

Master License and Service Agreement

This Master License and Service Agreement ("Agreement" or "MLSA") is made and entered into by and between IXL Learning, Inc. ("Vendor"), having its principal offices at 777 Mariners Island Blvd, Suite 600, San Mateo, California, 94404, and the **Board of Cooperative Educational Services for the First Supervisory District, Erie County** ("Customer"), having its principal offices at 355 Harlem Road, West Seneca, NY 14224. Vendor and Customer are sometimes referred to herein, individually, as a "Party," and collectively, as the "Parties."

Boards of Cooperative Educational Services ("BOCES"), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements ("CoSers") approved by the New York State Education Department.

Regional Information Centers ("RICs"), organized and administratively aligned under a BOCES, provide shared technology and other educational support services on a regional basis to its BOCES' component school districts, and to other BOCES and school districts located within the RIC's respective region.

Cooperative educational services provided by a BOCES (by the BOCES itself, or if applicable, its respective RIC) include shared computer services, software, and technical training and support that are provided to school districts that enter into applicable CoSers.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of instructional software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in a statewide Instructional Technology Contract Consortium ("NYSITCC"). Through Customer's procurement process, IXL Learning, Inc. has been identified and accepted by Customer as a provider of IXL, as more fully described herein (the "Product(s)").

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable approved CoSers, Customer wishes to make the Product(s) available through the NYSITCC. Accordingly, the Parties have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the NYSITCC.

1. TERM and TERMINATION

1.1 Term of Agreement. The Effective Date of this Agreement shall be April 27, 2020. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2023 ("the Initial Term"), unless earlier terminated as otherwise set forth herein. The Initial Term may be extended for successive renewal terms of three (3) years (each

a "Renewal Term") only by mutual execution by the Parties of either a written Amendment to this Agreement, or, a new Agreement.

1.2 Termination of Agreement. Either Party may terminate this Agreement for any reason prior to the expiration of its Initial Term (or the expiration of any Renewal Term) upon ninety (90) days' written notice to the other.

1.3 Termination by Customer. Customer shall have the right to terminate this Agreement at any time prior to the expiration of its Initial Term (or the expiration of any Renewal Term) in the event of Vendor's failure to cure any default or breach of this Agreement within (30) days written notice from Customer.

2. SCOPE OF SERVICES

Acting as an independent contractor, Vendor will provide the Product(s) as more fully described and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference. Any services related to the Product(s) to be provided by Vendor, including but not limited to consulting, educational, hosting, system administration, training or maintenance and support services ("Services"), shall be as more fully described within this Agreement and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference.

3. GRANT OF LICENSE

3.1 The Product(s) are provided under license. Vendor grants to Customer, as a participating BOCES in the NYSITCC on behalf of the Western New York Regional Information Center ("WNYRIC"), and to each other BOCES that is a participant in the NYSITCC (and, where applicable, on behalf of its RIC), a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for the Product(s) with a BOCES through the NYSITCC by purchasing CoSer 6360 Instructional Technology Service and provides professional development by purchasing CoSer 6368 Model Schools, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. For purposes of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein may also be referred to individually as a "Licensee" and collectively as "Licensees." Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor.

3.2 Vendor may terminate the license granted to a Licensee under this Agreement if the Licensee fails to comply with any terms and conditions of this Agreement that are specifically applicable to that entity as a Licensee. Within five (5) days of receipt of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee's sites or under the direct control of Licensee.

3.3 Vendor warrants that it has full power and authority to grant the rights herein described. Vendor's obligation and liability under this Section 3 shall be to obtain any

authorization necessary to make effective the grant of license to Licensees to use the Product(s), in such a manner or method as determined by Vendor, at Vendor's own cost and expense.

4. USE of PRODUCTS, PROTECTION OF APPLICATION and CONFIDENTIAL INFORMATION

4.1 Product(s) shall be utilized only at such licensed sites as shall be designated by Licensees (or utilized in a cloud environment as designated by Licensees) and shall be used solely for the benefit of Licensees. Licensees shall not permit or provide for transfer or reproduction of the Product(s), or any portion thereof, to be placed on a computer not at the Licensee's designated sites or under the direct control of the Licensee, by physical or electronic means, unless specifically authorized by Vendor and/or as otherwise provided in this Agreement.

4.2 The Product(s) are protected by copyright law. Vendor hereby confirms that Vendor is the owner of the copyright in the Product(s) described in **Exhibit A**, as well as an authorized source or reseller for the Product(s) in the state of New York. Licensees shall not make or allow others to make copies or reproduction of the Product(s), or any portion thereof in any form without the prior written consent of Vendor and/or as otherwise provided in this Agreement. The unauthorized copying, distribution or disclosure of the Product(s) is prohibited and shall be considered a material breach of this Agreement.

4.3 Except as expressly stated herein, no Licensee may alter, modify, or adapt the Product(s), including but not limited to translating, reverse engineering, decompiling, disassembling, or creating derivative works, and may not take any other steps intended to produce a source language state of the Product(s) or any part thereof, without the prior written consent of Vendor.

4.4 Licensees shall be the sole owner and custodian of any information or data transmitted to, received, or manipulated by the Product(s), except as otherwise specifically set forth in this Agreement.

4.5 Confidential Information. Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for purposes of this subparagraph means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software and the terms of this Agreement (except those portions of the Agreement that Customer may be required to disclose by law or legal process) and (b) the Confidential Information of Customer shall include personally identifiable information regarding its and other Licensees' end users provided in connection with the Product(s). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or

obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

4.6 Vendor Obligations Under NYS Education Law 2-d. For Student Data, or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations in the event of a breach of security of such data. Vendor shall not subcontract or assign its obligation to store or maintain Student Data, or Teacher and Principal Data provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer.

5. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

5.1 Mutual. Each Party represents and warrants that it has the power and authority to enter into this Agreement and that the Party's execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party; (b) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any agreement to which the Party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party, except as otherwise provided herein.

5.2 Intellectual Property. Vendor warrants that use of the Product(s) does not infringe any United States patent, copyright, or trade secret. Vendor will indemnify Customer and any other applicable Licensee and hold it or them harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with any allegation that the use of the Product(s) provided hereunder infringed upon any United States patent or pending application for letters patent or constituted an infringement of any trademark or copyright. Customer or the other Licensee, as applicable, will notify Vendor in writing of such suit, claim, action, proceeding or allegation(s). Vendor shall have sole control of the defense. Customer or the other Licensee, as applicable, shall provide reasonable information and assistance to the Vendor at the Vendor's expense.

5.2.1 Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein.

