

Agreement



Arlington Public Schools

Procurement Office

2100 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123

Website: www.apsva.us

Via Email

October 25, 2023

David Lee
Proposal Manager
IXL Learning, Inc.
777 Mariners Island Blvd Suite 600
San Mateo, CA 94404
proposals@ixl.com

Subject: Contract 82FY23 Secondary Mathematics Select Courses

Dear Mr. Lee:

Contract 82FY23, for the provision of Secondary Mathematics Select Courses (“the Work” or “Resources”) is entered into as of August 30, 2023; by and between IXL Learning Inc, located at 777 Mariners Island Blvd Suite 600 San Mateo, CA 94404, hereinafter called “Contractor” and Arlington School Board, operating as Arlington Public Schools hereinafter called “APS” or “Owner” and supersedes and governs Purchase Order 2401871 dated October , 2023.

Contract Term:

The term of this Contract shall commence on August 30, 2023 and expire on November 1, 2026 (“Contract Term”), unless otherwise stated as provided in the Contract Documents.

Unless directed otherwise by APS, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued, but must be completed no later than six (6) months following expiration of the Contract Term in which the Purchase Order was issued.

Contract Price:

The Contractor agrees that prices shall remain firm for the Contract Term.

As required by the Code of Virginia §22.1-241, the Contract Price shall not exceed the lowest wholesale price at which the Resource involved in the Contract are currently under contract anywhere in the United States.

In accordance with Code of Virginia §22.1-241, if, subsequent to the date of contract award, the prices of Resources named in this Contract are reduced or the terms of the Contract are made more favorable to purchase anywhere in the United States or a special or other edition of any book named in the contract is sold outside of Virginia at a lower price than contracted in the Commonwealth, the publisher shall grant the same reduction or terms to APS and give APS the option of using such special or other edition adapted for use in Virginia and at the lowest price at which such special edition is sold elsewhere and the contract shall so state.

Scope of Work

The Contractor agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified Contractor to provide and implement the Work. The Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by APS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work. The Contractor shall be responsible for providing the Work.

Contract Amount

APS will pay the Contractor in accordance with the firm fixed price(s) shown in Attachment B – Fee Schedule. The firm fixed price shall include all of the Contractor's fees in performance of the Work under this Contract, including but not limited to, travel, overhead and profit. The firm fixed price(s) shall not be subject to change during the Contract Term.

Contract Documents

The Contract consists of the following documents: all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.

- 1 Agreement #82FY23 and all modifications properly incorporated into the Agreement
- 2 Attachment A – Scope of Work
- 3 Attachment B – Fee Schedule & Payment Plan
- 4 Attachment C – Contractor Certification Regarding Criminal Convictions
- 5 Attachment D – Non-Disclosure and Data Security Agreement
- 6 Attachment E – Student Data Usage and Privacy Agreement
- 7 Attachment F – Contract Terms and Conditions
- 8 Attachment G – Certificate(s) of Insurance
- 9 Attachment H – Publisher Certification and Agreement
- 10 Attachment I – IXL Terms of Service & Privacy Agreement

The following are incorporated by reference:

- 11 The Request for Proposal (RFP) documents,
- 12 and The Proposal Response from the Contractor

Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Contract between APS and the Contractor. APS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Contract which is not contained in the Contract Documents. The Contract Documents are referred to herein below as the “Contract.”

Definitions

All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.

Right to Terminate Contract

APS has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Terms and Conditions.

Payment Procedures

Contractor shall submit invoices for its Work, and such invoices will be processed by APS, all in accordance with the provisions of the Terms and Conditions.

Assignments

This Contract is not assignable by Contractor without the express written consent of APS, and APS shall be under no obligation to grant such consent. Sale, assignment or transfer of a controlling interest in the Contractor shall be deemed an assignment for purposes of this provision and shall be grounds for termination of this Contract if consent of APS is not obtained. It is understood by APS that Contractor may use Subcontractors for performance of parts of the Work. However, it is expected that Contractor will be performing the Work, and subcontracting of all or substantially all of the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

Notices

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, or emailed addressed as follows:

To the Contractor: Mr. David Lee
IXL Learning, Inc.
Proposal Manager
777 Mariners Island Blvd Suite 600
San Mateo, CA 94404
proposals@ixl.com

To APS: Mr. Carl Seward
Academics Office
Supervisor of Secondary Mathematics
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
carl.seward@apsva.us

And David J. Webb, C.P.M.
Procurement Director / Procurement Agent
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
david.webb@apsva.us

Binding Agreement

The Owner and the Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

The Work shall be performed in accordance with the above-referenced Contract Documents and is the complete agreement between APS and the Contractor and may not be altered except by written amendment signed by APS and the Contractor in compliance with the requirements of the Contact Documents.

The signatures of APS and the Contractor, or their authorized representatives, are set out below in acknowledgment and acceptance of this Contract.

IN WITNESS WHEREOF, APS and Contractor have executed this Agreement as of the date written above.

Acceptance:

Arlington Public Schools

Authorized Signature: David J. Webb

Printed Name David J. Webb, C.P.M.

Title: Director/Procurement Agent

Date: October 30, 2023

IXL Learning, Inc.

Authorized Signature: Paul Mishkin

Printed Name: Paul Mishkin

Title: Chief Executive Officer

Date: 10/27/2023

Attachment A Scope of Work

IXL Math gives APS the complete solution in one seamless platform that meets the scope of work requirements set forth in RFP. **IXL is the end-to-end (ETE) learning solution to drive positive student learning outcomes across the district.** Whether teaching in class, remotely or in a hybrid model, IXL is the essential solution that supports teachers with up-to-date assessment of where students are, insight on where they need help, and actionable next steps to differentiate instruction for intervention and accelerate their learning. IXL supports every student to learn independently, at their working level, and at their own pace. With personalized guidance and insightful analytics, students are empowered to take ownership of their learning, making informed choices about what to learn next and tracking their progress towards mastery.

IXL was designed based on learning science research and the result is an ETE solution with five key components working together seamlessly as one integrated platform.

IXL is Grounded in Learning Science Research. IXL was designed by drawing on decades' worth of learning science research, well-established cross-disciplinary theories of learning and teaching, and best practices by IXL's curriculum specialists and product designers.¹ This work culminated in an end-to-end learning solution that includes: a comprehensive curriculum and personalized guidance to support any learning need; instructional resources and classroom engagement tools to help students learn independently; the IXL Real-Time Diagnostic assessment that provides both continuous and benchmark data; and actionable analytics to help teachers differentiate instruction for every student. The demands of personalized learning are complex, and by integrating these components into a single integrated platform, IXL makes truly personalized learning simple and effective for every student and teacher. Key aspects of IXL's Design Principles include:

- Organization of Cognitive Tasks to Facilitate Learning Progressions
- Active Learning
- Adaptive Learning
- Immediate Feedback and Learning from Mistakes
- Engagement and Motivation

Organization of Cognitive Tasks to Facilitate Learning Progressions. The IXL curriculum is finely scaffolded within skills and across skill categories, in alignment with theories such as Bloom's Taxonomy, wherein educational goals are ordered from the lowest cognitive demand of recalling information to the most advanced—creating original content. IXL's platform reflects this approach with a PK-12 curriculum that is organized by category and grade level, from simple to more complex skills. IXL skills are scaffolded with multiple levels of rigor to support all levels of learners.

¹ IXL Design Principles: www.ixl.com/research/IXL_Design_Principles.pdf

Active Learning. IXL motivates students by giving them choice in their learning path. From selecting from any skill in the curriculum to practice to selecting which personalized skill recommendations to work on next, students are encouraged to drive their own learning. Even as they work on a skill, they can choose to ‘learn by doing’ and start answering questions, or ‘learn with an example’ and follow step-by-step instructions for a sample problem. Finally, IXL provides students with their own suite of analytics, empowering students to monitor their progress and take ownership of their learning.

Adaptive Learning. To assess student progress on each skill, IXL uses its proprietary SmartScore, which is a numeric representation from 0-100 of students’ proficiency in a given skill. SmartScore adapts to learners’ response patterns and adjusts question difficulty to meet students where they are. SmartScore is not a percent-correct score, as it incorporates item difficulty, answer accuracy, response patterns, and relative progress on a skill. Students can always reach mastery by correctly answering the most challenging questions in the skill. Similarly, the Real-Time Diagnostic is adaptive to each student and uses information from multiple skills to assess their grade level proficiency overall and in key diagnostic strands.

Immediate Feedback and Learning from Mistakes. IXL’s approach with immediate feedback and explanation is supported by research as a key element of a quality formative assessment,² as learners are provided with timely and specific information about what they are getting wrong.³ Providing feedback following incorrect attempts is crucial, as it enhances subsequent learning.⁴

Engagement and Motivation. On IXL, students are motivated to excel with instant updates to their SmartScore as they progress through skills, immediate explanations so they can learn from mistakes, virtual awards when they reach achievement milestones, and as well as engaging and friendly Leaderboard competitions with their classmates.

IXL’s all-inclusive, research-based solution is built on five key components. Integrated into a single platform, each component is designed to work together seamlessly to give educators the tools and insights they need to maximize learning for every student.



Comprehensive PK-12 curriculum and personalized guidance. IXL’s comprehensive math curriculum is composed of over 4,900 adaptive skills that meet each learner where they are. IXL seamlessly integrates into daily instruction with interactive skill plans custom-built to standards, textbooks, and assessments. IXL also offers tailored skill recommendations for each student to help accelerate their growth.

IXL’s adaptive PK-12 math curriculum is comprehensively aligned to Virginia SOL. IXL unpacks each standard into finely scaffolded skills with multiple levels of rigor to help teachers measure student knowledge, pinpoint gaps in understanding, and focus instruction. **IXL takes the guesswork out of instructional planning** with interactive skill plans custom-built to the Virginia SOL including SOL for Mathematical Analysis, Trigonometry, and Probability and Statistics, enabling teachers to easily identify, assign and track progress on skills that support each standard. IXL also offers skill plans designed to match the scope and sequence of popular core textbooks to support core instruction, and common state exams for targeted test preparation. IXL helps students **achieve rigor in math**, progressing

² Perie, M., Marion, S., & Gong, B. (2009). Moving toward a comprehensive assessment system: A framework for considering interim assessments. *Educational Measurement: Issues and Practice*, 28(3), 5-13.

³ Shute, V. J. (2008). Focus on formative feedback. *Review of Educational Research*, 78(1), 153-189.

⁴ Kornell, N., Hays, M. J., & Bjork, R. A. (2009). Unsuccessful retrieval attempts enhance subsequent learning. *Journal of Experimental Psychology: Learning, Memory, & Cognition*, 35, 989-998

from conceptual understanding to procedural fluency, and then contextual application. IXL is designed for every learner, and includes **Spanish translation** through geometry.

IXL provides personalized guidance to help every student learn and grow at their own pace. IXL believes every student has the innate desire and ability to achieve mastery and recognizes that learning is not a linear path. Based on their performance, IXL provides real-time skill recommendations that provide a personalized pathway for growth. With IXL's open platform, students have **access to the complete IXL curriculum in all grades**. This benefits both students who need to revisit foundational skills and address unfinished learning, as well as accelerated learners who are ready to work on higher level skills. Whether for intervention, grade-level learning or enrichment, IXL ensures students are engaged with the skills they need, regardless of their enrolled grade level. IXL meets every learner in their zone of proximal development for an **authentically personalized learning experience**.



Instructional resources and classroom engagement tools. IXL's built-in instructional resources help students learn independently, with thousands of video tutorials, step-by-step lessons, and corrective feedback after each question. IXL makes classroom learning engaging and exciting with collaborative features such as IXL Group Jams and IXL Leaderboards.

IXL's instructional resources place high-quality learning in the hands of students at the point of need. Students receive direct instruction with 'Learn with an Example'⁵ solutions for each skill; over 1,800 video tutorials⁶ in math from grade 3 through geometry; and over 500 lessons in math. Based on their performance, IXL provides **real-time skill recommendations** for just-in-time remediation. On IXL, students receive immediate positive feedback on correct answers and a detailed explanation for incorrect responses, which is proven by learning science research to be effective in correcting mistakes in understanding and in improving learning.

IXL includes many opportunities to make learning engaging, interactive, and collaborative. As students reach achievement milestones in their work, they earn **virtual awards** that are collected on their awards wall for each grade. IXL **Leaderboard**⁷ allows teachers and administrators to create friendly competitions for students within a class or the entire school. Leaderboards can be customized to compete on the total number of questions answered, skills mastered, or time spent on IXL. IXL **Group Jam**⁸ encourages collaboration, as teachers can pose the same questions to students in real-time, see each student's response, and encourage the class to discuss and justify their answers. Teachers can also use Group Jams as a formative assessment to gauge students' understanding of specific skills. Teachers can also now create **IXL Quizzes**⁹ based on one or more IXL skills. By selecting just a few key options, teachers can create a custom assessment in minutes, whether a short quiz to check for understanding after a lesson or a comprehensive test spanning multiple topics to cap off a unit. In addition, **Live Classroom**¹⁰ enables teachers to monitor whole class activity at a glance, help students get back on track, and communicate in real-time with students to offer encouragement and support.

