You Expressly Understand and Agree That: is hereby amended to read as follows:

a. " YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS. IXLEXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

b. IXL 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, AND (V) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

c. 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.

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

e. NOTWITHSTANDING THE ABOVE DISCLAIMERS, SELLER AGREES TO MAKE REASONABLE EFFORTS TO TIMELY REPAIR OR CORRECT ANY ERRORS OR DEFECTS IN THE PRODUCTS AND SERVICES PROVIDED BY SELLER TO PURCHASER UNDER THIS AGREEMENT.

**Some states do not allow certain limitations on warranties, so certain of the above limitations may not apply to you.**

7. **Section 8 (Limitation of Liability)** is hereby amended by removing the following language:

"IN ALL INSTANCES, DAMAGES SHALL BE CAPPED AT ONE MONTHS FEES."

8. **Section 11 (Entire Agreement)** is hereby amended to read as follows:

"This Sales Contract, which incorporates the Terms of Service and attached Addendum by reference, is the final expression of the agreement between Purchaser and Seller and supersedes all prior representations, understandings, and agreements between the Purchaser and Seller relating to its subject matter. This Sales Contract cannot be modified, amended, or changed except in writing and signed by authorized representatives of the Seller and Purchaser."

9. All remaining terms of the TCOS remain in full force and effect. Capitalized terms used but not defined in this Addendum shall have the same meaning as ascribed to them in the TCOS.

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed by their authorized representatives, effective as of the date first set forth above.

**IXL Learning, Inc.**

**Making Waves Academy**

By \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_