5.2.2 If the Product(s) are held to infringe, or in Vendor's opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraphs 5.2 and 5.2.1 above, at its expense, (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing. If commercially reasonable efforts to perform the foregoing are unsuccessful,

Customer or the other Licensee, as applicable, shall be entitled to a pro-rata refund of fees paid by Customer or the Licensee to Vendor pursuant to this Agreement, calculated as of the date Customer or the Licensee, as applicable, was prohibited from using the Product(s).

5.2.3 Vendor shall have no obligation with respect to any such claim of infringement based upon modifications of machines or programming made by Customer or any other Licensee without Vendor's approval, or upon their combination, operation, or use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor's approval.

5.3 Warranties. Vendor represents and warrants that (a) the Product(s) will perform substantially in accordance with the specifications set forth in the then-current Documentation, if any, for such Product(s), and that (b) the Services will be performed in a professional and workmanlike manner. In the event of a non-conformance of the Product(s) or Services, reported to Vendor by Customer or any other Licensee, Vendor shall make commercially reasonable efforts to correct such non-conformance. In the event that Vendor is unable to correct such non-conformance, Vendor will provide Customer or the other Licensee, as applicable, with replacement or repair of defective Product(s), re-performance of Services, or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of any period of non-conformance.

5.4 Remedies available to Customer or any other Licensee for damage or loss to the Product(s) shall be the repair or replacement of the Product(s) or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of the damage or loss. Vendor shall have no liability or responsibility for damage or loss to the Product(s) caused by any alteration or modification by a Licensee not authorized by Vendor, or for damage or loss arising out of the malfunction of Licensee's equipment or other software not supplied by Vendor.

5.5 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE'S PARTICULAR REQUIREMENTS OR PURPOSE.

5.6 Customer Representations and Warranties. Customer hereby represent and warrants to Vendor:

5.6.1 That all BOCES that are participants in the NYSITCC, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein.

5.6.2 That all BOCES that are participants in the NYSITCC, including Customer, will take reasonable measures to ensure that all of the sites used by BOCES and school district Licensees within their jurisdiction will meet the systems and network minimum requirements set forth on **Exhibit C**, attached to this Agreement and made a part hereof.

5.6.3 That all BOCES that are participants in the NYSITCC, including Customer, will take steps to ensure that BOCES and school district Licensees within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.

5.6.4 That all BOCES that are participants in the NYSITCC, including Customer, will provide Vendor with the name of a contact person (hereinafter referred to as the "BOCES Contact") who will have the authority to act on behalf of the BOCES and school district Licensees within their jurisdiction with regards to any questions or issues that may arise during the installation or implementation of the Product(s). Unless directed by that BOCES Contact, the Vendor will have no other contact within the BOCES regardless of previous working relationships. The Vendor will provide written communication to the BOCES Contact if it plans to demo/visit a BOCES or school district Licensee within that BOCES' jurisdiction. This communication will occur a minimum of two (2) days prior to the demo/visit.

6. INDEMNIFICATION

Customer shall indemnify and hold harmless Vendor and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Customer of this Agreement. Vendor shall indemnify and hold harmless Customer and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Vendor of this Agreement.

7. FEES AND PAYMENT

7.1 License Fees. In consideration of the licenses granted to all Licensees as described herein, and the Services to be performed by Vendor, Customer agrees that each participating BOCES (including Customer) shall pay Vendor the applicable fees set forth in **Exhibit A** on behalf of each Licensee within its jurisdiction that participates in the applicable CoSers during any fiscal year within the Initial Term of this Agreement or any Renewal Term.

7.2 Pricing. The fees set forth in **Exhibit A** shall be applicable during the period July 1, 2020 through June 30, 2021 (the first fiscal year within the Initial Term of this Agreement).

Vendor will provide to Customer proposed new pricing for each succeeding fiscal year within the Initial Term of this Agreement (or each succeeding fiscal year within any Renewal Term) by November 1 of each fiscal year, by notification to Michelle Okal-Frink, Erie 1 BOCES by e-mail at contracts@e1b.org or by certified letter addressed to 355 Harlem Road, West Seneca, NY 14224. Michelle Okal-Frink will work with the Vendor to evaluate and accept pricing to be applicable during each succeeding fiscal year; however, in no event shall pricing increase by more than 2% annually. The Parties shall revise **Exhibit A** as needed to reflect any new prices as mutually agreed. If no notification is received by November 1 of any fiscal year, the fees established for the then current fiscal year will remain in effect for the subsequent fiscal year.

7.3 Quotes. Quotes applicable to any BOCES or school district Licensees based on the fees set forth in **Exhibit A** shall be provided to each BOCES Contact (including Customer's)

or his/her designee. The Vendor will not provide quotes directly to any school district Licensees. Each quote will reference the NYSITCC contract number. Each participating BOCES (including Customer) will issue a purchase order to Vendor on behalf of each Licensee within its jurisdiction that wishes to participate in the applicable CoSers.

7.4 Invoices. When invoicing Customer, Vendor shall send invoices addressed to 355 Harlem Road, West Seneca, NY 14224 (Attention: Business Office); any other invoices shall be sent by Vendor to the other participating BOCES initiating the request. Vendor shall contact the BOCES contact at each other participating BOCES to receive the proper invoicing address. Payment shall be made by each participating BOCES (including Customer) within forty-five (45) days of either completion of the activation of the Product(s) at the site of a Licensee, or the implementation meeting for service.

7.5 Withdrawal. Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1st), without penalty. Upon receipt of notification, Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data; if requested by the Licensee, Vendor will assist in exporting all Protected Data previously received back to the Licensee prior to deletion. Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this subsection 7.5, "Protected Data" shall have the same meaning as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. Notwithstanding the non-renewal or withdrawal of any Licensee, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

8. IMPLEMENTATION ASSISTANCE SERVICES AND TRAINING SUPPORT

8.1 Training. The Vendor will provide initial training, at no cost, to Customer's staff and the staff of each participating BOCES so that they are able to turn key and train school district Licensees using RIC/BOCES accounts or Product(s) provided to the RIC/BOCES at no cost, at four (4) sites during each year of this Agreement. These accounts will be fully active within the system and not simply a training site. This training should be in person and be robust whereas the BOCES staff developers are able to provide the support and professional development to the school district Licensee in order to promote a successful implementation. The Vendor will provide on-site training and installation to the BOCES staff as outlined in **Exhibit B**, attached and incorporated herein by reference.

8.2 Use of Training Materials. Customer, all other participating BOCES, and all school district Licensees may use the entire Vendor provided training materials, on an ongoing basis, at no cost. Customer, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

8.3 Training Logins & Sites. The Vendor will provide Customer and all other participating BOCES the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while training Licensee school districts. The Vendor will provide administrative logins to Customer and all other participating BOCES for each Licensee school district in order for Customer and all other participating BOCES, as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education. The Vendor will provide updates and training each year for four additional sites throughout New York State for new and current trainers to be coordinated through Michelle Okal-Frink or her designee. Michelle Okal-Frink or her designee must approve any marketing that would include the name and or logo of Customer or any other participating BOCES.