⁵ Quick Tip: Learn with an Example: www.youtube.com/watch?v=jytJpXvcQMA

⁶ Video Tutorials: www.youtube.com/watch?v=oeWuA5lvELA

⁷ IXL's Leaderboard: www.youtube.com/watch?v=nNxc2EThWr4

⁸ IXL's Group Jam: www.youtube.com/watch?v=Ci2SjxoU-Qk

⁹ IXL Quizzes: www.youtube.com/watch?v=HLVeUMHnsHM

¹⁰ IXL's Live Classroom: www.youtube.com/watch?v=hQdOrARFmXU



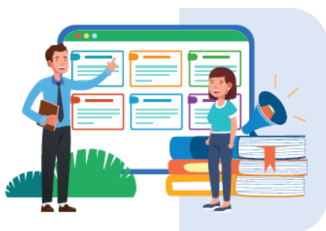
The Real-Time Diagnostic. IXL's Real-Time Diagnostic provides both continuous and benchmark assessment of students' grade-level proficiency. The Diagnostic helps teachers strategically plan small-group instruction and creates a personalized Diagnostic Action Plan for each student with specific next steps for growth.

The IXL Real-Time Diagnostic pinpoints each student's grade level proficiency in math overall and in key diagnostic strands. The Real-Time Diagnostic is uniquely powerful in its capability as both a daily instructional diagnostic and a benchmark assessment. In **real-time mode**, teachers always have an up-to-date understanding of students' knowledge and thus are able to identify and address knowledge gaps much sooner. At the same time, the Diagnostic can also be scheduled for **Snapshot mode**, which enables administrators to set benchmark periods to capture student knowledge levels at fixed points in time. Significantly, the Diagnostic provides **actionable next steps for effective data-driven instruction**, including strategic groupings of students at similar working levels, and a personalized **Diagnostic Action Plan** with specific skill recommendations to close knowledge gaps quickly and accelerate growth for each student.



Actionable district-wide analytics. IXL provides insightful analytics with real-time data and flexible reporting at multiple levels, from the district to the individual learner. Administrators can quickly understand how well learners and teachers are engaging with the platform and whether students are meeting grade-level expectations. Teachers can get up-to-the-minute insights that help them support every student at the right level. Students also have their personal suite of analytics so they may track their own progress and make their own choices on what to learn next.

IXL District and School Analytics allows administrators to assess student performance and teacher engagement on IXL at the district and school levels. With this insight, administrators can easily track progress, identify needs, and provide support if needed. Administrators may also zoom into classroom and student level data. **IXL Teacher Analytics** provides teachers with up-to-the-minute insights on students' grade and skill level proficiency. From illuminating student trouble spots and alerting teachers when students need help, to forming small groups for reteaching and monitoring progress and growth, IXL helps teachers make effective instructional decisions and provide differentiated instruction for the whole class, small groups, and each student. **IXL Student Analytics** provides students with their own reports to help them recognize their achievement and growth, and to understand where they need to work on to improve. Parents may also access student analytics reports to support learning at home.



District partnership, professional learning and implementation services. IXL is a committed partner and will work closely with district leaders to ensure a streamlined onboarding, seamless integration, tailored professional development, and successful ongoing implementation. IXL's district partnership team will collaborate with district leaders to understand goals and objectives, and provide ongoing guidance on how best to support teachers and students on IXL.

IXL believes educational technology works best when it empowers educators to be more effective. Just as the IXL platform is designed to make personalized and adaptive instruction easy for teachers to implement, IXL's implementation approach is designed to make project execution simple and seamless. As a committed and collaborative partner, IXL will assign an experienced district

partnership team, including a dedicated Account Manager, to support districts and schools at every step, from onboarding and integration to professional development and ongoing implementation. IXL offers flexible onsite, virtual and on-demand professional development opportunities that can be customized to district objectives. In addition, IXL supports effortless technology integration with learning management systems (LMS), single sign-on (SSO), and autorostering.

IXL understands from the Scope of Work that APS requests a NIMAS fileset to the NIMAC that complies with the terms and procedures set forth by the NIMAC. IXL is an adaptive, interactive personalized learning program. Therefore, it is not feasible to provide a NIMAS fileset. While IXL does not offer a NIMAS fileset, IXL substantially complies with Section 508 and Web Content Accessibility Guidelines (WCAG) Level AA. This includes support for keyboard navigation, adhering to contrast guidelines in questions and explanations, audio support, and a steadily expanding support for screen readers.

2.1.c Treatment of Issues

IXL offers APS an end-to-end, digital solution solution that can be accessed from anywhere using the most common browsers. IXL's key features, including a comprehensive math curriculum with open access to all PK-12 skills, accurate assessment suite, and actionable data-based analytics, work together seamlessly to empower teachers with up-to-date knowledge of where students are in their learning and where they may need additional support.

2.1.d Statement of Qualifications

2.1.d.1 Organizational and Staff Experience

IXL Learning was founded in 1998 with one mission—to spread the joy of learning by engaging every student's natural curiosity, creativity, and desire for knowledge. IXL strives to make the education experience better by applying technology in thoughtful and innovative ways. IXL's approach is grounded in the belief that educational technology works best when it empowers teachers to be more effective and inspires students to take an active role in their learning.

An Established History of Innovation. IXL Learning introduced Quia Web in 1998, the first online collaboration community and resource creation tool for teachers. In 2007, the company launched IXL, featuring a comprehensive standards-aligned curriculum, the first and only real-time diagnostic, and analytics that put authentic, data-driven instruction within reach for every teacher. **Figure 1** highlights IXL's major development milestones.

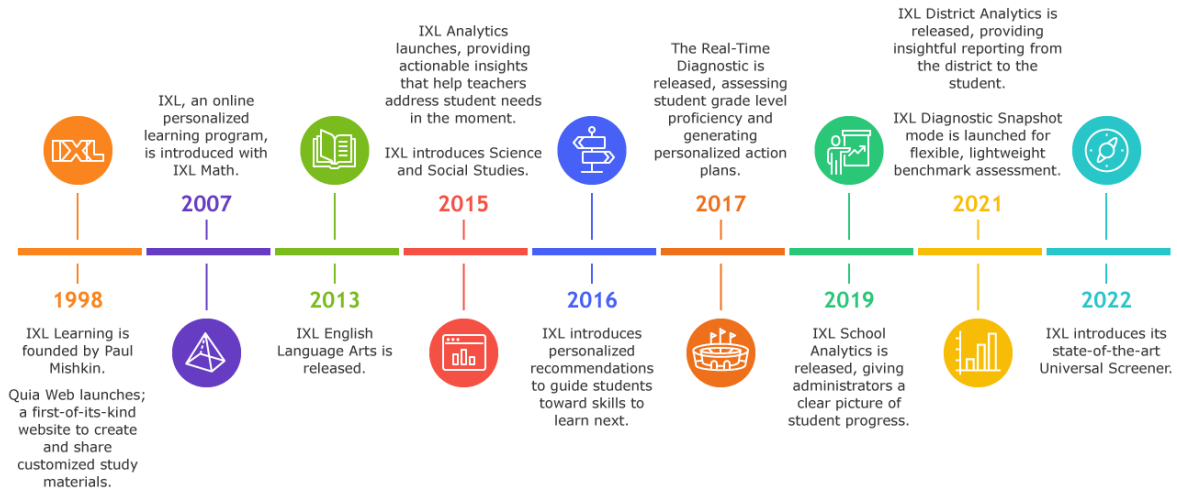
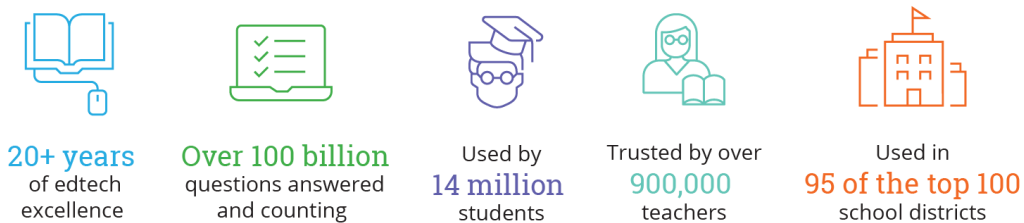


Figure 1 - IXL has an over 20-year track record of educational technology innovation

Today, IXL is used by 14 million students and 900,000 teachers in over 190 countries. Implemented in all 50 states and 95 of the top 100 school districts, one in five students in the U.S. is learning on IXL. **IXL consistently maintains a perfect satisfaction rate:** out of the 100 largest districts that were up for renewal in both 2021-2022 and 2020-2021, all 100 chose to renew IXL. The company is in strong financial standing and invests heavily in product development to ensure the most effective learning platform to help every student reach their potential. IXL Learning's family of products continues to grow and includes ABCya, Education.com, Vocabulary.com, Wyzant, Rosetta Stone, Curiosity Media, and Emmersion.



Exceptional Organizational Qualifications. IXL employs over 1,000 employees across offices in California, North Carolina, Utah, Illinois, Virginia, Colorado, and Rhode Island. IXL also has offices in Canada, Germany, and China. IXL's curriculum and product development teams are composed of educators, PhDs, and technologists with expertise in mathematics, linguistics, speech, science, and related disciplines. IXL's Professional Learning Group consists of former educators who combine diverse education experience with IXL implementation expertise to deliver relevant professional development training for teachers and administrators. IXL staff—from engineers to user interface designers—are dedicated to the shared mission of creating a high-quality personalized learning platform to meet the needs of every student.

Attachment B
Fee Schedule

Receipt of Resources	Timeline
Receipt of Digital Resources	September 1, 2023
Completion of Initial Training	October 9, 2023

To Be Provided at No Cost to APS

Product	Timeline
1. APS to record all professional learning virtual training sessions to be used for onboarding teachers throughout the school year as an asynchronous option, and provide the recording to Carl Seward, Supervisor of Secondary Mathematics within three business days after each training session.	Contract Term
2. Professional Development Plan (Only) for year 1, year 2, and year 3 of implementation to include six (6) six-hour days of on-site PD training days of on- site PD training, and four (4), 6-hour virtual training sessions.	Contract Term
3. Sponsor a celebration, unboxing/ initial training event, for beginning of the year for educators. A total value up to \$500.00	Tuesday August 23, 2023, Monday Oct 9, 2023

Attachment B
Payment Plan

Deliverable	Timeline	Cost
IXL Site License Grades 9-12 (225) - IXL Live 3 Hours Professional Learning	Contract Term (August 30, 2023 - November 1, 2026)	\$11,600.00
IXL Site License Grades 6-8 (6,000), Professional Development	Contract Term (August 30, 2023 - November 1, 2026)	\$206,325.00
	Total Cost	\$217,925.00
	Payment Term	Payment Amount
Payment 1 - Upon Receipt of Resources	Payment Year 1 - November 30, 2023	\$90,725.00
Payment 2 - Upon Receipt of Resources	Payment Year 2 - November 30, 2024	\$63,600.00
Payment 3 - Upon Receipt of Resources	Payment Year 3 - November 30, 2025	\$63,600.00
	Total Payment	\$217,925.00

Attachment C
Contractor Certification Regarding Criminal Convictions



VI. Appendix A

Contractor Certification Regarding Criminal Convictions

The completed form from the Contractor is a condition precedent to the award of the Contract.

As the official authorized to enter into this Contract on behalf of my organization, I certify that the Contractor, its employees, its sub-contractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. A sexually violent offense as defined in Va. Code Ann. § 9.1-902;
3. Any of the offense listed below occurring on or after July 1, 2006 in which the offender was more than three years older than the victim, when the offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan to commit, (i) abduction or kidnaping in violation of Va. Code Ann. § 18.2-47 or § 18.2-48, (ii) burglary in violation of Va. Code Ann. § 18.2-89, (iii) entering a dwelling house with intent to commit crimes in violation of Va. Code Ann. § 18.2-90 or Va. Code Ann. § 18.2-91, or (iv) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2., or (v) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof:
 - a. Rape of a child under 13 in violation of Va. Code Ann. § 18.2-61;
 - b. Forcible sodomy with a child under 13 in violation of Va. Code Ann. § 18.2-67.1; or
 - c. Object sexual penetration with a child under 13 in violation of Va. Code Ann. § 18.2-67.2; or
4. A conviction for a crime of moral turpitude.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

IXL Learning, Inc.
Name of Offeror

777 Mariners Island Blvd., Suite 600

San Mateo, CA 94404
Address of Offeror

(650) 242-3101
Telephone


Signature

Joseph Zhou, Vice President of Finance
Name and Title (please type or print)

January 19, 2023
Date

Attachment D
Non Disclosure and Data Security Agreement

VIII. Appendix C

Non-Disclosure and Data Security Agreement

The undersigned, an authorized agent of the Contractor and on behalf of IXL Learning, Inc. (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter "Information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the Information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as Information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the "Work" or "APS Contract" as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as "Information" or "APS Information").

In addition to the Data Security obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to APS Information for any purpose or by anyone unless expressly authorized. This includes but is not limited to Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "Information" or "APS Information").

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of Information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Work. Contractor acknowledges that any unauthorized use, dissemination or disclosure of Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Work. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of Information and the integrity of APS networked resources.

Contractor agrees to take strict security measures to ensure that Information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which Information is stored, even temporarily, will have strict security and access control. Any Information that is accessible will not leave the Contractor's work site or the APS' physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No Information may be downloaded expect as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of Information, security breach, hacking or other breach of this

Non-Disclosure and Data Security Agreement, the APS Contract, APS policy, Contractor's security policies, or any other breach of Work protocols. The Contractor will fully cooperate with the APS to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this Non-Disclosure and Data Security Agreement also extend to its employees, agents or subcontractors who are given access to APS Information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Non-Disclosure and Data Security Agreement and related data security provisions in the APS Contract.

It is the intent of this Non-Disclosure and Data Security Agreement to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of APS Information and APS networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this Non-Disclosure and Data Security Agreement conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Work, Contractor agrees to return all APS Information to the APS Project Officer. These obligations remain in full force and effect throughout the Work and shall survive any termination of the APS Contract.

