

Vendor Agreement and Terms

This Vendor Agreement (this Agreement) is made effective as of _____, between XtraMath, of 4700 42nd Ave SW, Suite 580, Seattle, WA 98116 (“Vendor”), and _____, of _____ (“Customer”).

1. ITEMS LICENSED. Vendor agrees to license, and Customer agrees to purchase XtraMath Instructional Materials (“License Material”) set forth in the attached Price Quote in accordance with the terms and conditions.

2. LICENSE and SERVICES.

a. License. XtraMath grants Customer a non-exclusive, non-transferable license to access and use License Material for internal educational and training purposes solely for the License as set forth in the Price Quote. This Agreement provides only Customer and Customer’s specifically authorized instructors, administrators, students, and parents (“End Users”) access to and use of the License solely for internal education- and training-related purposes. License and Service types are listed below:

i. Single User - available to a single User identified by name and designated as the sole Student User of the specific license throughout the Term. Licenses cannot be transferred to another User.

iii. Site License - provides access to the software throughout the Term by all authorized Users located in the specific physical site identified on the Price Quote. Must be a traditional brick and mortar educational institution that provides educational services to students at a common physical location.

Licenses are available to access software throughout the Term by authorized Users not to exceed specific quantities stated on the Price Quote.

b. Services. XtraMath will also provide Professional Development and Product Training. The Professional Development will include a customer-facing webinar that will help teachers gain knowledge on how to utilize the XtraMath Instructional Materials in the classroom. Product Training will consist of XtraMath via webinar (available live or on-demand) a complete onboarding/start-up process for XtraMath. Customer’s access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Price Quote or if the License is terminated for any reason.

c. XtraMath Technical and Customer Support. XtraMath will provide full technical and customer support for the Service. Technical support includes system updates and enhancements when made available and pushed per XtraMath’s regularly scheduled maintenance. Information on customer support and technical requirements is found at <https://home.xtramath.org/support.html>.

3. USE OF LICENSE.

a. Customer Data and Student Data. All data and materials uploaded or entered during use of the License by Customer, including student information and student records, remain the property of Customer (“Customer Data”). All student-generated content and personally identifiable information about any students (“Student Data”) 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 this Agreement. Students (or Parents or legal guardians of the Student) retain ownership and control of all Student Data that is provided or accessed through XtraMath's course, and ownership of such Student Data never passes to XtraMath. During the term of this Agreement, Customer may export Customer Data and Student Data to the extent allowed by the functionality within the License. For training and demonstration purposes, XtraMath may use and share Customer Data and Student Data but will share only with supervisors, instructors, and other Customer employees who have appropriate authorization. XtraMath does reserve the right to use anonymized or de-identified data for research, to inform product iterations, or data metric outcomes in the form of aggregate data.

b. **Customer Responsibilities.** Customer must (i) keep its 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 License as described in XtraMath's written guides. Customer authorizes its integrators or other third-party vendors and XtraMath to conduct initial setup and to allow continued access to the License for the sole benefit of the Customer. Customer may provide XtraMath the name and contact information for all third parties authorized by Customer, or necessary for Customer to use the License. Customer is solely responsible for ensuring compliance by its authorized integrators or other third-party vendors (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.**

4. 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 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 license Purchase.

5. DELIVERY. Vendor will arrange delivery to Customer the License Materials on or after August 1, 2021, or by another set date that is mutually agreed upon by the parties.

6. MUTUAL CONFIDENTIALITY.

a. **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, pricing information, and the Licensed Material.

b. **Protection of Confidential 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 this Agreement. 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 this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.

c. **Exclusions.** 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. XTRAMATH PROPERTY.

a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how, and other items provided by XtraMath as part of the License, any Instructional Services or Professional Development, or in response to Customer requests for customized content are the proprietary property of XtraMath and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with XtraMath and its licensors. Customer may not remove or modify any proprietary marking in XtraMath curricula. XtraMath reserves all rights unless expressly granted in this Agreement.

b. **Restrictions.** Customer may not (i) sell, resell, rent, or lease the access to the License or use it in a service provider capacity; (ii) use the License to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the License or attempt to gain unauthorized access to the License or its related systems or networks; (iv) use the License for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the License or modify, create derivative works based on the License; or (vi) access the License to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

8. LIABILITY LIMIT.

a. **EXCLUSION OF INDIRECT DAMAGES.** XtraMath is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits), even if it knows of the possibility of such damage or loss.

b. **TOTAL LIMIT ON LIABILITY.** XtraMath's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid by customer within the 12-month period before the event that gave rise to the liability.

10. INDEMNITY. To the extent permitted under Applicable Law, each party will defend, indemnify and hold harmless the other party from and against any third-party claims, injuries, losses, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) that arise from or relate to (i) the indemnifying party's negligence, misconduct or breach of this Agreement; and (ii) an indemnifying party's violation of Applicable Law.