9. TECHNICAL SUPPORT SERVICES

9.1 Technical support and updates provided by Vendor shall include assistance and consultation by phone to assist Customer, any other participating BOCES, or any school district Licensee in resolving problems with the use of the Product(s), at no charge.

9.2 Vendor shall provide support for the Product(s) for at least one (1) year following any notification by Vendor to Customer, any other participating BOCES, or any school district Licensee that the Product(s) has been discontinued.

9.3 All requests for assistance to Vendor by Customer, any other participating BOCES, and/or any school district Licensee to resolve problems which cause the software to become "inoperative" will be acknowledged by Vendor by phone within twenty-four (24) hours during Vendor's normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone within forty-eight (48) hours.

9.4 Vendor also agrees to provide the following technical support services to Customer, any other participating BOCES, and any school district Licensee:

9.4.1 Toll Free Number support [855-255-8800] from [8:00] A.M. to [8:00] P.M. EST (Eastern Standard Time).

9.4.2 Bug Correction – Vendor shall use its best efforts to correct any software bugs in the Product(s). Customer, any other participating BOCES, and any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

9.4.3 Training, free of charge, for technical staff of Customer and/or any other participating BOCES to install or upgrade any equipment. This training can be provided via webinar.

10. APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State's choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good

faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be venued in any court of competent jurisdiction located in the County of Erie, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.

11. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, neither Party shall have any liability to the other Party for any default or delay in performance of its obligations hereunder to the extent attributable to unforeseen events beyond the reasonable control of the Party. Such events shall include but not be limited to, natural disasters or "acts of God;" war; acts of public enemies; terrorism; flood; government action, orders or regulations; fire; civil disturbance or unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restriction (each, a "Force Majeure" event). Vendor's performance of some or all of its obligations hereunder may also cease at any time upon mutual written agreement between the Parties. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

12. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed by the Party granting the waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or consent to any other or further breach of that term or provision or any other different or subsequent breach of any other term or provision.

13. SEVERABILITY

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed severed from the Agreement.

14. RISK OF LOSS OR DAMAGE

Vendor and its insurers agree at a minimum to assume all risks of loss and damage to the Product(s) during transportation except for loss or damage caused by the gross negligence of Customer, any other participating BOCES, and/or any school district Licensee.

Vendor assumes all risks for injuries to or death of its employees and for damage to its tangible property, excluding damage to data, while on the premises of, or traveling to or from, facilities of Customer, any other participating BOCES, and/or any school district Licensee. Vendor shall provide assistance to recover or resolve any damaged data to the reasonable satisfaction of Customer, any other participating BOCES, and/or any school district Licensee.

15. AMENDMENT

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed by the parties hereto.

16. HEADINGS

The headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

17. NOTICES

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

18. CONFLICT OF INTEREST

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

19. EMPLOYMENT PRACTICES

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other tools of compensation, and selection for training, including apprenticeship. Vendor shall insert similar provisions in any authorized subcontracts for the performance of Services covered by this Agreement.

20. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of monies appropriated and available to Customer or any other BOCES or school district Licensee for the purpose of this Agreement, and no liability on account thereof shall be incurred by Customer or any other BOCES or school district Licensee beyond the amount of such monies. The Agreement is not a general



obligation of Customer or any other BOCES or school district Licensee. Neither the full faith and credit nor the taxing power of any school district Licensee is pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

21. NON-ASSIGNMENT

This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or its right, title or interest therein, or its power to execute this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer; and any attempts to assign the Agreement without Customer's prior written consent are null and void.

22. ENTIRE UNDERSTANDING

This Agreement and all Exhibits attached hereto constitute the entire understanding between Customer and Vendor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

IXL Learning, Inc.

By: Paul Mishkin

Printed Name: Paul Mishkin

Title: Chief Executive Officer

Date: June 9, 2020

ERIE 1 BOCES

By: James Fregelette

Printed Name: James Fregelette

Title: Executive Director, Administrative Services & Operations

Date: 6/24/20

EXHIBIT A

IXL is a personalized learning platform that helps educators make data-driven, differentiated instructional decisions to accelerate learning for all students. IXL is built on four key components: a Continuous Diagnostic assessment, adaptive New York-standards aligned curriculum (math, science, ELA, social studies, and Spanish), personalized guidance and recommendations, and actionable analytics. IXL also offers flexible and customized onsite, virtual, and on-demand professional development.

Our pricing depends on the total number of students using IXL (as each student receives their own individual username, which are not meant to be shared), as well as which subject(s) (math, language arts, science, social studies, and/or Spanish) they have access to. Our smallest license is a single-subject classroom subscription covering 1 teacher and up to 25 students for \$299/year. Our complete classroom license pricing is available online at <https://www.ixl.com/membership/school/subscribe>.

We offer site license pricing geared toward larger groupings of students. In addition to favorable pricing, site licenses include additional benefits and support, such as an administrator account for oversight of student usage and performance, and a dedicated IXL account manager to assist with setup and implementation.

Our site license pricing is tiered, and depends on the total number of students within a district using IXL. IXL is offering BOCES purchasers a discount on all site license purchases of 100 students or more. Pricing for BOCES purchasers starts at \$10.40 per student for a license of 100 students receiving access to a single subject. Pricing will adjust for larger student numbers. Per-student discounts are offered when bundling multiple subjects together. Please see pricing below. In addition, site-license subscribers can purchase access to our eLearning Library, which starts at \$495 per school and will remain active for the life of the subscription.

New Customers: New Customers joining IXL for the first time, as well as any previous customers without active licenses during the 2019-20 academic year, will receive 2020-21 BOCES pricing as outlined in the following price sheet.

Renewal BOCES Customers: Existing BOCES customers with active licenses renewing for the 2020-21 academic year will be limited to a 3% increase on 2019-20 full year contract value.

All licenses purchased for redistribution must be activated within 30 days, and these licenses will provide access from the date of activation through June 30 of the current year. Pricing will be prorated for districts purchasing within the school year. IXL does not offer any software components beyond subscriptions to our math, language arts, science, social studies, and Spanish products, so there are no additional fees for content or maintenance.