Authorized Signature:



Printed Name and Title: Joseph Zhou, Vice President of Finance

Date: January 19, 2023

Attachment E
Student Data Usage and Privacy Agreement

This Student Data Usage and Privacy Agreement ("SDUPA") dated August 30, 2023, is between **Arlington Public Schools**, located at 2110 Washington Boulevard, Arlington, VA 22204 ("APS" or "Customer") and **IXL Learning, Inc.** located at 777 Mariners Island Blvd Suite 600 San Mateo, CA 94404 ("Provider") hereinafter individually a "Party" and collectively "the Parties", APS and Provider mutually agree to the terms of this SDUPA whereby APS will provide the following Data to Provider for the Approved Purposes only.

The Parties hereby agree as follows:

- 1.0 Definitions
 - 1.1 "Agreement" or "Agreements" shall mean any contract or contracts between APS and the Provider for the provision of any Authorized Services.
 - 1.2 "Approved Purposes" shall mean the use of Data by the Provider for the purposes of providing services authorized by APS in Agreements entered into between APS and the Provider ("Authorized Services") during the term of the SDUPA., and for no other purpose.
 - 1.3 "Data" shall include all Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. Data include, but are not limited to, student data, metadata, forms, logs, cookies, tracking pixels, and user content.
 - 1.4 "Subcontractors" shall include Provider subcontractors, subcontractors of Providers subcontractors, their subcontractors, and all successor entities.
- 2 Security Controls
 - 2.1 Provider will store and process Data in accordance with commercially reasonable practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use.
 - 2.2 Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
 - 2.3 Provider will also have a written incident response plan, to include immediate (within one (1) business day) notification of APS in the event of a security or privacy incident involving Data. Provider agrees to share its incident response plan upon request.
- 3 Access and Control
 - 3.1 Any Data held by Provider will be made available to APS upon request by APS.
 - 3.2 All Data must remain under the direct control of APS to the extent required by FERPA. Where Data is in possession of Provider, APS may direct Provider to take certain actions with regards to the Data, in conformity with the SDUPA and applicable law.
 - 3.3 Parents and eligible students must be able to access the Data upon request. This request shall occur through APS to ensure only authorized individuals have access to the Data.
 - 3.4 Provider shall use Data solely as necessary to perform Authorized Services. Provider may not access, collect, store, process, or use Data for any reason other than as necessary to provide the Authorized Services.
- 4 Marketing and Advertising
 - 4.1 Provider may not use any Data to advertise or market to students or their parents.
 - 4.2 Provider may not use Data to target individual students with directed advertisements, and may never directly collect personal information from students under the age of 13.

5 Collection and use of Data

5.1 Solely for purposes of this SDUPA with respect to Data, Provider is deemed a 'School Official' within the meaning of that term as defined in 20 USC §1232g et seq., with a legitimate educational interest to the Data performing services and providing functions which would otherwise be performed by APS staff, for the sole purpose of providing Authorized Services.

5.1.1 No relationship of employer and employee is created by this SDUPA or any Agreement. Provider its sub- contractors, and its employees shall not be employees of APS and shall not have any claim under this SDUPA or any Agreement or otherwise against APS for vacation pay, sick leave, retirement benefits, social security contribution, worker's compensation, disability or unemployment insurance benefits or any other employee benefit of any kind. Provider shall not be the agent of APS, nor shall Provider make any representation to the contrary to any third parties.

5.2 Provider may not sell Data or disclose Data to third parties except under provision 5.4.

5.3 Provider will collect and use Data only for the purpose of fulfilling its duties and providing Authorized Services under any Agreement and for improving Authorized Services under such Agreement.

5.4 APS understands that Provider may rely on one or more Subcontractors to perform Authorized Services under an Agreement. Provider shall share the names of these Subcontractors, including sub-subcontractors, with APS upon request. If Provider intends to provide any Data which was received from, or created for APS, to a Subcontractor, then Provider shall require such Subcontractor and sub-subcontractor to countersign this SDUPA. APS reserves the right to reject any Subcontractor if, in its sole discretion, APS determines that such subcontractor or sub-subcontractor is unsuitable for performance of the SDUPA. Provider acknowledges and agrees that the Provider's obligations under this SDUPA shall not be assigned to any other person or entity without the prior written consent of APS, which APS shall be under no obligation to grant. Provider shall include in all subcontracts, and require that its subcontractors include in all sub-subcontracts, acknowledgement and agreement that the subcontractor and sub-subcontractor are bound by the terms of this SDUPA, and if so requested by APS, will execute a separate SDUPA as a condition of acceptance by APS as a subcontractor or sub-subcontractor.

6 Data Transfer or Destruction

6.1 Provider will ensure that all Data in its possession and in the possession of any Subcontractors, or agents to which the Provider may have transferred Data, are destroyed or transferred to APS under the direction of APS when the Data are no longer needed to provide Authorized Services, at the request of APS within one (1) month, or as agreed upon between the Parties. Where there is a conflict between applicable law and this SDUPA, the applicable law will prevail.

7 Rights and License in and to use Data

7.1 Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of APS and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations.

7.2 This SDUPA shall not be construed to give the Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in this SDUPA to provide Approves Services. This includes the right to sell or trade Data.

8 Data De-Identification

8.1 Provider may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID.

8.2 Provider agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any third party unless that third party agrees not to attempt re-identification.

8.3 De-identified data may be used to improve the Provider's products or services, but may not be provided to third parties or sold.

9 Data Mining

9.1 Provider is prohibited from mining Data for any purposes except as expressly authorized by APS in any Agreement or in this SDUPA. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

10 Modification of Terms of Service

10.1 During the term of the SDUPA, Provider will not materially change its methods for the collection, use, and sharing of Data, including its storage and destruction protocols, without advance notice to and consent from APS.

11 Precedence Over Agreements

11.1 Unless this SDUPA is specifically amended, in the event of a discrepancy between this SDUPA language and the terms and conditions of any Agreements between APS and the Provider relating to Data, the SDUPA language shall take precedence.

ACCEPTED AND AGREED:

IXL Learning, Inc.

By: *Paul Mishkin*

Printed Name: Paul Mishkin

Title: Chief Executive Officer

Date: 10/27/2023

Arlington Public Schools:

By: *David J. Webb*

Printed Name: David Webb

Title: Director/ Procurement Agent

Date: October 30, 2023

The undersigned, being a sub-subcontractor to an Agreement between Provider and APS to provide services to APS under such Agreement, hereby confirms and agrees to be bound by the foregoing Student Data Usage and Privacy Agreement ("SDUPA") and shall owe a contractual duty to APS to perform those duties and explicit terms set forth in the SDUPA.

SUBCONTRACTOR:

By: _____

Name: _____

Title: _____

Attachment F
Contract Terms and Conditions

1. **Standard of Care**
In the performance or furnishing of services hereunder, the Contractor and all its agents, shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of the Work.
2. **Responsibility of the Contractor**
The Contractor shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies that significantly affect the production environment, as determined by the Project Officer, which are discovered within a twelve-month period of final completion of Work.
3. **Responsibility for Claims and Liabilities**
APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.
4. **Payment**
Contractor will be paid upon acceptance of the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract. APS will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the APS Project Officer. The number of the issued APS Purchase Order shall appear on all invoices.
5. **Project Officer**
The performance of the Contractor is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington APS department requesting the Work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work under the Contract Documents.
6. **Adjustments for Change in Scope**
APS may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the Work or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by APS and the Contractor. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The Contractor will not be compensated for performing any work unless a Proposal complying with this subSection has been submitted in the time specified above and a written amendment has been signed by APS and the Contractor and an APS Purchase Order is issued covering the cost of the services to be provided under the amendment.
7. **Additional Services**
The Contractor shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by APS and the Contractor and an APS purchase order is issued covering the expected cost of such services.

APS may determine the need for additional work by the Contractor. Upon a request from APS, the Contractor shall prepare a cost Proposal for any such work. No Additional Services shall be performed unless a written amendment to this Contract has been executed by both parties.

8. Reimbursable Expenses

All expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

9. Reimbursable Travel-Related Expenses

All travel-related expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in firm fixed price:

1. Alcoholic beverages
2. Personal phone calls
3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
6. Auto repairs, maintenance and insurance costs for personal vehicles
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.

10. Payment of Subcontractors

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from APS attributable to the work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from APS for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

11. Non-Appropriation

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by Arlington County School Board (School Board). In the event of non-appropriation of funds by the School Board for the goods or services provided under this Contract, or substitutes for such goods or services which are as advanced or more advanced in their technology, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination specified in APS's written notice.

12. APS Purchase Order Requirement

APS purchases are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Procurement Agent. Contractors providing goods or services without a signed APS Purchase Order do so at their own risk and expense.

13. Replacement or Augmentation of Key Personnel and Subcontractors

The key personnel and subcontractors submitted by the Contractor in its Proposal and thereafter accepted by APS are considered essential to the Contractor's qualifications. The Contractor may not replace, substitute or augment any key personnel or subcontractor without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the APS Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS.

Additionally, the Contractor shall not remove or replace the approved Project Manager without written approval of APS. In cases of the approved Project Manager's prolonged illness or other extended leave of absence, Contractor shall provide an interim Project Manager whose continued work on the Work shall be subject to approval by APS.

In the event of the Project Manager's resignation or termination from the Contractor's employment, the Contractor shall replace the Project Manager with an individual with similar qualifications and experience and only with APS' prior written approval.

14. Project Staff

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by the Contractor. If APS reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

15. Supervision by Contractor

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract and shall only employ on the Work persons reasonably proficient in the work assigned.

16. Employment Discrimination by Contractor Prohibited

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
 - C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
 - E. The Contractor will include the provisions of the foregoing subsections in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.
21. Employment of Unauthorized Aliens Prohibited

In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

22. Drug-Free Workplace to be Maintained by Contractor

During the performance of the Work pursuant to this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor by APS in accordance with the Procurement Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. Termination for Cause, Including Breach and Default; Cure

The Contract shall remain in force for the Initial Contract Term or any Renewal Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

24. Termination for the Convenience of APS

The performance of work under this Contract may be terminated by the Procurement Agent in whole or in part whenever the Procurement Agent shall determine that such termination is in APS' best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) calendar days before the date of termination, specifying the extent to which performance of the Work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by APS prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to APS; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

25. Indemnification (Note: Virginia does not permit the indemnification of others; cross indemnity provisions are not acceptable). The Contractor covenants for itself, its employees, and subcontractor to save, defend, hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "APS" for purposes of this section) from and against any and all claims made by third parties or by APS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions or errors in performance or nonperformance of its work called for by the Contract Documents, whether such act or omission or error is attributable to Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by them, called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this section is brought against APS, then upon written notice from APS to the Contractor, Contractor shall at Contractor's expense, resist or defend such action or proceeding by counsel approved by APS in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same.

If, after Notice by APS, the Contractor fails or refuses to save, defend, hold harmless and/or indemnify APS, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

26. Intellectual Property Indemnification

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

27. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as APS may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to APS by this subSection are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this subSection. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" subSection.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this subSection as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

28. Ownership and Return of Records

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose APS' data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

29. Confidential Information

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person's, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

All student data is considered to be confidential under any resulting Contract as well as under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records, and will only be released in accordance with the applicable laws and regulations. Student data shall include all metadata, forms, logs, cookies, tracking pixels, user content, and Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. All student data received by the Contractor shall be maintained by the Contractor in a secure location, in accordance with the Student Data Usage and Privacy Agreement.

The Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of student data (whether intentionally or by inadvertence, negligence or omission verbally electronically, through paper transmission or otherwise), for any purpose other than that directly associated with its officially assigned duties pursuant to any resulting Contract. Contractor is aware that unauthorized use or disclosure of student data is prohibited and, in addition, may also constitute a violation of Virginia law (e. g. the Government Data Collection and Dissemination Practice Act, formerly called the Privacy Protection Act, VA Code §2.2-3800 et seq., and the Secrecy of Information Act, VA Code §58.1-3, which may be punishable by a jail sentence of up to six (6) months and/or a fine of up to \$1,000,000.).

30. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C. F. R. §164.502(e) and §164.504(e), the Contractor shall be designated a Business Associate pursuant and will be required to execute an APS Business Associate Agreement. If Contractor engages a subcontractor or subcontractors in the performance

of the Scope of Work under any resulting Contract, the Contractor shall enter into an agreement with each of its subcontractors pursuant to 45 C. F. R. §164.3082(b) and the Health Information Technology for Economic and Clinic Health (HITECH) Act §13401 that is appropriate and sufficient to require each subcontractor to protect the Protected Health Information (PHI) to the same extent required of Contractor under APS's Business Associate Agreement and in a form approved by APS. HITECH defines PHI as individually identifiable and maintained by a covered health care provider, health plan, or health care clearinghouse. See 45 C.F.R 160.103 and 164.501. The Contractor shall ensure that its subcontractors notify the Contractor, immediately, of any breaches in security regarding the PHI.

The Contractor takes full responsibility for any failure to execute the appropriate agreements with its subcontractors to comply with the existing and or future regulations of HIPAA and/or HITECH, and shall indemnify APS in accordance with the Indemnification clause in this section.

31. Data Security

The Contractor agrees that it shall hold all APS data obtained or accessed as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If individual employees or subcontractors of the Contractor are performing work under this Contract on APS-owned property, then such individual employees or subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to APS data.

The Contractor shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) APS' Non-Disclosure and Data Security Agreement (NDA). The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an Attachment D) prior to performing any work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (b) Use of Data. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this Data Security and Protection provision or any NDA.
- (c) Data Protection. The Contractor agrees that it will protect APS Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan/s.

The Contractor shall provide, if requested by APS, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.

- (d) Data Sharing. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclose, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (e) Security Requirements. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.
- (f) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Contract and shall certify completion of this task, in writing, to APS Project Officer.
- (g) Notification of Security Incidents. The Contractor agrees to notify the APS Chief Information Officer and APS Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (h) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

32. Ethics in Public Contracting

This Contract incorporates by reference Article 9 of the Procurement Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

33. APS Employees

No employee of APS Schools, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise there from which is not available to the general public.