9. WARRANTIES and DISCLAIMERS.

a. **Compliance Warranty & Privacy Policy.** 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 Agreement ("Applicable Laws"), including without limitation the

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 and conditions, contains additional terms regarding XtraMath’s use of and commitment to safeguarding Student Data and compliance with other student privacy laws. Customers and End Users can find the privacy policy at <https://home.xtramath.org/privacy-policy.html>. Customer is responsible for providing notice of its own privacy policy to parents of its student and for obtaining any necessary parental consents for students to use the License as may be required by Applicable Law.

b. **Professional Development and Instructional Services Warranty.** XtraMath warrants that it will provide Professional Development and/or Instructional Services in a professional and competent manner consistent with the terms of this Agreement and under generally accepted industry standards.

c. **XtraMath Service Warranty.** XtraMath warrants that it will make commercially reasonable efforts to maintain the online availability of the License. **Customer’s exclusive remedy and XtraMath’s entire liability under this warranty will be for XtraMath to repair the non-conforming service, or if XtraMath cannot make such repair within a reasonable period of time, then XtraMath may terminate access to the License and refund a portion of the fee.**

d. **DISCLAIMERS.** The License is provided “as is” and with all faults. **Except for the above warranties, the license and any professional development and instructional services are provided on an “as-is” and “when available” basis. XtraMath expressly disclaims all other representations and warranties concerning the License and services to the extent allowed by law, including any warranty of merchantability or fitness for a particular purpose. There is no warranty that the operation or connectivity of the License will be uninterrupted or error-free or that the License will be free of all possible methods of unauthorized access, attack, or intrusion.**

10. TERM AND TERMINATION.

a. **Term.** The Term of this Agreement and Customer’s access to the License, Services, and any instructional Services or Professional Development services will continue for the period indicated on the applicable Price Quote unless terminated by XtraMath for material breach. The term of the Agreement begins and ends one year after the effective date set forth in the Price Quote for Services (“Term”), and Customer only has the right to use the Products and/or Service during the Term. The Term may be extended for an additional one (1) year renewal term (or other duration stated in the invoice) upon XtraMath’s issuance of an invoice for extension and either: (a) payment for such invoice by Customer, or (b) Customer’s continued accessing and use of the Products and/or Service.

b. **Funding-Out Clause.** If Customer is a governmental entity receiving federal funds, Customer’s payment obligation may be conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify XtraMath in writing within thirty (30) calendar days before termination. Upon termination, XtraMath will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.

c. **Non-payment of Fees.** XtraMath may terminate the Agreement and access the License in a Price Quote within ten (10) days after Customer's receipt of a notice of non-payment of amounts owed under that Price Quote.

d. **Mutual Termination for Material Breach.** Except for 10(c), if either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period if the breach has not been cured.

e. **Access to and Return of Customer Data and Student Data.** For a period of up to ninety (90) days after termination, upon request, XtraMath will make the License available for Customer to access and export Customer Data and Student Data. Alternately, Customer may submit a written request to XtraMath up to sixty (60) days after termination to request the deletion of Student Data (other than anonymized or de-identified data that may be retained pursuant to XtraMath's Privacy Policy).

f. **Suspension for Violations of Law.** XtraMath may temporarily suspend the License or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the License, Customer has violated a law. XtraMath will attempt to contact Customer in advance.

g. **Return or Destroy XtraMath Materials Upon Termination.** Within ninety (90) days after expiration or termination of this Agreement for any reason, upon request, Customer agrees to return, delete or destroy all proprietary XtraMath materials provided by XtraMath. Customer will confirm its compliance with this destruction or return requirement in writing upon request of XtraMath.

11. ENTIRE AGREEMENT. This Agreement contains the entire agreements and terms of the parties regarding the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties.

12. AMENDMENT. This agreement may be modified or amended if the amendment is made in writing and signed by both parties.

13. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision in this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

15. OTHER TERMS.

a. Governing Law. If Customer is a public school or district or other state or municipal governmental agency, this Agreement will be governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Otherwise, this Agreement will be governed by the laws of the State of Washington.

b. Entire Agreement and Changes. These Terms and Conditions (and any Attachments) and the Price Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The Parties may modify this Agreement only by written agreement signed by both parties.

c. No Assignment. Neither party may assign or transfer this Agreement or a Price Quote to a third party, except that this Agreement with all Price Quotes may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the assets of a party.

d. Independent Contractors. The parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

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

f. Enforceability and Force Majeure. If any term of this Agreement 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.

g. Money Damages Insufficient. Any breach by a party of this Agreement 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.

16. SIGNATURES. This Agreement shall be signed by Dee De La Paz, Executive Director on behalf of XtraMath and by _____ on behalf of _____

Customer:

Signature

Printed Name

Title

Date

Vendor:

XtraMath


Signature

Dee De La Paz
Printed Name

Executive Director
Title

09/02/2021
Date