Erie 1 ROCES Education Campus • 355 Harlem Road • West Seneca, NY 14224-1892



Number of students	1-Subject Pricing		2-Subject Pricing		3-Subject Pricing		4-Subject Pricing		5-Subject Pricing	
	Price	Stk	Price	Stk	Price	Stk	Price	Stk	Price	Stk
11	\$1,275	4,900	\$1,410	5,050	\$1,545	5,200	\$1,680	5,350	\$1,815	5,500
22	\$2,550	9,800	\$2,820	10,100	\$3,090	10,400	\$3,360	10,700	\$3,630	11,000
33	\$3,825	14,700	\$4,230	15,150	\$4,635	15,600	\$5,040	16,050	\$5,445	16,500
44	\$5,100	19,600	\$5,640	20,100	\$6,180	20,600	\$6,720	21,100	\$7,260	21,600
55	\$6,375	24,500	\$7,020	25,100	\$7,650	25,700	\$8,280	26,300	\$8,910	26,900
66	\$7,650	29,400	\$8,460	30,100	\$9,090	30,800	\$9,720	31,500	\$10,350	32,200
77	\$8,925	34,300	\$9,810	35,100	\$10,425	35,800	\$11,055	36,500	\$11,685	37,200
88	\$10,200	39,200	\$11,160	40,100	\$11,790	40,800	\$12,420	41,500	\$13,050	42,200
99	\$11,475	44,100	\$12,510	45,100	\$13,125	45,800	\$13,755	46,500	\$14,385	47,200
110	\$12,750	49,000	\$13,860	50,100	\$14,460	50,800	\$15,090	51,500	\$15,720	52,200
121	\$14,025	53,900	\$15,210	55,100	\$15,785	55,800	\$16,415	56,500	\$17,045	57,200
132	\$15,300	58,800	\$16,560	60,100	\$17,115	60,800	\$17,745	61,500	\$18,375	62,200
143	\$16,575	63,700	\$17,910	65,100	\$18,615	66,500	\$19,245	67,200	\$19,805	67,900

Number of students (Must be purchased in increments of 25)	1-Subject Pricing				2-Subject Pricing				3-Subject Pricing				4-Subject Pricing				5-Subject Pricing			
	List Per-Student Rate	ROCES New Customer Per-Student Rate	ROCES New Customer Discount Percent	ROCES Renewal Customer Per-Student Rate	List Per-Student Rate	ROCES New Customer Per-Student Rate	ROCES New Customer Discount Percent	ROCES Renewal Customer Per-Student Rate	List Per-Student Rate	ROCES New Customer Per-Student Rate	ROCES New Customer Discount Percent	ROCES Renewal Customer Per-Student Rate	List Per-Student Rate	ROCES New Customer Per-Student Rate	ROCES New Customer Discount Percent	ROCES Renewal Customer Per-Student Rate	List Per-Student Rate	ROCES New Customer Per-Student Rate	ROCES New Customer Discount Percent	ROCES Renewal Customer Per-Student Rate
100-249	\$11.00	\$10.45	5.5%	\$9.75	\$18.00	\$17.55	3.1%	\$16.75	\$27.00	\$26.55	2.0%	\$25.50	\$36.00	\$35.55	1.4%	\$34.50	\$45.00	\$44.55	1.2%	\$43.50
250-499	\$12.00	\$11.40	5.0%	\$10.60	\$19.00	\$18.55	2.9%	\$17.45	\$28.00	\$27.55	2.0%	\$26.45	\$37.00	\$36.55	1.4%	\$36.00	\$46.00	\$45.55	1.2%	\$45.00
500-749	\$13.00	\$12.35	5.0%	\$10.65	\$20.00	\$19.55	2.7%	\$18.45	\$29.00	\$28.55	2.0%	\$27.45	\$38.00	\$37.55	1.4%	\$37.00	\$47.00	\$46.55	1.2%	\$46.00
750-1,499	\$14.00	\$13.30	4.3%	\$10.70	\$21.00	\$20.55	2.6%	\$19.45	\$30.00	\$29.55	1.7%	\$28.45	\$39.00	\$38.55	1.4%	\$38.00	\$48.00	\$47.55	1.1%	\$47.00
1,500-2,499	\$15.00	\$14.25	4.0%	\$10.75	\$22.00	\$21.55	2.5%	\$20.45	\$31.00	\$30.55	1.8%	\$29.45	\$40.00	\$39.55	1.4%	\$39.00	\$49.00	\$48.55	1.1%	\$48.00
2,500-4,999	\$16.00	\$15.20	4.4%	\$10.80	\$23.00	\$22.55	2.4%	\$21.45	\$32.00	\$31.55	1.6%	\$30.45	\$41.00	\$40.55	1.3%	\$40.00	\$50.00	\$49.55	1.1%	\$49.00
5,000+	\$17.00	\$16.15	4.7%	\$10.85	\$24.00	\$23.55	2.3%	\$22.45	\$33.00	\$32.55	1.5%	\$31.45	\$42.00	\$41.55	1.2%	\$41.00	\$51.00	\$50.55	1.1%	\$50.00

EXHIBIT B

IXL agrees to provide four initial train-the-trainer professional development sessions to the Regional Information Centers (RICs) and four update professional development on-site sessions at no cost. IXL technical support is free to users with an IXL license subscription.

Professional Development Training

IXL training is delivered by IXL's Professional Learning Group (PLG), which consists of former educators with decades of combined experience in elementary and secondary education and a diverse range of specialties, including literacy, mathematics, intervention, special education, blended learning, competency-based education, data-driven instruction, and curriculum development. Each professional development (PD) session is led by a professional learning specialist with extensive education experience and IXL implementation knowledge.

IXL's Train-the-Trainer model is designed to build capacity for IXL trainers in the district. IXL will work with BOCES professional development staff to understand training needs and ensure that a deep understanding of IXL is developed to enable effective training to end users. IXL understands that an effective Train-the-Trainer Model needs to be engaging, highly interactive, and completely relevant to the ways that today's educators prefer to receive information – instructional best practice that can easily and immediately impact student success.

Therefore, IXL's Train-the-Trainer sessions are designed with a *Model and Practice* structure. This hands-on approach begins with modeling of the training and then allocating time for trainees to discuss and practice the training, and consider their own strategies for sharing training with staff. IXL will facilitate workshops designed specifically to support BOCES instructors to add or expand the skills and knowledge necessary to successfully support teachers with effective IXL implementation.

IXL has developed a recommended training agenda for a Train-the-Trainer model based on best practices for successful implementations, as summarized in **Table I**. IXL will collaborate with district leaders to tailor plans that meet district and school objectives.

Technical Support

For other issues or concerns, IXL offers a dedicated Technical Support Team available via phone and email Monday through Friday. Other than closure for major holidays, IXL's attentive staff of Technical Support Analysts will respond to all requests within one business day.

Additional Professional Development

For districts that would like to purchase additional professional development training, IXL offers a wide range of flexible on-site, virtual, and on-demand services. Each session is led by a professional learning specialist with extensive education experience and IXL implementation knowledge:

IXL Foundations I: Essential Tools for Daily Instruction

This 90-minute interactive, web-based session offers a deep dive into key IXL features and implementation best practices. Learn how to:

- **Leverage the Real-Time Diagnostic.** Reach students at the right level every day with this portrait of student knowledge at your fingertips.