34. Force Majeure

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner.

No such extension of time shall be deemed a waiver by the Owner of its right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

35. Authority to Transact Business

The Contractor shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

36. Relation to APS

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. APS will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, APS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

37. Antitrust

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by APS under this Contract.

38. Report Standards

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All submittals must be in the required tabular format in a binder.
- Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

39. Audit

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Renewal Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the Contractor shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

40. Amendments

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and APS

41. Arlington Public Schools Procurement Resolution and Policies

Notwithstanding any provision to the contrary herein, no provision of the Procurement Resolution or any applicable APS policy is waived in whole or in part.

42. Dispute Resolution

All disputes arising under this Contract, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the Work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Procurement Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Procurement Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Procurement Resolution, incorporated herein by reference. A copy of the Procurement Resolution is available upon request from the Office of the Procurement Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

43. Applicable Law, Forum, Venue and Jurisdiction

This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

44. Arbitration

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

45. Nonexclusivity of Remedies

All remedies available to APS under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to APS at law or in equity.

46. No Waiver

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

47. Severability

The sections, subsections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and sections of this Contract.

48. No Waiver of Sovereign Immunity

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

49. Survival of Terms

In addition to any numbered section in this Contract which specifically state that the term, paragraph or subsection survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: Indemnification; Relation to APS; Ownership and Return of Records; Audit; Copyright; Intellectual Property Indemnification; Confidential Information, and Data Security and Protection.

50. Headings

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this contract or a limitation on the scope of the particular section to which the heading refers.

51. Ambiguities

Each party and its counsel have participated fully in the review and revision of this Contract . Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

52. Non-Discrimination Notice

APS does not discriminate against faith-based organizations.

53. Insurance Requirements

A. Overview

During the term of this Contract, the Contractor and all of their Subcontractors shall procure and maintain the **types of insurance that are referenced in section D below**. All insurance policies shall be with insurance companies that meet the following criteria:

1. Are authorized to do business under the laws of the Commonwealth of Virginia and acceptable to the APS, in its sole discretion.
2. Are rated with an AM Best rating of A- or better. APS reserves the right to require the Contractor and/or its Subcontractors to change their insurance to an insurance company that has the minimum required AM Best rating. This right can be exercised at any time the insurance requirements set forth in the Contract Documents remain applicable. If the AM Best rating of the insurance company changes to a rating under A- during the Contract Term, the Contractor and/or its Subcontractors will notify APS in writing immediately upon discovery and change the insurance immediately to an insurance company that meets or exceeds the AM Best rating of A-.
3. If APS suffers damages under the Contract and makes a claim on the named insurance company by APS, and the claim is not paid in full by the insurance company, Contractor acknowledges that it shall remain wholly liable for the full amount of the claim regardless of the solvency of the insurance company or the insurance company's willingness to pay the claim in full.
4. The Contractor and/or its Subcontractors must disclose in the Certificate of Insurance the amount of any deductible or self-insurance component applicable to all required insurance policies herein, if any. APS has the right to request additional information to determine if the Contractor and/or its Subcontractors have the financial capacity to meet their obligations under a deductible or self – insurance program. If, in its discretion, APS is not satisfied as to the Contractor and/or its Subcontractors financial capacity to meet its obligations under a proposed deductible or self – insurance program, the Contractor and/or its Subcontractors shall re-submit revised acceptable insurance coverage at the sole discretion of APS and with no obligation to do so agree to alternative approaches proposed by the Contractor and/or its Subcontractors to ensure protection for APS.

B. Certificates of Insurance & Additional Insured Status:

1. Contractor

The Contractor is required to provide a Certificate of Insurance that names Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds by endorsement for all insurance policies except Workers Compensation, Professional Liability, and Cyber Liability coverage.

2. Subcontractors

- All Subcontractors will provide the Contractor with Certificates of Insurance for the policies that are required under this contract. All Certificates of Insurance should by endorsement name Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds for all contracts of insurance except Workers Compensation & Professional Liability.
- All Subcontractors shall provide the Contractor with a certificate of insurance that will serve as proof of insurance for their Cyber Liability coverage, but APS will not need to be added as an additional insured.
- The Contractor will maintain all certificates of insurance for their subcontractors.
- The Contractor will provide APS with its Subcontractors certificates of insurance at any time upon request.

C. Termination & Or Augmentation of Insurance Policies:

1. All required insurance policies must be endorsed through a Certificate of Insurance to provide that the insurance company shall give **forty-five (45) days written notice** to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing Work, the Contractor shall provide APS with a Certificate of Insurance referencing each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment. The Contractor and or their Subcontractors terminating or augmenting any insurance policy without giving APS forty-five (45) days' notice will be in direct violation of the terms and conditions of the Contract.
2. If insurance coverage is allowed to lapse and a loss occurs, the Contractors and or their Subcontractors will still be required to indemnify and hold APS harmless for all losses sustained. Regardless of whether insurance is present or not.

D. Insurance Required by The Contract:

Casualty Insurance:

1. Commercial General Liability occurrence-based insurance:

Commercial General Liability occurrence-based insurance shall be in place until APS confirms the Contract has expired. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. For work that specifically deals with purchase, construction and or maintenance of physical property the insurance coverage for contractors and subcontractors shall also include coverage for explosions, collapse, underground utilities and completed products and operations. Coverage

afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board including its elected and appointed officials, agents, and employees.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial General Liability	\$2,000,000	\$4,000,000

2. Subcontractor’s Commercial General Liability Insurance:

The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor’s Commercial General Liability Insurance in amounts satisfactory to the contract.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Subcontractors Commercial General Liability	\$2,000,000	\$4,000,000

3. Worker's Compensation and Employer's Liability Insurance:

Worker’s Compensation and Employer’s Liability Insurance is mandatory for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all the Subcontractor’s employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Worker’s Compensation	Statutory Limit	Statutory Limit
Employer’s Liability	\$100,000	\$100,000

4. Commercial Automobile Liability Insurance:

Commercial Automobile Liability insurance, including coverage for owned, non-owned and hired vehicles shall be in place for the Contractor and all of its Subcontractors.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial Automobile Liability	\$1,000,000	\$2,000,000

5. Cyber Liability Insurance:

A standalone Cyber Liability insurance shall be in place for Contractor and all of its subcontractors. Coverage to include: Economic Loss arising out of Contractor’s capacity for which it is being hired, and Coverage resulting from the ability of a third-party to gain access to APS’ computer system, Contractor’s failure to prevent unauthorized access (e.g., breach) to or use of an Contractor’s computer system, and unauthorized access (e.g., breach) or use of confidential information (e.g., Personally Identifiable Information (PII) and Protected Health Information (PHI)). Coverage shall include but not be limited to:

1. Data Breach & Incident Response
2. Network Security, Privacy and Data Breach Liability

3. Regulatory Liability
4. PCI Fines & Assessments
5. Data Restoration
6. Cyber Extortion Including Ransomware
7. Media Liability
8. Social Engineering & Fraud Event
9. Forensics

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Cyber Liability	\$3,000,000	\$5,000,000

E. Receipt of Certificates of Insurance:

Proof of satisfaction, of insurance for each type of coverage listed herein shall be provided to APS **within ten (10) days** of the Contractor's receipt of the Notice to Proceed and no work, shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on its subcontract until all insurance required of the Subcontractor has been obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein.

F. Use of Excess / Umbrella Liability Insurance:

The use of Excess / Umbrella Liability insurance is permitted. If Excess / Umbrella insurance is used the policy must be endorsed to show that the lines that the policy is bolstering are covered under the policy. All Excess / Umbrella Liability insurance coverage is subject to review by APS' Risk Manager and its use can be denied based on that review.

G. Consideration of Claims Made Insurance Coverage:

APS will consider claims made insurance coverage on a case-by-case basis **APS reserves the right to accept or deny the use of Claims Made Insurance coverage at any time.**

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Consultant must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two (2) years after final payment for the Contract for General Liability policies five (5) years for Professional Liability & Cyber policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Consultant's work under this Contract.

or

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

If claims made insurance is utilized by the Contractor and or their Subcontractors and a claim occurs that relates back to the vendor's services. The Contractor and or their Subcontractors will indemnify and hold APS harmless of all losses regardless of whether they have insurance coverage in place or not.

H. Contract Identification:

All certificates of insurance shall state the Contract number and title.

54. Accessibility of Web Site

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>.

55. Arlington County Business License

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

56. Failure to Deliver

In case of failure to deliver goods or services in accordance with the contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

57. Subcontracts

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from doing federal, state or local government work for any reason.

The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the Work of subcontractors.

Nothing contained in this contract shall create any contractual relationship between any subcontractor and APS.

58. Non-Endorsement Clause for Contracts and Agreements

APS may be identified as a "Participant" in the Work with the following statement added: "This shall not constitute an endorsement of any products or services". For further information, please contact the APS Department of Schools and Community Relations.

59. Advertising and Use of Proprietary Marks or Logos

Contractor shall not use the name of APS or any authorized user or refer to APS or any authorized user, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS or such authorized user. In no event may Contractor use a proprietary mark of APS or an authorized user without receiving the prior written consent of APS or the authorized user.

60. Extension of Contract Term

The Procurement Office, at its sole and absolute discretion, may extend the Contract Term or final Renewal Contract Term of the resultant Contract for a period of not more than six (6) months, unless specifically stated otherwise in the solicitation.

61. Student Data Usage and Privacy Agreement

During the term of the Contract Term, and any Renewal Contract Term(s), the Contractor will have access to student data. As a condition of awarding a Contract for the provision of the Work that requires the Contractor to

have access to the student data the Contractor is required to sign the Student Data Usage and Privacy Agreement (See Attachment E).

63. Contractor Certification Regarding Criminal Convictions

All Contracts with APS, where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the Contractor to certify that neither it nor any of its employees nor any of its Subcontractors' nor any of its Subcontractors' employees, who will have direct contact with students, have been:

- (1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,
- (2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:
 - (a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),
 - (b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,
 - (c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or
 - (d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

This requirement is applicable without exception for a person convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902, but for all other offenses set forth above this requirement does not apply unless the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of:

- (a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,
- (b) abduction with intent to extort money or for immoral purpose in violation of Va. Code Ann. § 18.2-48,
- (c) burglary in violation of Va. Code Ann. § 18.2-89,
- (d) entering a dwelling house with intent to commit murder, rape, robbery or arson in violation of Va. Code Ann. § 18.2-90,
- (e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or
- (f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

The Contractor certification covers its employees, its Subcontractors and the employees thereof. (See Attachment C).

The Contractor certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's certification

64. Cooperative Contract for Use by Other Public Bodies

This Contract has been awarded by APS not only for its benefit but for the benefit of any other public body eligible to participate in use of the services herein solicited by means of cooperative procurement as provided by, and to the extent permitted by, §2.2-4304 of the Virginia Public Procurement Act.

65. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct With Minor

As a condition of awarding a Contract, or Contract Renewal, the Contractor acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the Contractor knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

Attachment H
 Publisher Certification and Agreement

Publisher's Certification

Only one copy is required per Proposal submission provided all Resources submitted are included below.

Print and complete additional pages if more space is necessary.

January 18, 2023
 (Date)

IXL Learning, Inc.

(Publishing Company)

Name of Primary Contact:

David Lee

Phone Number, including area code:

(650) 242-3101

E-mail Address:

proposals@ixl.com

The publishing company indicated above submits the following primary materials to APS for consideration in resource approval process.

Line Item #on Pricing Schedule	Title	ISBN	Copyright	Course
1	IXL Math	978-1-947569-40-9	2023	High School General Mathematics
1	IXL Math	978-1-947569-40-9	2023	ELD/SLIFE Math Foundations
1	IXL Math	978-1-947569-40-9	2023	ELD/SLIFE Pre-Algebra



Publisher Certification

The Publisher certifies the following:

1. Each Resource has been thoroughly examined and reviewed by at least three qualified content experts for factual accuracy in the subject matter and the resources are free from any factual or editing errors. The credentials of the author(s) and/or editor(s) and content review experts are provided on the attached forms which must be completed and accompany the submitted proposal.
2. Each Resource has been thoroughly examined and reviewed by qualified editors to identify any typographical errors.
3. Any duplicate version (i.e., print or digital) of the primary material that is available to Virginia school divisions contains at least the same content included in the primary material selected by the publisher for review. Any additional content, above that contained in the primary material reviewed is accurate and free of errors. If the content of the print and digital versions of the same primary material varies, those variations are outlined in an attachment to the certification.
4. The Quality Assurance and Editing Process described below was followed for all primary materials submitted by the publisher for review.

Quality Assurance and Editing Process:

Please describe, ***in three pages or less***, the internal process used to ensure accuracy and lack of bias including:

- the quality assurance and workflow steps used to ensure accuracy of content;
- the quality assurance and workflow steps used to eliminate editing and typographical errors, including errors in grammar, written expression, spelling, formatting, and other substantive elements that may affect student learning;
- the fact-back-up guidelines (i.e., what is an acceptable source for a fact and what is not) used by the authors, editors, and outside content experts;
- the review by outside content experts, other than the authors, to verify accuracy and ensure freedom from bias; and
- the process used to reach consensus on information with divergent interpretations.

[Please see IXL's Quality Assurance and Editing Process in section 2.3.1.](#)

Publisher's Agreement

Only one copy is required per Proposal submission.