- **Unlock the PreK-12 curriculum.** Use IXL's comprehensive curriculum to support daily lessons and differentiate to meet the learning needs of every student.
- **Dive into IXL's personalized guidance.** Build on each student's existing knowledge and fill gaps along their individual learning journey.

Please see **Table II** for a sample agenda.

IXL Foundations II: Strategies for Data-Driven Classrooms

This follow-up to Foundations I is a 90-minute interactive, web-based session that explores IXL Analytics and how it supports instructional action in the classroom every day. Learn how IXL's actionable analytics help you:

- **Provide effective small-group instruction.** Use insights to identify students with shared needs and easily form small groups for remediation and enrichment.
- **Address individual student needs.** Get a clear picture of individual student progress, analyze specific trouble spots, and provide truly personalized support for each learner.
- **Maximize limited class time.** Keep your finger on the pulse of your classroom and make the most effective data-driven decisions to support your students every day.

Please see **Table III** for a sample agenda.

eLearning Library

On-demand professional development for educators. This collection of 40+ videos includes content from both Foundations I and II.

On-Site Experience

A custom professional learning experience tailored to district instructional goals. IXL offers three ways to structure an on-site experience.

- **IXL Live: School Edition:** This session consists of 4.5 hours on effective IXL implementation, followed by 1.5 hours of guided teacher planning time.
- **Flex On-site:** One or more 90-minute sessions focused on practical strategies for using IXL in daily instruction.
- **Train the Trainer:** Designed to build capacity for IXL trainers in the district. Emphasis on best practices for leading successful IXL implementations. Please refer to **Table I** for a sample agenda.

Sample Agendas

Please find below sample agendas for an on-site train-the-trainer session, IXL Foundations I, and Foundations II.

Table I - The IXL Train-the-Trainer on-site session agenda is based on Model and Practice

IXL Train-the-Trainer Agenda	
<p>Welcome</p>	<ul style="list-style-type: none"> • Introductions • Review materials and resources • Review structure of training: model and practice • Log in to demo accounts

IXL Curriculum	<p>Model and Practice</p> <ul style="list-style-type: none"> • Anatomy of a skill: What students see when they work in IXL • Understanding the IXL SmartScore • Strategies for setting SmartScore goals and using the SmartScore to motivate students • How IXL's highly targeted and scaffolded skills support learning across topics and grade levels • Understanding IXL's difficulty progressions and how each skill adapts to meet student needs • How to find skills that support any lesson or learning objective: Grade view, Skill plans, Topics view, Search, and Standards alignments • Strategies for assigning skills to students
The IXL Real-Time Diagnostic	<p>Model and Practice</p> <ul style="list-style-type: none"> • How the IXL Real-Time Diagnostic supports personalized learning • Getting students started with the Real-Time Diagnostic
Personalized Guidance	<p>Model and Practice</p> <ul style="list-style-type: none"> • Personalizing learning with the IXL Recommendations wall • Understanding the recommendation types • Ideas for implementing Recommendations in your classroom • Using In-skill Recommendations to provide remediation and enrichment opportunities
Analytics	<p>Model and Practice</p> <ul style="list-style-type: none"> • Dashboard: Your home base for the Analytics experience • Diagnostic Overview: Insights from the IXL Real-Time Diagnostic • Diagnostic Strand Analysis: In-depth insights for driving tailored small-group instruction • Score Grid: Quick and easy overview of your IXL coverage • Trouble Spots: An essential tool for addressing student needs efficiently • Skill Analysis: A deep dive into student abilities in a single skill • Questions Log: Detailed data for understanding and supporting individual student needs • Live Classroom: A teacher favorite for classroom management and in-the-moment instructional decision-making.
IXL Extras	<ul style="list-style-type: none"> • Using IXL awards and certificates to motivate students and challenge them to meet new milestones • Engaging students with IXL's mobile apps

Planning and Collaboration	<ul style="list-style-type: none"> Guided independent planning and collaboration to prepare for teacher training
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Table II - IXL Foundations I focuses on key IXL features and implementation best practices

IXL Foundations I Agenda	
Welcome	<ul style="list-style-type: none"> Review materials and resources Review structure of training: model and practice Log in to demo accounts
Intro to IXL	<ul style="list-style-type: none"> Intro to IXL's personalized learning platform Overview of the four components of IXL: comprehensive k-12 curriculum, the Real-Time Diagnostic, personalized guidance, and IXL Analytics Basic navigation Setting up teacher accounts and rosters (if needed)
IXL Curriculum	<ul style="list-style-type: none"> Anatomy of a skill: What students see when they work in a skill on IXL Understanding the IXL SmartScore Strategies for setting SmartScore goals and using the SmartScore to motivate students
Plan Your Lesson	<ul style="list-style-type: none"> Ways to find skills that support any lesson or learning objective: Grades view, Skill Plans, Topics view, Search Using IXL's standards alignments to identify skills that will prepare students for assessments Strategies for assigning skills to students
Deliver Your Lesson	<ul style="list-style-type: none"> Building IXL into your daily instruction.
Check for Understanding	<ul style="list-style-type: none"> Check for understanding using the Skill Analysis report Take a deep dive into student abilities in a single skill
The IXL Real-Time Diagnostic	<ul style="list-style-type: none"> How the IXL Real-Time Diagnostic supports personalized learning in your classroom Launching students in the Real-Time Diagnostic
IXL Personalized Guidance	<ul style="list-style-type: none"> Personalizing learning for every student with the IXL Recommendations Wall Understanding the recommendations types Strategies for implementing Recommendations in the classroom

IXL Real-Time Diagnostic Reports	<ul style="list-style-type: none"> • Interpreting insights from the Real-Time Diagnostic • Keeping diagnostic levels up to date • Using insights from the Real-Time Diagnostic to drive student next steps
IXL Extras	<ul style="list-style-type: none"> • Using IXL's Awards and certificates to motivate students and challenge them to meet new milestones • Engaging students with IXL's mobile apps

Table III - IXL Foundations II focuses IXL Analytics and how it supports instructional action