The Publisher agrees to the following:

1. ~~After submission of a Resource to APS for consideration in the Resource approval process, the Publisher will promptly inform APS in writing of any changes made in the Resource prior to its approval by the School Board.~~
 2. If any factual or editing errors are identified in a Publisher's Resource following its approval by the School Board, the Publisher will submit a corrective action plan to APS within 30 days of being notified by APS of the errors. Each corrective action plan must be tailored to the materiality of the errors identified and must be implemented in the manner most conducive to and least disruptive of student learning. Corrective action plans may include, but are not limited to: a) corrections upon reprinting of the resource; b) corrective edits to an online resource; c) electronic errata sheets posted on the Publisher's and APS's Web sites; d) print errata sheets provided to schools for insertion into Resources; e) replacement books; and f) return of the Resource and refund of any payment made for the Resource. Upon approval of the corrective action plan, the Publisher will implement the plan at the Publisher's expense.
 3. If, upon being notified by APS of factual or editing errors in an approved resource, the Publisher disputes that the Resource contains such errors, the Publisher must submit a written explanation of its position to APS within 30 days of receiving notice from APS of the error. Upon request, the Publisher may meet with APS. The School Board reserves to itself the right to make a final determination of whether the Resource contains a factual or editing error. If the School Board determines that the resource contains such an error, the Publisher will submit a corrective action plan to APS within 15 days after receiving notice of the School Board's determination.
 4. If numerous and/or significant errors are identified in a resource on the School Board's approved list, the School Board may, in its sole discretion, withdraw the Resource from the approved list. The School Board must notify the Publisher in writing before it removes its Resource from the approved list. The Publisher will have 30 days to respond in writing and the right to meet with APS before removal. A "significant error" is a factual or editing error that the School Board or Department of Education determines within the context of the intended use of the resource will substantially interfere with student learning. A change in knowledge that occurs subsequent to publication shall not constitute a significant error.
 5. If the Publisher makes updates/revisions to Resources after they have been approved by the School Board, the Publisher will ensure that the updated/revised material has been vetted through the same quality assurance process for accuracy and editing outlined in the signed certification. ~~The Publisher will notify APS and any school division that has purchased this material of the updates/revisions that have been made.~~
- Please check here if this submission includes an attachment that outlines if and how duplicate versions (print or digital) of primary materials vary. (Item #3 in the certification)



(Signature of President of the Company or Designee)

January 19, 2023

(Date)

Joseph Zhou, Vice President of Finance

(Name and Title of Person Signing)

Attachment I
IXL Terms of Service

Thank you for your interest in using the online services operated by IXL Learning, Inc. (hereafter called "IXL"). These Terms of Service govern your use of online and/or mobile services, websites, and software provided on or in connection with www.ixl.com (collectively, the "Service"), which are offered through (i) www.ixl.com, (ii) mobile applications associated with www.ixl.com, and (iii) any other IXL website, app or online service which links to these Terms of Service.

By accessing or using the Service, or by clicking a button or checking a box marked "I Agree" (or something similar), you signify that you have read, understood and agree to be bound by these Terms of Service (the "Agreement"), and to the collection, processing, and sharing of your information as set forth in our [Privacy Policy](#), whether or not you are a registered user of our Service. IXL reserves the right to modify this Agreement so long as it provides notice of these changes to you as described below. This Agreement applies to all visitors, users, and others who access or otherwise use the Service ("you" or "Users"). If you open an IXL account on behalf of a School, company, organization, or other entity, then "you" includes you and that entity.

A note about Student Data: This Service may be purchased by providers of educational services, such as schools, school districts, or teachers (collectively referred to as "Schools") that use our services for educational purposes. When IXL contracts with a School to provide the Service, we may collect or have access to Student Data (defined below), which may be provided by the School or by the student. Such Student Data may, in some cases, contain information (e.g., gender, race, ethnicity) that is considered sensitive under certain applicable United States ("US") state privacy laws. We consider Student Data to be strictly confidential and in general do not use such data for any purpose other than improving and providing our Services to the School or on the school's behalf. It is solely your responsibility to obtain the necessary and proper consent, where required by law, for you to use Student Data and for you to transfer Student Data to IXL for our subsequent use. Our collection, processing and sharing of Student Data is governed by this Agreement and any applicable laws and regulations including, in the U.S., provisions of the Family Educational Rights and Privacy Act ("FERPA"), the Children's Online Privacy Protection Act ("COPPA") and applicable state laws, including without limitation the Illinois Student Online Personal Protection Act ("SOPPA").

1. THE SERVICE

The Service helps its users to learn and practice various subjects including mathematics, language arts, science, and social studies. Unless explicitly stated otherwise, any new or improved features to the Service shall be provided subject to this Agreement. You understand and agree that the Service is provided "as-is" and that IXL assumes no responsibility for any mistakes, errors, or omissions, including any unavailability of the Service, deletion or loss of any data relating to the Service, or failure to obtain the proper consent to collect, use, and share Student Data with IXL for IXL's subsequent use.

IXL grants you a personal, non-transferable and non-exclusive right and license to use the Service. You agree that you will not copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by IXL for use in accessing the Service.

To use the Service, you must obtain access to the Internet, either directly or through devices that access web-based content, and pay any service fees or other costs associated with such access. In addition, you must provide all equipment necessary to make such connection to the Internet, including a computer and modem or other access device.

2. ELIGIBILITY AND AUTHORITY

IXL does not sell the Service to children, but only to adults who can purchase the Service with a credit card or other permitted payment method. If you are under eighteen (18) years of age, you may use the Service only with the involvement and consent of a parent, legal guardian, or at the direction of your School. Your School may impose additional policies regarding the use of the Service, with which you must comply.

If you open an IXL account to provide the Service to students in a School, you represent and warrant that you are an authorized representative of the School with the authority to bind the School to this Agreement, and that you agree to this Agreement on the School's behalf. If you contact IXL to take any action with respect to an account, you represent and warrant that you have all necessary authority to request such action(s) from or on behalf of the account-holder (e.g., a School or Parent).

The U.S. Children's Online Privacy and Protection Act ("COPPA") requires that online service providers obtain verifiable parental consent before collecting personal information from children under 13. If you are a School providing the Service to children under 13, you represent and warrant that you have the authority to provide consent on behalf of parents or have received appropriate consent for IXL to collect and use information from students under 13 before allowing such students to access our Service. Use of the Services is conditioned upon Schools obtaining the proper parental and student consent, where necessary, for Schools to collect Student Data and to subsequently share that data with IXL for IXL's use. IXL assumes no responsibility for failure to obtain proper and necessary consent. Therefore, we recommend that all Schools provide appropriate disclosures to students and parents and obtain appropriate consent regarding their use of service providers such as IXL and that they provide a copy of our Privacy Policy and the IXL Learning Student Data Privacy Pledge to parents.

3. YOUR REGISTRATION OBLIGATIONS

In consideration of your use of the Service, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or IXL has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, IXL has the right to suspend or terminate your account and refuse all current or future use of the Service (or any portion thereof).

4. GENERAL ACCOUNT INFORMATION

IXL sells access to the Service to a subscriber in the form of an account. Each account is provided for a term and price subject to certain renewal, cancellation, and other terms and conditions specific to the account (the "Account Terms"). The Account Terms are identified (in order of precedence) in the then-current quote or sales contract for the account, the selections made and account-specific terms disclosed when signing up for the account (which may be confirmed by e-mail), the description of account terms accessible through the IXL website when signed in to an appropriate user associated with the account and the default Account Terms set forth below. Each account may have Account Terms in addition to or different from those as set forth in this Agreement, but only to the extent set forth in a signed writing by the account subscriber and an officer of IXL.

IXL provides a variety of "account types" which may apply depending on the subscriber and the way an IXL account is created. Each account type has a

default set of Account Terms which apply unless superseded as set forth above. IXL reserves the right to provision accounts that do not belong to any of these default account types and/or to provision accounts with different Account Terms regardless of its account type.

Account Types:

- Family Account — A family account is purchased by or for a Parent. Family accounts are generally only available for purchase through the IXL website or a third-party app store using a credit card. A family account typically includes child profiles that can be used by a Parent's child at the Parent's direction. Family account subscriptions are generally for a term of one month, six months, or one year. The term is disclosed at the time of purchase. If multiple terms are available, the term can be selected at the time of purchase or later changed by contacting help@ixl.com. Family accounts automatically renew. See Section 6 below for more information about automatic renewal and cancellation of automatically renewing accounts.
- Classroom Account — A classroom account is purchased by or on behalf of a school, such as by a teacher. Classroom accounts may generally be purchased either through the IXL website, or by phone or e-mail. A classroom account typically includes a single teacher user and a small number of student users (which may vary depending on the purchase). A classroom account is typically for a term of one year. The term is disclosed at the time of purchase. Classroom accounts do not automatically renew. Action must be taken by the school or its authorized representative (e.g., teacher) to renew and continue using a classroom account past the end of the term. A classroom account is a type of school account. More information relating to school accounts may be found in Section 5 below.
- Site Account — A site account is purchased by or on behalf of a school or school district. Site accounts may be purchased by phone or e-mail. A site account typically includes an unlimited number of teacher users and a set maximum number of student users (which may vary depending on the purchase). A site account may be for a term of one year or longer. The term is disclosed at the time of purchase. Site accounts do not automatically renew. Action must be taken by the school or its authorized representative (e.g., school administrator) to renew and continue using a site account past the end of the term. A site account is a type of school account. More information relating to school accounts may be found in Section 5 below.

Quotes and Proposals: Any quotes or proposals provided by IXL are valid only for a limited time and are effective only with the agreement of the

relevant parties. Quotes and proposals may be withdrawn by IXL at any time in its sole discretion. Quotes and proposals may include information that is proprietary and confidential to IXL and to the maximum extent permitted by law may not be disclosed to anyone other than their intended recipient. By requesting and/or accepting receipt of a quote or proposal from IXL you agree to keep such quotes or proposals confidential, to not disclose such quotes or proposals to any third party, and to immediately return and/or destroy all quote and proposal materials upon receiving a request to do so from IXL. To the extent that public records laws may apply to a quote or proposal provided by IXL, you agree to immediately notify IXL of any public records request that may result in disclosure of an IXL quote or proposal and provide IXL all reasonable opportunities to take steps to prevent such disclosure to the maximum extent permitted by law and will reasonably cooperate with IXL.

Payments: School accounts have the option to make payment by credit card, check, or other methods at IXL's discretion (contact us for details). Payment must be received by IXL no later than 30 days after IXL issues an invoice. If IXL does not receive payment within 30 days, the invoice is past due and IXL reserves the right to suspend access to the affected school account(s) and take collection action. Suspension of an account does not relieve the account-holder of its obligation to pay for the account. IXL reserves the right to charge a late fee in the amount of 1% per month or the maximum permitted by law and its reasonable attorney's fees in securing payment of past due amounts.

Cancellation: Except as set forth below or otherwise agreed by IXL in a signed writing, accounts may not be canceled until the end of the current term of the account. Unless otherwise provided for herein, all cancellations requested before the end of the then-current term will be effective at the end of the current term.

IXL permits early cancellations only in the following circumstances:

- In the event that the Service is permanently discontinued.
- IXL otherwise permits early cancellations only to the extent required by applicable law. In the event of such an early cancellation, the parties agree that the account-holder is responsible for all amounts due and payable before the date of early cancellation without pro-ration or to the greatest extent permitted by law. The parties agree that IXL's efforts in selling, provisioning and providing an account are front-loaded and for that reason, pro-ration of fees in the event of early cancellation is not necessary or appropriate.

End of Subscription: When an account subscription ends (e.g., at the end of the term if the account has not been renewed or has been canceled), the account no longer permits access to the Service. However, IXL may, at its sole discretion, permit continued, limited access for users of the Account for a limited time after the conclusion of the term. The Service includes built-in capabilities to download and export information relating to the account. If an account-holder or any of its users wishes to save or maintain any data, it is the account-holder and its user's sole obligation to download such data before the conclusion of the term. Once the term of an account ends, IXL may delete data relating to an account in accordance with this Agreement and the Privacy Policy. It is the account-holder's sole responsibility to request renewal of accounts that do not automatically renew to maintain continued access to the account and its associated data.

5. SCHOOL ACCOUNTS AND STUDENT DATA

This Section 5 applies to a School's use of the Service.

When IXL is used by a School for an educational purpose, IXL may collect or have access to Student Data that is provided by the School or by a student. "Student Data" is personal information that is directly related to an identifiable student and may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA") as well as "sensitive" Student Data as defined by applicable US state privacy laws.

The School or the student, and not IXL, owns and controls the Student Data. It is the School's responsibility to obtain proper consent to collect and control the Student Data, where necessary. You authorize IXL to access, collect, transmit, modify, display and store Student Data to provide the Service and as described in this Agreement and in our Privacy Policy.

Compliance with Laws. In the U.S., IXL may collect and process Student Data as a School Official with a legitimate educational interest pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). Individually and collectively, we and our School Users agree to uphold our obligations under FERPA, COPPA, the Protection of Pupil Rights Amendment ("PPRA"), applicable State laws relating to student data privacy, and with all other laws and regulations governing the protection of Student Data.

Use of Student Data. By submitting, providing us access to, or causing us to receive Student Data, you agree that IXL may use the Student Data for the purposes of (i) providing the Service, (ii) improving and developing our Service, (iii) enforcing our rights under these Terms, and (iv) as permitted with the School's or the User's consent. IXL is not responsible for obtaining

proper consent to collect and use Student Data, including for IXL's own use of such Student Data.