IXL Foundations II Agenda	
Overview	<ul style="list-style-type: none"> • Refresher on IXL's personalized learning platform • Review of the four components of IXL: comprehensive k-12 curriculum, the Real-Time Diagnostic, personalized guidance, and IXL Analytics
Deep Dive into the IXL Curriculum	<ul style="list-style-type: none"> • How IXL's highly targeted and scaffolded skills support learning across topics and grade levels • Understanding IXL's difficulty progressions and how each skill adapts to meet student needs • Use Jump a Level to preview difficulty levels within a skill
IXL Guidance	<ul style="list-style-type: none"> • Using In-Skill Recommendations to provide remediation and enrichment opportunities
IXL Analytics	<ul style="list-style-type: none"> • Deep dive into IXL Analytics including strategies for supporting day-to-day instruction • Dashboard: Your home base for the Analytics experience • Diagnostic Overview: Insights from the IXL Real-Time Diagnostic • Diagnostic Strand Analysis: In-depth insights for driving tailored small-group instruction • Students Quickview: An overhead view of student work on IXL • Student Details: Individual practice patterns and performance • Score Grid: Quick and easy overview of your IXL coverage • Student Score Chart: Insights on individual student performance • Trouble Spots: An essential tool for addressing student needs efficiently • Skill Analysis: A deep dive into student abilities in a single skill • Questions Log: Detailed data for understanding and supporting individual student needs • Progress and Improvement: Visualize student progress over time • Live Classroom: A teacher-favorite for classroom management and in-the-moment instructional decision-making



IXL Extras	<ul style="list-style-type: none">• Certificate Center: Acknowledge success and motivate students with IXL certificates
Teacher Resources	<ul style="list-style-type: none">• Finding implementation strategies and classroom resources in IXL's Teacher Resources tab
Planning and Collaboration	<ul style="list-style-type: none">• Guided independent planning and collaboration to prepare for teacher training

EXHIBIT C

As a fully web-based solution, IXL does not require hardware or software installation and is easily accessible at www.ixl.com. The following are the technical requirements for accessing IXL.

Computer Requirements

- Windows or Mac OS
- An up-to-date version of Chrome, Firefox, Safari, Edge, or Internet Explorer 11
- 256 MB of installed RAM (at the minimum)
- An Internet connection speed of at least 128Kbps
- Resolution of 1024X768 with 32-bit color depth
- Sound card and speakers to use audio support on IXL
- PDF viewer to view printable teacher resources including certificates, progress charts, goal posters, and parent handouts

Mobile Device Support

The IXL app can be downloaded from the Apple App Store, Google Play, and the Amazon Appstore. **Table IV** lists the supported mobile device models. Students may also access IXL from their mobile device web browser.

Table IV - IXL is available on all major mobile platform devices

Device	Models
iPad & iPhone	All models, iOS 9.0 or higher
Android tablets	7-inch screen or larger, Android 5.0 or higher
Kindle Fire	7-inch screen or larger, Fire OS 5 or higher
Chromebooks	All models

EXHIBIT D

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. Purpose

- (a) This Exhibit supplements the Master License and Service Agreement ("MLSA") to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES' Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES' website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.

- (d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption., and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA: IXL employs reasonable organizational and technical means to prevent unauthorized access, use, alteration, or disclosure of customer data stored on systems

under IXL's control. Please see Attachment A, IXL's Information Security Policies and Procedures for details. IXL has also attached our Privacy Policy as Attachment B.

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor x will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. Notification of Breach and Unauthorized Release

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.



EXHIBIT D (CONTINUED)

ERIE 1 BOCES

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

BY THE VENDOR:

Paul Mishkin
Signature

Paul Mishkin
Printed Name

Chief Executive Officer
Title

June 9, 2020
Date



EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

**ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
BETWEEN
ERIE 1 BOCES AND [IXL LEARNING, INC.]**

Erie 1 BOCES has entered into a Master License and Service Agreement ("MLSA") with [IXL Learning, Inc.] which governs the availability to Participating Educational Agencies of the following Product(s):

IXL (Math, Science, English Language Arts, Social Studies, and Spanish)

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law ("Protected Data").

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor's subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: Any such entities will have contractual obligations in place with IXL including to comply with all applicable laws, to maintain the confidentiality and security of such information in a manner no less rigorous than required by this Agreement.

Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on April 27, 2020 and expires on June 30, 2023.
- Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such formats as may be requested by the Participating Educational Agency.

- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.



Supplement to

**MASTER LICENSE AND SERVICES AGREEMENT
(Term Ending June 30, 2023)**

IXL Learning, Inc. having its principal offices at **777 Mariners Island Blvd, Suite 600, San Mateo, California, 94404**, and Board of Cooperative Educational Services for the First Supervisory District, Erie County having its principal offices at 355 Harlem Road, West Seneca, NY 14224 ("Erie 1 BOCES"), have entered into a Master License and Services Agreement, the term of which ends June 30, 2023 (the "Agreement"). By this Supplement, **IXL Learning** and Erie 1 BOCES wish to provide for the potential purchase of **IXL** licenses and services by other Board of Cooperative Educational Services (BOCES) in the State of New York (intermediate units of the NYS Education Department) on the same terms and conditions.

IXL Learning agrees to honor the pricing in Exhibit A only for the BOCES that adopt the contract at their Boards of Education. If a RIC or BOCES has not adopted the resolution **IXL Learning** may not extend the same or lesser pricing than has been set forth in Exhibit A. Lower prices will not be offered to school districts/BOCES/RICs in NY state. Vendors may utilize national promotions or sales within the state of New York and those prices would be extended through the contract after the approval of Michelle Okal-Frink or her designee. Special pricing for specific BOCES or RICs is not allowable under this contract.

Erie 1 BOCES and **IXL Learning** hereby agree:

1. From time to time during the term of the Agreement, another BOCES in New York State (an "Other BOCES") may adopt a Board of Education resolution that permits Erie 1 BOCES to represent the Other BOCES' interests and to enter into the Agreement on behalf of the Other BOCES.
2. The Other BOCES shall purchase under the Agreement by issuing an Addendum in the form of a Board resolution, appropriately amended to reflect that the Other BOCES is the purchaser. By issuing that Addendum, the Other BOCES will agree to be bound by all of the terms of the Agreement with respect to its purchase thereunder.

IN WITNESS WHEREOF, the parties have signed this Supplement to Agreement.

Erie 1 Board of Cooperative Educational Services

IXL Learning, Inc.

By: 
Authorized Signature

By: 
Authorized Signature

Name: James Fregelette

Name: Paul Mishkin

Title: Executive Director

Title: Chief Executive Officer

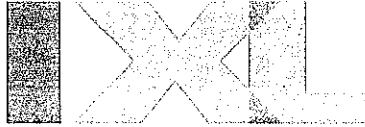
Address: 355 Harlem Rd

Address: 777 Mariners Island Blvd, Suite 600, San Mateo, CA 94404

West Seneca, NY 14224

Date: June 9, 2020

Attachment B



IXL Service Privacy Policy



Effective date: May 25, 2018

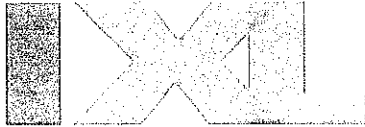
IXL Learning, Inc. supports the Student Privacy Pledge to safeguard student privacy.

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. 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.

Use these links to navigate to the following topics of interest:

1. [What information does IXL collect about you?](#)
2. [How IXL uses the information we collect](#)
3. [How does IXL share your information?](#)
4. [Third-party tracking and online advertising](#)
5. [How to control e-mail communications](#)



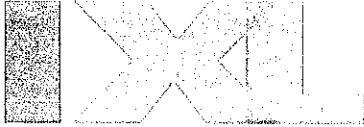
6. [How to access, update or delete your personal information](#)
7. [How long does IXL retain your information?](#)
8. [How does IXL protect your information?](#)
9. [European Union Data Protection](#)
10. [How does IXL protect children's privacy?](#)
11. [How does IXL protect Student Data and comply with laws?](#)
12. [Links to other websites and services](#)
13. [Updates to this Policy](#)
14. [Contact Us](#)

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. Personally identifiable information collected from or about students, along with other information associated with that personally identifiable 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



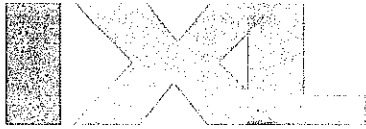
cannot access the Service without the Parent first signing in to the Parent account with the Parent's sign in credentials.

- **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. 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 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, to help us measure traffic and usage trends for the Service and to understand more about the demographics and behaviors of our users. 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 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.

[Top](#)

2. How IXL uses the information we collect

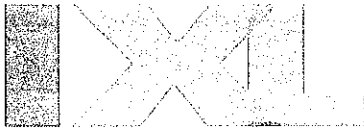
We use the information we collect for the following purposes:

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 curriculum, 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 such communications by following the opt-out instructions contained in each e-mail.

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.

For personal data subject to the European Union General Data Processing Regulations ("GDPR"), we rely on several legal bases to process the data. These legal bases include where:

- The processing is necessary to perform our contractual obligations in our Terms of Service or other contracts with you (such as to provide you the Service as described in our Terms of Service);
- You have given your prior consent, which you may withdraw at any time (such as for marketing purposes or other purposes we obtain your consent for from time to time);
- The processing is necessary to comply with a legal obligation, a court order or to exercise or defend legal claims;
- The processing is necessary for the purposes of our legitimate interests, such as in improving, personalizing, and developing the Service, marketing the Service, such as new features or products that may be of interest, and promoting safety and security as described above.

If you have any questions about or would like further information concerning the legal basis on which we collect and use your personal information, please contact us using the contact details provided below in Section 14.

[Top](#)

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. 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.

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. Some of these service providers or vendors may send you e-mails on IXL's behalf. IXL will not knowingly use Student Data for targeted advertising purposes.

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 services 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.

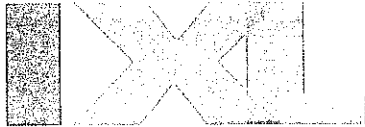
[Top](#)

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 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 information about your visit to 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.

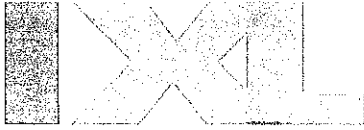
[Top](#)

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.

[Top](#)

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. 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.

[Top](#)

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.

[Top](#)

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.



[Top](#)

9. European Union Data Protection

Residents in the European Union are entitled to certain rights with respect to personal information that we hold about them under the General Data Protection Regulation (GDPR):

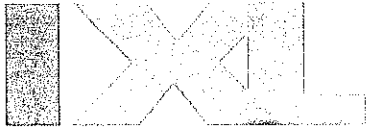
- **Right of access and portability.** The right to obtain access to your personal information, along with certain related information, and to receive that information in a commonly used format and to have it transferred to another data controller;
- **Right to rectification.** The right to obtain rectification of your personal information without undue delay where that personal information is inaccurate or incomplete;
- **Right to erasure.** The right to obtain the erasure of your personal information without undue delay in certain circumstances, such as where the personal information is no longer necessary in relation to the purposes for which it was collected or processed;
- **Right to restriction.** The right to obtain the restriction of the processing undertaken by us on your personal information in certain circumstances, such as where the accuracy of the personal information is contested by you, for a period enabling us to verify the accuracy of that personal information; and
- **Right to object.** The right to object, on grounds relating to your particular situation, to the processing of your personal information, and to object to processing of your personal information for direct marketing purposes, to the extent it is related to such direct marketing.

You may also have the right to make a GDPR complaint to the relevant Supervisory Authority. A list of Supervisory Authorities is available here: http://ec.europa.eu/justice/data-protection/bodies/authorities/index_en.htm. If you need further assistance regarding your rights, please contact us using the contact information provided below and we will consider your request in accordance with applicable law. In some cases our ability to uphold these rights for you may depend upon our obligations to process personal information for security, safety, fraud prevention reasons, compliance with regulatory or legal requirements, or because processing is necessary to deliver the services you have requested. Where this is the case, we will inform you of specific details in response to your request.

IXL is in the process of certifying to the U.S.-EU and U.S.-Swiss Privacy Shield Principles. We will update this page with additional information once this process is complete.

[Top](#)

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 [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.

[Top](#)

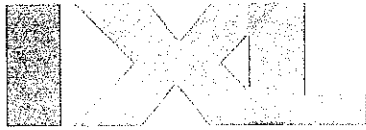
11. How does IXL protect Student Data and comply with laws?

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.



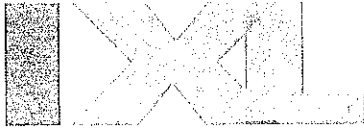
- IXL will maintain a comprehensive data security program designed to protect the types of Student Data maintained by IXL.
- IXL will not knowingly retain Student Data beyond the time period required to support the School's purpose, unless authorized by the parent.
- IXL will clearly and transparently 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."

[Top](#)

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.

[Top](#)

13. Updates to this Policy

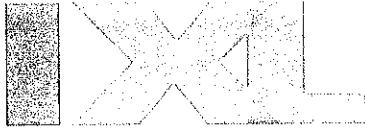
IXL may, in its sole discretion, modify or update this Policy from time to time, which will be reflected in the `date last modified` set forth below. If we change this Policy in a material manner, we will do our best to notify you of the changes by posting a notice on our website. Your continued use 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.

[Top](#)

14. Contact Us



If you have a question regarding this statement, or if a question was not addressed in this privacy policy, you may contact technical support using the contact information below. We will do our best to answer your question promptly and accurately.

IXL Learning, Inc.
777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404 (USA)
Tel. (650) 372-4040
Fax (650) 372-4072

compliance@ixl.com

Last Updated: May 25, 2018

[Top](#)

Children's Privacy Policy

IXL does not permit children under the age of 13 ("Child") 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.