Use of De-Identified or Anonymized Student Data. You agree that both before and after the term of the Agreement, IXL may collect, analyze, use, and retain data derived from Student Data as well as data about users' access and use of the Service, for the purpose of operating, analyzing, improving or marketing the Service, developing new products or services, conducting research or other purposes, provided that IXL may not share or publicly disclose information that is derived from Student Data. ~~unless such data is de-identified and/or anonymized such that it cannot reasonably identify a specific individual.~~

Use of Personal Information for Marketing. You agree that IXL may provide customized content, advertising, and commercial messaging to school, teacher or district administrative users and other non-student users from time to time, provided that such advertisements shall not be based on Student Data. For emphasis, and without limitation, IXL shall never use Student Data to engage in targeted advertising.

Disclosure of Student Data and Third-Party Service Providers. You acknowledge and agree that IXL may provide access to Student Data to our employees and service providers which have a legitimate need to access such information to provide their services to us. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Student Data will be required to maintain the confidentiality of such data. IXL shall not share Student Data with third parties other than as described in this Agreement and in the IXL Privacy Policy, or without consent of the School or parent.

Student Data Access and Deletion Requests. You may request that we delete Student Data in our possession at any time by providing such a request in writing, and we shall comply with such request within thirty (30) days, except that IXL shall not be required to delete Student Data that has been moved to a personal family account on the Service or as otherwise prohibited by law. A parent or student over the age of 18 seeking to access, modify, correct, or delete personal information in a student account that is connected to a School account will be instructed to contact the School to discuss data deletion or modification. ~~IXL is not required to delete data that has been derived from Student Data if such data is de-identified and/or anonymized such that it cannot reasonably identify a specific individual.~~

Data Security and Breach Notification. We have implemented administrative, physical and technical safeguards designed to secure the personal information in IXL's possession and control from unauthorized

access, disclosure and use. If an unauthorized party gains access to or has been disclosed Student Data (a "Security Event"), that we have collected or received through the Service under this Agreement, we will promptly notify the School. If, due to a Security Event which is caused by the acts or omissions of IXL or its agents, a notification to an individual, organization or government agency is required under applicable privacy laws, the School shall be responsible for the timing, content, and method of any such legally-required notice and compliance with such laws and IXL shall indemnify the School for reasonable costs related to legally-required notifications. With respect to any Security Event which is not caused by the acts or omissions of IXL or its agents, IXL shall reasonably cooperate with School's investigation of the Security Event, as School requests, at School's reasonable expense, but IXL shall not indemnify a School for costs associated with the Security Event. IXL shall be responsible for the timing, content, cost and method of notice and compliance with such laws as they relate to users that are not associated with a School account.

State Specific Terms. The following additional terms may apply depending on the state a School is located:

5.1 Connecticut- Intentionally Deleted

5.2 New York- Intentionally Deleted

6. MEMBERSHIP AND BILLING FOR ACCOUNTS WITH AUTOMATIC RENEWAL

This Section 6 applies to accounts that have been created through the Service using a credit card and automatically renew.

You can find specific details regarding your membership with IXL at any time. Simply sign in to your IXL account, click on the account menu in the upper-right corner, and select Membership details. You may also contact IXL with any questions that you may have by [contacting us](#).

Billing and Automatic Renewals.

MEMBERSHIP SUBSCRIPTION RENEWAL FEES WILL BE AUTOMATICALLY CHARGED TO YOUR CARD ON FILE EACH SUBSCRIPTION PERIOD (MONTHLY OR YEARLY), UNTIL YOU CANCEL.

By starting your IXL membership, you are expressly agreeing that we are authorized to charge you the membership fee associated with the term of your membership (e.g., monthly or yearly) you chose during registration. Thereafter, we will automatically renew your subscription on each (monthly

or yearly) anniversary of your subscription date, and as authorized by you by checking the box demonstrating your consent for automatic monthly/yearly renewals of your subscription during the sign-up process, we will charge your then-current payment method (or to a different payment method if you change your account information) associated with your account with the applicable then-current fee and any sales or similar taxes that may be imposed. Please note that prices and charges are subject to change with notice. As used in this Agreement, "billing" shall indicate either a charge or debit, as applicable, against your Payment Method.

You acknowledge that the amount billed each billing period may vary for reasons that include differing amounts due to changes in your membership plan, and you authorize us to charge your Payment Method for such varying amounts. Payments are nonrefundable and there are no refunds or credits for partially used periods. We may change the fees and charges in effect, or add new fees and charges from time to time, but we will give you advance notice of these changes. If you want to use a different Payment Method or if there is a change in Payment Method, such as your credit card validity or expiration date, you may edit your Payment Method information from your Membership details page. To access your Membership details page, sign in to your IXL account, click on the account menu in the upper-right corner, and select Membership details. If your Payment Method reaches its expiration date and you do not edit your Payment Method information or cancel your account (see, "Cancellation" below), you authorize us to continue billing that Payment Method and you remain responsible for any uncollected amounts.

You must cancel your membership before it renews each billing period to avoid billing of the next membership fee to your Payment Method. The membership fee will be billed at the beginning of the paying portion of your membership and each month or year thereafter unless and until you cancel your membership. Sign in to your IXL account, click on the account menu in the upper-right corner, and select Membership details to see the commencement date for your next renewal period. We automatically bill your Payment Method each month or year on the calendar day corresponding to the commencement of your paying membership. Membership charges are fully earned upon payment.

Note: In the event your monthly membership began on a day not contained in a given month, we bill your Payment Method on the last day of such month. For example, if you became a paying member on January 31, your Payment Method would next be billed on February 28.

Cancellation of Automatic Renewals. You may cancel your IXL membership at any time, and cancellation will be effective immediately. You will continue to have access to the program until the current billing period

ends. We do not provide refunds or credits for any partially used membership periods. To cancel your membership, sign in to your IXL account and click the words "Cancel membership" on your Membership details page. Follow the instructions for cancellation under the heading "Cancel Membership."

Price Changes. We reserve the right to adjust the pricing for our Service, including but not limited to membership subscription plans, in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in this Agreement, any price changes will take effect following posting or other notice to you (e.g., e-mail).

Purchases through Third-Party Stores. If you purchased your IXL membership through a third-party store, such as through your Apple iTunes or Google Play account, portions of this Section may not apply to you. Because such a purchase is between you and the third-party store, and not IXL, you acknowledge and agree that IXL is not responsible for billing for your membership and is not responsible or liable for any claims relating to the billing of your purchase. If you have questions about membership or billing, you should contact the Apple iTunes store directly.

7. ACCOUNT PASSWORD AND SECURITY

You will have a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to (a) immediately notify IXL of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. IXL cannot and will not be liable for any unauthorized access to your account or data that arises from your acts or omissions.

IXL accounts may not be shared by more than one person or organization unless express authorization is given by IXL Learning, Inc.

8. USER CONTENT

You are solely responsible for any content that you create, transmit or display while using the Service.

The Service or IXL may now or in the future allow Users to submit, post, display, provide, or otherwise make available content such as text, images, comments, questions, and other content or information (any such materials

a User submits, posts, displays, provides, or otherwise makes available on the Service is referred to as "**User Content**").

We claim no ownership rights over User Content created by you. The User Content you create remains yours.

By submitting, posting, displaying, providing, or otherwise making available any User Content on or through the Service or to IXL, you expressly grant, and you represent and warrant that you have all rights necessary to grant, to IXL a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, syndicate, publicly perform, publicly display, and make derivative works of all such User Content in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service and IXL's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each User of the Service a non-exclusive license to access your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under this Agreement.

You must have the legal right to the User Content you submit to the Service. You may not upload or post any User Content to the Service that infringes the copyright, trademark or other intellectual property rights of a third party nor may you upload User Content that violates any third party's right of privacy or right of publicity. You may post only User Content that you have permission to post by the owner or by law.

9. COPYRIGHT COMPLAINTS

It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("DMCA").

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify IXL's copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

1. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
2. Identification of the copyrighted work that you claim has been infringed;

3. Identification of the material that is claimed to be infringing and where it is located on the Service;
4. Information reasonably sufficient to permit IXL to contact you, such as your address, telephone number, and, e-mail address;
5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
6. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

DMCA Agent; Legal Department
IXL Learning, Inc.
777 Mariners Island Blvd.
Suite 600
San Mateo, CA 94404
E-mail: legalnotices@ixl.com

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying IXL and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with IXL's rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, IXL has adopted a policy of terminating, in appropriate circumstances, Users who are deemed to be repeat infringers. IXL may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

10. SPECIAL ADMONITIONS FOR INTERNATIONAL USE

Recognizing the global nature of the Internet, you agree to comply with and are solely responsible for ensuring compliance with all local laws, regulations, and rules in the jurisdiction(s) in which you reside. You agree to

comply with all applicable laws regarding the transmission of data exported from the United States or the jurisdiction(s) in which you reside.

11. INDEMNITY- Intentionally Deleted

12. NO RESALE OF SERVICE

You agree not to reproduce, duplicate, copy, sell, resell or otherwise exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service.

13. NOTIFICATION PROCEDURES AND MODIFICATIONS TO AGREEMENT

IXL may provide notifications, whether required or provided by law or otherwise, to you via e-mail notice, written or hard copy notice, or through posting of such notice on our website, as determined by IXL in our sole discretion.

IXL may, in its sole discretion, modify or update this Agreement from time to time, which will be reflected in the `date last modified` set forth below. If we change this Agreement in a material manner, we will update the `Effective Date` at the top of this page and notify you that material changes have been made to this Agreement. Your continued use of the Services following such update constitutes your acceptance of the revised Terms. If you do not agree to any of the terms in this Agreement or to any future terms in a future revision of this Agreement, do not use or access (or continue to access) the Service.

Notwithstanding the foregoing, IXL shall not make any material change to the Terms that relate to the collection or use of Student Data without first giving notice to the school or parent and providing a choice before the Student Data is used in a materially different manner than was disclosed when the information was collected.

In the event that you have entered into a signed, written agreement with IXL in addition to this Agreement, any changes to this Agreement will not be effective as to you until either (a) you affirmatively accept the changes to this Agreement, either electronically or in a signed writing or (b) upon renewal at the end of the current term of your account.

You will not be permitted to continue using the Service and IXL reserves the right to cancel your account without notice if you refuse or otherwise fail to accept changes made by IXL to this Agreement.

Notices that are required or permitted to be sent to IXL must be sent to the following mailing address by certified mail with a copy sent by e-mail.

Legal Department
IXL Learning, Inc.
777 Mariners Island Blvd.
Suite 600
San Mateo, CA 94404
E-mail: legalnotices@ixl.com

14. MODIFICATION OR TERMINATION OF SERVICE

IXL reserves the right at any time and from time to time to modify or temporarily discontinue the Service (or any part thereof) with or without notice. You agree that IXL shall not be liable to you or to any third party for any modification, suspension or temporary discontinuance of the Service. In the event of permanent discontinuance of the Service, IXL's liability is limited to the paid subscription price, pro-rated to the amount of time remaining on the subscription.

You agree that IXL, in its sole discretion, may suspend or terminate your password, account (or any part thereof) or use of the Service, for any reason, including, without limitation, for lack of use or if IXL believes that you have violated or acted inconsistently with the letter or spirit of this Agreement. You agree that any termination of your access to the Service under any provision of this Agreement may be implemented without prior notice, and you acknowledge and agree that IXL may immediately deactivate or delete your account and all data relating to your account and/or bar any further access to the Service. Further, you agree that IXL shall not be liable to you or any third party for any termination of your access to the Service.

15. LINKS

The Service may provide, or third parties may provide, links to other Internet websites or resources. Because IXL has no control over such sites and resources, you acknowledge and agree that IXL is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that IXL shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

16. IXL's PROPRIETARY RIGHTS

You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that information presented to you through the Service is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by IXL or advertisers, you agree not to copy, modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part. Any automated scraping, harvesting, indexing, mining, or any other extraction of any content from the Service is expressly prohibited.

The Service is protected by copyright and other laws in both the United States and elsewhere. Under the terms of this Agreement, it is expressly forbidden to distribute or reproduce the content of the Service or any portion thereof by any means, including but not limited to electronic and print.

IXL reserves the right to cancel your account without refund if it is determined that you have violated this section of the Agreement.

17. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. IXL EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
2. IXL MAKES NO WARRANTY OR CONDITION 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 SOFTWARE WILL BE CORRECTED.
3. 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.

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

18. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL IXL, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS 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 IXL 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 COLLECTION, ACCESS TO, STORAGE OR ALTERATION OF YOUR TRANSMISSIONS OF 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 IXL or its subsidiaries, parent companies, affiliates, licensors, contractors, employees, officers, directors, agents or third-party partners' total liability to you for all damages, losses, and causes of action arising out of or relating to this Agreement or your use of the IXL Service (whether in contract, tort, warranty or otherwise, exceed the amount paid by you, if any, for accessing the IXL Service during the twelve (12) months preceding your claim or one hundred dollars (\$100), whichever is greater.

19. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN CLAIMS OR DAMAGES SUCH AS INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

20. TRADEMARK INFORMATION

IXL and the IXL logo are registered trademarks of IXL Learning, Inc. You agree not to use any IXL trademarks without the express advance written permission of IXL.

21. GOVERNING LAW AND VENUE

~~You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. This Agreement shall be governed by the internal substantive laws of the **Commonwealth of Virginia**, without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.~~

You agree to submit to the personal jurisdiction of the federal and state courts located in **Arlington County, Virginia** for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, ~~as set forth in the Arbitration provision below~~, including any provisional relief required to prevent irreparable harm. You agree that Arlington County, Virginia is the proper forum for ~~any appeals of an arbitration award or for trial court proceedings if the arbitration provision below is found to be unenforceable.~~

22. ARBITRATION- ~~Intentionally Deleted~~

23. CLASS ACTION/JURY TRIAL WAIVER- ~~Intentionally Deleted~~

24. ADDITIONAL TERMS FOR MOBILE APPLICATIONS

Mobile Applications, Generally. We may make available software to access the Service via a mobile device ("Mobile Applications"). To use a Mobile Application, you must have a mobile device that is compatible with at least one of the Mobile Applications. IXL does not warrant that the Mobile Applications will be compatible with your mobile device. You may use mobile data in connection with the Mobile Applications and may incur additional charges from your wireless provider for these services. You agree that you

are solely responsible for any such charges. IXL hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Applications for one IXL User Account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Applications, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Applications to any third party or use the Mobile Applications to provide time sharing or similar services for any third party; (iii) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Applications, features that prevent or restrict use or copying of any content accessible through the Mobile Applications, or features that enforce limitations on use of the Mobile Applications; or (iv) delete the copyright and other proprietary rights notices on the Mobile Applications. You acknowledge that IXL may from time to time issue updates and upgrades, including but not limited to upgraded versions of the Mobile Applications, and may automatically electronically upgrade the version of the Mobile Applications that you are using on your mobile device. By installing the Mobile Applications, you consent to the activation of the Mobile Application by IXL, 777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404, and to all future automatic upgrading and updating on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. You can withdraw your consent at any time by uninstalling the Mobile Applications. To request assistance, please contact IXL support at help@ixl.com. You acknowledge and understand and agree that the Mobile Applications, and the Service (including any updates and upgrades) will (a) cause your device to automatically communicate with our servers to deliver the Service's functionalities (as described where you downloaded the Mobile Applications (such as iTunes and Google stores) (b) affect the app-related preferences or data stored in your device, and (c) collect personal information as set out in our [Privacy Policy](#). Any third-party code that may be incorporated in the Mobile Applications is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Applications or any copy thereof, and IXL or its third-party partners or suppliers retain all right, title, and interest in the Mobile Applications (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. IXL reserves all rights not expressly granted under this Agreement. If the Mobile Applications is being acquired on behalf of the United States Government, then the following provision applies. The Mobile Applications will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use,

reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement. The Mobile Applications originates in the United States, and is subject to United States export laws and regulations. The Mobile Applications may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Applications may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Applications and the Service.

Mobile Applications from Apple App Store. The following applies to any Mobile Applications you acquire from the Apple App Store ("Apple-Sourced Software"): You acknowledge and agree that this Agreement is solely between you and IXL, not Apple, Inc. ("Apple") and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to IXL as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to IXL as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party's intellectual property rights, IXL, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and IXL acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and

conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

Mobile Applications from Google Play Store. The following applies to any Mobile Applications you acquire from the Google Play Store ("Google-Sourced Software"): (i) you acknowledge that the Agreement is between you and IXL only, and not with Google, Inc. ("Google"); (ii) your use of Google-Sourced Software must comply with Google's then-current Google Play Store Terms of Service; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) IXL, and not Google, is solely responsible for its Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or the Agreement; and (vi) you acknowledge and agree that Google is a third-party beneficiary to the Agreement as it relates to IXL's Google-Sourced Software.

25. GENERAL TERMS

This Agreement, together with any amendments and any additional agreements you may enter into with IXL relating to the Service, shall constitute the entire agreement between you and IXL and govern your use of the Service, superseding any prior agreements between you and IXL. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. This Agreement may only be superseded by a signed, notarized writing executed by an officer of IXL. The failure of IXL to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. We might make versions of this Agreement or one or more of our Policies available in languages other than English. If we do, the English version of this Agreement and any such Policies will govern our relationship and the translations are provided for convenience only and will not be interpreted to modify the English version of this Agreement or such Policies.

The section titles in this Agreement are for convenience only and have no legal or contractual effect.

Effective date: August 23, 2023

Attachment I

IXL Privacy Policy

IXL Learning, Inc. (hereafter called "IXL" "us" or "we") knows that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. This Privacy Policy describes our collection and use of personal information collected from you through the online and/or mobile services, websites, and software provided on or in connection with www.ixl.com (collectively, the "Service"), which are offered through (i) www.ixl.com, (ii) mobile applications associated with www.ixl.com, and (iii) any other IXL website, app or online service which links to this Privacy Policy. "You" or "your" means a visitor or a user (whether signed in or not) of our Service. Your use of the Service is conditioned on your acceptance of this Policy.

A note about Student Data: This Service may be purchased by providers of educational services, such as schools, school districts, or teachers (collectively referred to as "Schools") that use our services for educational purposes. When IXL contracts with a School to provide the Service, we may collect or have access to Student Data (defined below), which may be provided by the School or by the student. We consider such Student Data to be strictly confidential and in general do not use such data for any purpose other than improving and providing our Services to the School or on the school's behalf. Our collection, use and sharing of Student Data is governed by our contracts with the School and any applicable laws and regulations including, in the U.S., provisions of the Family Educational Rights and Privacy Act ("FERPA"), the Children's Online Privacy Protection Act ("COPPA") and applicable state laws, including without limitation the Illinois Student Online Personal Protection Act (SOPPA). If you have any questions about reviewing, modifying, or deleting personal information of a student, please contact your School directly. See Section 11 to understand the principles which guide our collection, use and disclosure of Student Data.

1. What information does IXL collect about you?

IXL collects information in several ways from different parts of the Service.

Information you provide to us. The type of personal information we collect may vary depending on your account type.

- **School Information.** When a teacher, school administrator, or other authorized person associated with a School registers for an account on our Service or corresponds with us, we may collect personal information such as a name, e-mail address, payment information, username and password, and information about the School.
- **Student Information.** Once registered, a School may provide information about its students, such as student names or other identifiers, passwords, e-mail address for the student or the student's parent or legal guardian, and educational level and topic of study. Personal information collected from or about students, along with other information associated with that personal information is "**Student Data**." The School may elect to provide user

names or identifiers which are not readily identifiable to anyone outside of the School community in lieu of a full student name, at its discretion. Additionally, some Schools may elect to use a single-sign on (SSO) service like G Suite for Education rather than usernames and passwords to authenticate student access.

- **Parent and Child Information.** When a parent or guardian ("Parent") registers for an account on our Service or corresponds with us, we may collect personal information such as a name, e-mail address, payment information, username and password. We may also collect information about the child(ren) authorized by the Parent to use the Service through the Parent's account, including a profile name for the child user and selection of a profile avatar. Each child user profile must be associated with a Parent account, and children cannot access the Service without the Parent first signing in to the Parent account with the Parent's sign in credentials.
- **Learning and Activity Information.** During the course of providing the Service, we collect information about your use of the Service, as well as any information that you submit to the Service, such as answers to questions or content or messages posted or shared through the Service. In addition, we may ask you for personal information at other times, such as when you contact our technical support team, send us an e-mail, complete a user survey or otherwise communicate with IXL.

Information we receive automatically from your use of our Service. Like most websites and online services, IXL and our vendors automatically collect certain types of usage information when you visit www.ixl.com, read our e-mails, use our Service or otherwise engage with us. This information is typically collected through a variety of tracking technologies, including cookies, web beacons, Locally Stored Objects (LSOs such as Flash or HTML5), log files, and similar technology (collectively, "tracking technologies"), and we may use third party providers to collect this information on our behalf. These tracking technologies collect information about how you access and use the Service (e.g., referring / exit pages and URLs, how frequently you access the Service, the pages you view, the links you click, and other actions you take on the Service); information about your browser and information about the device(s) you use to access the Service (e.g., Internet Protocol (IP address), browser type, browser language, Internet service provider, device type, model and manufacturer, a unique ID that allows us to uniquely identify your browser, device or account, operating system brand and model, and whether you access the Service from multiple devices). We may also collect information about your geographical location data at the city level. We may collect analytics data, or use third-party analytics tools, such as Google Analytics, to help us measure traffic and usage trends for the Service and to understand more about the demographics and behaviors of our users. You can learn more about Google's practices at <http://www.google.com/policies/privacy/partners>. We may also work with third party partners to employ technologies, including the application of statistical modeling tools, which permit us to recognize and contact you across multiple devices. Although we do our best to honor the privacy preferences of our users, we are unable to respond to Do Not Track signals set by your browser at this time.

We use or may use the data collected through tracking technologies to secure the Service, improve the Service, to save you time, to provide better technical support, for promotional purposes, and to track website usage. For example, tracking technologies help us to:

1. Keep track of whether you are signed in or have previously signed in so that we can display all the features that are available to you.
2. Remember your settings on the pages you visit, so that we can display your preferred content the next time you visit.
3. Customize the function and appearance of the pages you visit based on information relating to your account; for example, to default you to a particular grade level, or to remember customized settings for a report.
4. Track website usage for various purposes including website optimization, website improvement, sales, marketing, and billing.

Most browsers are initially set up to accept cookies, but you can reset your browser to refuse all cookies or to indicate when a cookie is being sent. However, some features and services (particularly those that require you to sign in) may not function properly if your cookies are disabled. You may also set your e-mail options to prevent the automatic downloading of images that may contain technologies that would allow us to know whether you have accessed our e-mail and performed certain functions with it. Deleting cookies does not prevent the collection of information through non-cookie technologies and does not delete Local Storage Objects (LSOs) such as Flash objects and HTML5. You can learn more about Flash objects — including how to manage privacy and storage settings for Flash cookies — on Adobe's website or by clicking [here](#). If you choose to delete Flash objects from our sites, then you may not be able to access and use all or part of the sites or benefit from the information and services offered.

We and our third-party partners may also use cookies and tracking technologies for advertising purposes. For more information about tracking technologies, please see "**Third-party tracking and online advertising**" below.

2. How IXL uses the information we collect

We use the information we collect for the following purposes:

To provide and maintain the Service. We use the information we collect to deliver the Service to you. For example, we need to use your information to process payments, personalize learning curriculums, provide Schools, Parents and students with information and reports about student and child performance and use of the Service, respond to inquiries and provide customer support.

To improve, personalize, and develop the Service. We use information to tailor the content and information that we may send or display to users, to offer personalized content and instructions, and to otherwise personalize your experience while using the Service, including on various devices you may use to access the Service. We collect statistics to better understand how users access and use our Service, monitor the effectiveness of our Service, detect usage patterns, and to diagnose or fix technology problems. We also use information to demonstrate the effectiveness of the Service and perform research, and to develop, support, and improve our Service and other educational products and services.

To communicate with you. We use your information to provide transactional notifications for certain activities relating to your use of our Service. For example, we may send e-mail notifications when a user completes an activity, to provide receipt for payment or other subscription notices. From time to time, we may send periodic promotional or informational e-mails to School or Parent users. We do not use Student Data to send marketing communications, and we do not send marketing communications to student or child users. You may opt-out of certain communications (e.g., marketing or certain notifications about your use of the Service) by following the opt-out instructions contained in the e-mail. You may not opt out of service-related communications (e.g., account verification, transactional communications, changes/updates to features of the Service, technical and security notices).

To promote safety and security and respond to legal process. We use information to promote the safety and security of our Service, our uses and other third parties. For example, we may use the information to authenticate users, facilitate secure payments, detect and prevent fraud and other harmful activities, respond to legal requests or claims, and enforce our terms and policies.

3. How does IXL share your information?

IXL may share or disclose your personal information as needed to provide our Service or with your consent or permission. We may also share personal information in the circumstances described below.

Third parties with Consent or as Instructed We share information with consent and at the direction of Schools and Parents. For example, a School or Parent may direct IXL to share specific information with another individual, such as when a teacher directs IXL to send a communication to a parent. Similarly, we may share personal information with third parties, for example, if a School authorizes Google login or similar authentication tools for that School's user accounts.

Others within the School. IXL may share information collected from users associated with a School with other users or persons designated by the School, such as teachers and school administrators of that School. Messages and content shared or posted by members of a School community, such as messages between a teacher and students in a class, will be accessible by School administrators or other designated School users.

Vendors and Service Providers. IXL may share information with our trusted vendors, third party service providers and individuals to provide services or products for us or on our behalf, which may include analytics, hosting, billing, targeted advertising, and marketing (provided however, that IXL will not knowingly use any Student Data to target advertising or marketing). Vendors and service providers who have access to Student Data, if any, shall be contractually bound to uphold privacy and confidentiality terms no less protective than those provided herein.

Aggregate or De-Identified Information. ~~We may share information in aggregated and/or anonymous form that cannot reasonably be used to identify an individual. For example, IXL may disclose aggregated user statistics (i.e., the total number or percentage of IXL users from a particular geographic region) in order to describe our Service to current and prospective partners and other third parties, and for other lawful purposes.~~

Merger or Sale. If IXL becomes involved in a merger, acquisition, bankruptcy, change of control, or any form of sale of some or all of its assets, your personal information may be transferred or disclosed in connection with the business transaction. In such an event, we will make efforts to provide notice before personal information is transferred and becomes subject to a different privacy policy. We will not transfer Student Data associated with School accounts in the event of a merger or sale unless the recipient has committed to The Student Privacy Pledge principles or similarly stringent privacy protections, or we will provide Schools with notice and an opportunity to opt-out of the transfer of Student Data by terminating their accounts and any associated student users before the transfer occurs.

Other. IXL may release personal information if it has a good faith belief that access, use, preservation, or disclosure of such information is reasonably necessary to (a) satisfy any applicable law, regulation, legal process, or enforceable governmental request; (b) enforce applicable Terms of Service, including investigation of potential violations thereof; (c) detect, prevent or otherwise address fraud, security or technical issues; (d) protect the rights, property, or personal safety of IXL, its users, or the public; or (e) as required or permitted by law.

4. Third-party tracking and online advertising

IXL does not display any targeted advertising on the Service.

Please note that although we may permit third party advertising partners to collect information from visitors to adult-directed areas of the Service for the purpose of displaying advertisements on other websites or online services on our behalf, we take many steps to prevent these third-party advertising networks from collecting information for targeted advertising purposes once a subscriber to our Service signs into our Service. Please note that we rely on cookies to identify whether you are a subscriber to our Service and if you delete or block cookies, you may also delete the IXL cookie which prevents subscribers from receiving targeted IXL advertisements on other websites or online services.