IXL permits Parents to set up child profiles associated with the Parent account so that children may access the Service under the Parent's supervision. We take special precautions to collect only as much information as is reasonably necessary for the child to use the Service and to ensure that Parents have access to and control of their child's use of the Service.

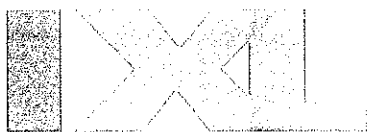
This Children's Privacy Policy applies to all users of child profiles associated with a Parent account, regardless of the age of the child.

By creating a child profile associated with a Parent account and permitting your child to use the IXL Service, you expressly agree to the practices described in this Children's Privacy Policy and you consent to the collection, use, and disclosure of your child's personal information as described herein.

1. How to create a child profile associated with a Parent account.

A parent must purchase a user license using a credit card on the Family Membership page, register for an account with IXL, and agree to the terms of our Terms of Service, Privacy Policy and this Children's Privacy Policy. During the account creation process, the Parent may create individual profiles for each child(ren) authorized by the Parent to use the Service through the Parent's account. 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 login credentials. After the Parent logs into a Parent account, the child user selects the child profile to use the Service.

2. What information does IXL collect from or about a child and how does IXL use this information?



Information you provide us. Through the Parent's account set-up, the Parent provides information about the child(ren) authorized by the Parent to use the Service through the Parent's account, including a profile name and selection of a profile avatar. We recommend that the Parent selects a profile name that does not include the real name or identifying characteristics of the child. The Parent may also create a "secret word," which functions similar to a password to access the child profile, though it cannot be used to sign in to the Service without the Parent first signing in to the Parent's account using the Parent's login credentials. IXL does not request a birthdate or any additional personal information from the user of the child profile, though the child may change his/her profile avatar, secret word and profile name (of course, the Parent will see these changes through the Parent's account dashboard).

IXL uses this information to provide the Service to the user of the child profile. IXL uses the e-mail address provided by users of Parent accounts to communicate messages about the account, such as subscription notices and password resets, and the child user reports and awards.

Information collected from the Child's use of the Service. During the course of providing the Service, we collect information about the user of the child profile's use of the Service and information submitted to the Service, such as answers to questions, for the purpose of providing feedback to the user and for compiling reports and awards.

When your Child accesses the Service through the Parent's account, we automatically collect and store usage information as well as information about the device used by the Parent and Child to access the Service. For example, we collect an IP address, location (at the city level), browser type, language preferences, and other information about the device used to access the Service, such as the device type, model and manufacturer and a unique identifier which allows us to uniquely identify your browser, device, or account, as well as account usage information such as the day/time stamp, referring/exit pages and URLs, pages viewed, and similar information. This information is typically collected through a variety of tracking technologies, including cookies, web beacons, log files, and similar technology (collectively, "tracking technologies"), and we may use third party providers to collect this information on our behalf. This data collection is explained in greater detail in Section 1 of our Privacy Policy under the sub-heading "Information we receive when you use the Service."

We use this information to secure and improve the Service, to provide personalized content and information, to remember you when you return to the Service at a later time or using a different device, to improve the Service, to save you time, to provide better technical support, to track website usage and other similar purposes.

3. How we disclose information

IXL may share or disclose a child's personal information as needed to provide our Service or with your consent or permission. For example, we share information with our trusted vendors, third party service providers and individuals to provide services for us on our behalf, which may include analytics providers and hosting services. We may also share personal information if we have 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.

If IXL becomes involved in a merger, acquisition, bankruptcy, change of control, or any form of sale of some or all of its assets, personal information may be transferred or disclosed in connection with the business transaction, subject to any applicable laws.

We may also share aggregate or de-identified information in a manner that cannot be reasonably used to identify an individual user.

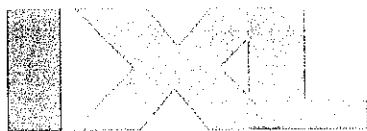
4. Third party tracking and online advertising on the Service

IXL does not display any targeted advertising on the Service.

We work with third-party online advertising networks which use tracking technologies (such as cookies, web beacons and similar technologies) to collect information about visitors to direct targeted advertising on other websites or services. You can learn more by referring to Section 4 of the IXL Privacy Policy called "Third party tracking and online advertising," and by visiting the Digital Advertising Alliance's resources at <http://www.aboutads.info/choices> and/or the Network Advertising Initiative's online resources, at <http://www.networkadvertising.org>.

We take certain steps designed to avoid these third-party tracking technologies from collecting information from users of Child profiles for targeted advertising purposes, by taking steps to disable such tracking technologies once a subscriber to our Service (e.g., the Parent) logs into our Service, maintaining the preferences for as long as the subscriber is signed in, and by remembering these preferences the next time you return to our Service using the same browser or device. Please note that we rely on cookies to identify whether you are a Subscriber and if you delete or block cookies you may also delete the IXL cookie which allows us to recognize returning users and prevent subscribers from receiving targeted IXL advertisements on other websites or services. These preferences are unique to the browser or device you used to sign in to the Service. Therefore, third-party tracking technologies may be present if you navigate to certain pages of our website using a new browser or device until you sign in to your account on that browser or device.

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 access and delete your child's personal information

The Parent may review the information collected from the user of the child profile at any time by signing in to the Parent account. The Parent may refuse to permit the further collection of the child user's information by no longer providing the child user access to the Service through the Parent's account.

IXL will retain the personal information collected from and about the user of the child profile for as long as necessary to provide the Service and will de-identify or delete the personal information after the termination of the Parent's subscription account in accordance with our standard data retention policy or until we receive a deletion request. To request deletion of personal information of a user of a child profile at any time, please contact us at compliance@ixl.com.

6. Our practices involving Schools

When IXL is used by a School in an educational setting, the School may authorize IXL to collect information from a child under 13. If you are a Parent whose child accesses the IXL Service through a School, please contact the child's School to request to access, review and/or delete your child's information. IXL will process such requests promptly as directed by the School.

Please refer to Section 11 of the IXL Privacy Policy 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.

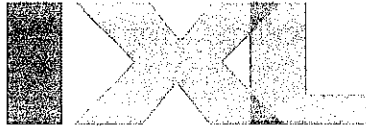
7. European Union Data Protection

If you reside in the European Union, the United Kingdom or Switzerland, additional rights may apply to you pursuant to the General Data Protection Regulation (GDPR). Please see our Privacy Policy section on **European Union Data Protection** to learn more.

8. Contact us


If you have questions or concerns about this policy or about our use of information provided by a user of a child profile, please contact us:

IXL Learning, Inc.
777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404 (USA)
Tel. (650) 372-4040
Fax (650) 372-4072
compliance@ixl.com



Last Updated: May 25, 2018

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