We work with third-party online advertising networks which use technology to recognize your browser or device and to collect certain types of usage information about your visit to or use of our Service to provide customized content, advertising and commercial messages to you on other websites or services, or on other devices you may use. We (through the third-party advertising networks) use this information to direct our online advertisements to those people who may find them relevant to their interests. Typically, though not always, the information is collected through cookies or similar tracking technologies. You may be able to set your browser to reject cookies or other tracking technology by actively managing the settings on your browser or mobile device, though these tools may not be effective for all third-party tracking technologies, including Flash or HTML5 cookies. To learn more about cookies, clear gifs/web beacons and online advertising technologies and how you may opt-out of some of this advertising, you may wish to visit the Digital Advertising Alliance's resources at www.aboutads.info/choices and/or the Network Advertising Initiative's online resources, at www.networkadvertising.org.

If you do not want to receive targeted advertising from IXL based on your visit to our website, you can use the below link to request that IXL take steps to prevent third-party advertising networks from using information about your visit to our website to display targeted IXL advertisements to you on other websites or services on behalf of IXL. IXL cannot, however, guarantee that such steps will eliminate all collection and/or display of targeted advertising, and it may take some time for your request to take effect. Such requests will not prevent you from receiving contextual advertising or other types of advertisements that are displayed without taking into consideration whether you have previously visited www.ixl.com (for example, advertisements shown on the basis of a search term keyword). Such requests will not stop the collection of information for purposes other than advertising (e.g., for website analytics). This opt-out requires the setting of a cookie in your browser to record your request (and thus will no longer be effective if the required cookie is deleted), will be effective only in the browser from which you make the request, and will be effective for a maximum of one year from the request. If you delete cookies, change your browser settings, switch browsers or computers, or use another operating system, you will need to make the request again. You may make additional requests at any time.

[Click here](#) to request not to have information about your visit to www.ixl.com tracked for the purpose of displaying targeted IXL advertisements on other sites or services.

5. How to control e-mail communications

IXL may, from time to time, send you e-mail regarding our products and services, or your use of our products and services. Only IXL (or its vendors or service providers operating on its behalf) will send you these e-mails. You can choose not to receive these e-mails by clicking the unsubscribe link in any e-mail or by contacting help@ixl.com. Please note that you are not permitted to unsubscribe or opt-out of non-promotional messages regarding your account, such as account verification, changes or updates to features of the Service, or technical or security notices.

6. How to access, update or delete your personal information

You may edit your account information at any time by signing in to your account, clicking on the account menu in the upper-right corner, and selecting Profile & settings. We recommend that you review your personal information periodically to ensure that it is accurate, complete, and current. If you do not provide and maintain accurate contact information for your account, we may not be able to provide you with the notices set forth in this Privacy Policy.

If you are a parent or guardian of a student who uses the IXL Service through a School, please refer all questions and requests regarding access, modification, or deletion of your student's user account or Student Data to your child's school. The School may, at its discretion, address such requests with IXL and IXL shall respond promptly to all access, modification and deletion requests it receives from Schools.

Please contact compliance@ixl.com for further instructions about deleting or deactivating your account or deleting your personal information. We may not be able to comply with your request in all circumstances. For example, certain requests to access, update or delete personal information and data associated with a School account or license may be subject to approval by the School. When account information is deleted ~~or de-identified~~, certain residual information may remain within our archive records, such as for customer and technical support, billing and tax purposes.

7. How long does IXL retain your information?

We will retain personal information for as long as needed to provide the Service and for our internal business purposes, which may extend beyond the termination or cancellation of your subscription or user account. For example, we may retain certain data as necessary to prevent fraud or future abuse, for recordkeeping or other legitimate business purposes, or if required by law. ~~We may also retain and use information which has been de-identified or aggregated such that it can no longer reasonably identify a particular individual. All retained personal information will remain subject to the terms of this Privacy Policy.~~

Student Data. We will not knowingly retain Student Data beyond the time period required to support an educational purpose, unless authorized by a School or parent. We do not delete or de-identify any Student Data from an active student user account associated with a School except at the direction of the School. The School is responsible for

maintaining current student rosters and identifying Student Data which the School no longer needs for an educational purpose by removing students from the school's master roster or by submitting a deletion request.

Unless otherwise directed by a School or Parent, we will delete ~~or de-identify~~ personal information of student and child users after a period of inactivity, after the termination or cancellation of the license subscription, or after termination of our agreement with the School, in accordance with the terms of any applicable written agreement with the School, written requests from authorized School administrators, and our standard data retention schedule. Authorized School administrators may contact us at compliance@ixl.com to request additional information about our standard data retention schedule and available options for customizing IXL's standard data retention schedule to meet individual School requirements.

We may not be able to immediately or completely delete all data in all instances, such as information retained in technical support records, customer service records, backups, and other similar business records. ~~We will not be required to delete any information which has been de-identified or disassociated with personal identifiers such that the remaining information cannot reasonably be used to identify a particular individual.~~

8. How does IXL protect your information?

Information Security. The security of your personal information is very important to us. We have implemented a variety of physical, administrative and technological safeguards designed to preserve the integrity and security of the personal information we collect and to protect against unauthorized access to data. These include internal reviews of our data collection, storage, and processing practices and security measures, as well as physical security measures to guard against unauthorized access to systems where we store personal data. We restrict access to personal information to IXL employees, contractors, and agents who need to know that information in order to operate, develop, or improve our services. Our employees may be subject to disciplinary action, including termination, if they fail to meet privacy and confidentiality obligations. However, no security system is impenetrable—for that reason, we cannot guarantee the security of your personal information. If personal information under our control is compromised as a result of a breach of security, we will take reasonable steps to investigate the situation and take all steps required by applicable laws and regulations and our agreements with any affected Schools.

Maintaining the security of your personal information also requires your cooperation and involvement. For your protection, remember to sign out of all accounts before closing your browser. There is a sign out link available on most IXL pages. After signing out, make sure to close all browser windows. In addition, do not use the "Remember" feature if you are signing in to your account from a computer that other persons may have access to. This is to ensure that others cannot access your personal information if you share a computer with someone else or are using a public computer.

Please keep your password secure. If you have forgotten your password, you may request a new one by contacting help@ixl.com. A new password will be sent to the e-mail address you specified during registration. For all other problems signing in to the IXL Service, please contact our technical support team using the contact information at the end of this policy.

If you have any concerns about the security of your account or the security of the Service, we ask that you report your concern to us immediately at security@ixl.com. While we are unable to respond to all security concerns, we appreciate your feedback and take all reported concerns seriously.

Data storage and transfer. IXL is located in the United States. Personal information collected through our Website and Service may be stored and processed in the United States or any other country in which IXL or its affiliates or service providers maintain facilities.

9. Region-specific disclosures

We may choose or be required by law to provide different or additional disclosures relating to the processing of personal information about residents of certain countries, regions or states. Please refer below for disclosures that may be applicable to you.

Notice for California Residents – Intentionally Deleted

Notice for Nevada Residents – Intentionally Deleted

Notice for Residents in the European Economic Area ("EEA") Residents – Intentionally Deleted

10. How does IXL protect children's privacy?

IXL does not permit children under the age of 13 to create an account and does not knowingly collect personally identifying information from children under the age of 13 without the consent and at the direction of a Parent. Please contact us at compliance@ixl.com if you believe we have inadvertently collected information from a child under 13 without parental consent so that we may delete the information as soon as possible.

Parents who purchase a subscription to the IXL Service may set up a Child profile associated with the Parent's account so that children under 13 may access the Service under the Parent's supervision. Please see our [IXL Service Children's Privacy Policy](#) to learn more about how IXL collects, uses and shares information associated with Child profiles. The Children's Privacy Policy applies to all users of Child profiles, regardless of the age of the Child.

When IXL is used by a School in an educational setting, the School may authorize IXL to collect information from a child under 13. Please refer to Section 11 to learn more about how IXL protects Student Data, including Students who may be under the age of 13, when the Service is used by a School.

11. How does IXL protect Student Data and comply with laws?

When IXL provides the Service to Schools, our collection, use and disclosure of Student Data is governed by our Terms of Service and/or any other agreement with the School, by the provisions of the Family Educational Rights and Privacy Act ("FERPA"), the Children's Online Privacy Protection Act ("COPPA") and other applicable laws that may relate to the collection and use of personal information of students. If you have any questions about our collection and use of Student Data, please contact us at compliance@ixl.com. If you have any questions about reviewing, modifying, or deleting the personal information of a student, please contact your School directly.

The Student Privacy Pledge ("The Pledge"). IXL adheres to the [Student Privacy Pledge](#), an industry standard approach to privacy for K-12 service providers. The Pledge was created by the Future of Privacy Forum (FPF) and The Software & Information Industry Association (SIIA) and has been endorsed by the National School Boards Association (NSBA), the National Parent-Teacher Association (PTA), and the White House.

As part of our commitment to The Pledge, when we have access to Student Data through the provision of our Services to a School, the following core principles guide our decisions around data, security, and technology:

- IXL does not collect, maintain, use or share Student Data beyond that needed for an authorized educational or school purpose, or as authorized by our agreement with a School.
- IXL does not use or disclose Student Data for targeted advertising purposes.
- IXL does not build a personal profile of a Student other than in furtherance of a K-12 School purpose, or as authorized by a parent.
- IXL will maintain a comprehensive data security program designed to protect the types of Student Data maintained by IXL.
- IXL will not knowingly retain Student Data beyond the time period required to support the School's purpose, unless authorized by the parent.
- IXL will clearly and transparently disclose our data policies and practices.
- IXL will never sell Student Data unless the sale is part of a corporate transaction, such as a merger, acquisition, bankruptcy, or other sale of assets, in which case we will use our best efforts to ensure the successor entity

honors the privacy commitments made in this policy and/or we will notify the School of such a sale and provide the School an opportunity to opt-out by terminating its account before the data transfer occurs.

- We will not make any material changes to our Privacy Policy or Terms of Service that relate to the collection or use of Student Data without first giving notice to the School and providing a choice before the Student Data is used in a materially different manner than was disclosed when the information was collected.

The Family Educational Rights and Privacy Act ("FERPA"). This Privacy Policy and our Service are designed to meet our responsibilities to protect personal information from the students' educational records under FERPA. We agree to work with each School to jointly ensure compliance with the FERPA regulations.

The Children's Online Privacy Protection Act ("COPPA"). This Privacy Policy and our Service are designed to comply with COPPA. We do not knowingly collect personal information from a child under 13 unless and until a School has authorized us to collect such information through the provision of the Service on the School's behalf. When a School uses our Service in the classroom or in an educational context, we rely on the School to provide appropriate consent and authorization for a student under 13 to use the Service and for IXL to collect personal information from such student, as permitted by COPPA. Upon request, we will provide the School the opportunity to review and delete the personal information collected from their students. If you are a parent and you have questions about your child's use of our Service and any information collected, you should discuss your questions with your child's School.

Students Online Personal Information Protection Act ("SOPIPA"). This Privacy Policy and our Service are designed to comply with SOPIPA. We do not use Student Data for targeted advertising purposes. We do not use collected information to amass a profile of a K-12 student except in furtherance of K-12 school purposes. We never sell Student Data unless the sale is part of a corporate transaction, such as a merger, acquisition, bankruptcy, or other sale of assets, in which case we make efforts to ensure the successor entity honors the privacy commitments made in this policy and/or we will notify you of such a sale and provide you an opportunity to opt-out by deleting your account before the data transfer occurs. We will not sell students' personal information to third parties other than in the context of a business transaction.

California Assembly Bill 1584 ("AB 1584"). This Privacy Policy and our Service are designed to comply with AB 1584. Pupil records obtained by IXL from a local educational agency ("LEA") continue to be the property of and under the control of the LEA. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by contacting their LEA directly. In the event of an unauthorized disclosure of a pupil's records, IXL will notify the LEA and will provide the LEA with a report to be shared with the affected parent(s), legal guardians(s) or eligible pupil(s). Pupil records will be deleted ~~and/or de-identified~~ in accordance with our data retention and deletion policies described above in the section "How long does IXL retain your information."

[12. Links to other websites and services](#)

The Services may contain links to and from third-party websites of our business partners, advertisers, and social media sites. If you follow a link to any of these websites, please note that these websites have their own privacy policies and their practices are not covered by this Privacy Policy. We strongly recommend that you read their privacy policies and terms and conditions of use to understand how they collect, use, and share information. We are not responsible for the privacy practices or the content on the websites of third-party sites.

[13. Updates to this Policy](#)

IXL may, in its sole discretion, modify or update this Policy from time to time, which will be reflected in the 'Last Updated' date set forth at the beginning of this Policy. If we change this Policy in a material manner, we will do our best to notify you of the changes by posting a notice on our website or through other appropriate communication channels. Your continued use of the Services following the effective date of such update constitutes your acceptance of the revised Policy. If you do not agree to any of the terms in this Policy or to any future terms in a future revision of this Policy, do not use or access (or continue to access) the Service.

We will not make any material changes to our Privacy Policy or Terms of Service that would result in Student Data being used in a materially different manner than was disclosed when the information was collected without first giving notice to applicable Schools and providing a choice before such Student Data is used in a materially different manner than was disclosed when the information was collected.

In the event that you or your School has entered into a signed, written agreement with IXL, changes to this Policy may not be effective as to you until either (a) you or your School affirmatively accepts the changes to this Policy, either electronically or in a signed writing or (b) upon renewal of the School's agreement with IXL at the end of the current term.

Last Updated: July 1, 2020