



Kenton County School District | It's about ALL kids.

**THE KENTON COUNTY BOARD OF  
EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY  
41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

**KCSD ISSUE PAPER**

**DATE:**

5/18/19

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve Consider/Approve Contract with x2VOL to track service hours for students in National Honor Society at Simon Kenton High School for the 2019 – 2020 school year.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

Contracting with this company would eliminate a lot of paperwork and make it easier for students to record and track their required service hours for NHS.

**FISCAL/BUDGETARY IMPACT:**

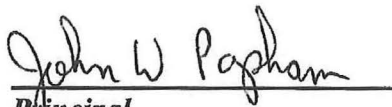
Cost will be \$250 to be paid from the NHS account at Simon Kenton with no cost to the students.

**RECOMMENDATION:**

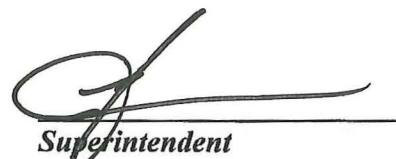
Approval for Simon Kenton to sign the contract with x2VOL to track service hours for students in National Honor Society at Simon Kenton High School for the 2019 2020 school year.

**CONTACT PERSON:**

Melissa Cross, Simon Kenton High School

  
Principal

  
District Administrator

  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.  
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

**Kenton County Board of Education**

Board Members: Carl Wicklund, Chairperson Karen L. Collins, Vice Chairperson Carla Egan Shannon Herold Jessica Jehn  
"The Kenton County Board of Education provides Equal Education & Employment Opportunities."

## **ANNUAL SUBSCRIPTION AGREEMENT – SPECIAL OFFER FOR NHS CHAPTERS**

This Subscription Agreement ("Agreement") dated as of the 15th of May, 2019 (the "Effective Date") is entered into by and between Five For A Dollar, Inc., a Texas LLC, d/b/a/ **intellIVOL**, ("INTELLIVOL"), having a principal place of business in Coppell, Texas, and Simon Kenton High School having a principal place of business in Independence, KY ("Subscriber"). Each Party may be separately referred to as a "Party" or jointly as the "Parties" and specifically for use by one high school.

### **RECITALS**

WHEREAS, INTELLIVOL has developed a proprietary volunteer management methodology, software, and system and offers access to and licensed use of the methodology, software, and system on a subscription basis; and

WHEREAS Subscriber desires to obtain a subscription and license to use the INTELLIVOL volunteer management methodology, software, and system;

NOW, THEREFORE, in consideration of the promises and covenants and other good, valuable and mutual consideration provided herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### **TERMS AND CONDITIONS**

#### **1. Definitions**

**1.1. "Subscriber"** means the above-identified entity, including any employees, agents, affiliates, or other representatives of the above-identified entity. A typical Subscriber is a school.

**1.2. "INTELLIVOL Website"** means the Internet website operated by INTELLIVOL at [www.x2vol.com](http://www.x2vol.com) [or at another website address subsequently provided by INTELLIVOL to Subscriber in a written communication] and is the website through which Subscriber and End Users access the INTELLIVOL Services and the X2VOL Product.

**1.3. "Restricted Area"** means that portion of the INTELLIVOL Website an End User must be registered to access. The INTELLIVOL Services are available in the Restricted Area.

**1.4. "INTELLIVOL Services"** means the volunteer management services provided by INTELLIVOL to Subscriber and Subscriber-Associated End Users who are Registered Users during the Term of this Agreement. The INTELLIVOL Services are limited to the features and functionality available at the INTELLIVOL Website at any time during the Term of this Agreement, those features and functionality being determined at the sole discretion of INTELLIVOL.

**1.5. "X2VOL Product"** refers collectively to the INTELLIVOL Website, INTELLIVOL Software, and INTELLIVOL Services available at the INTELLIVOL Website.

**1.6. "INTELLIVOL Software"** means an Internet-based software application used by INTELLIVOL to provide the INTELLIVOL Services. End Users interact with the INTELLIVOL Software when interacting with the INTELLIVOL Website.

**1.7. "End User"** means an individual that is to access the INTELLIVOL Website for accessing the INTELLIVOL Services and who must first complete the registration process at the INTELLIVOL Website to be authorized to access the Restricted Area.

**1.8. "Subscriber-Associated End User(s)"** means those End Users authorized by Subscriber to associate themselves with Subscriber

for purposes of using the X2VOL Product. Typical Subscriber-Associated End Users include school counselors, students enrolled with Subscriber, and other appropriate End Users.

**1.9. "Registered End User"** means an End User who has completed the registration process at the INTELLIVOL Website, including accepting INTELLIVOL's standard terms and conditions available at the INTELLIVOL Website.

**1.10. "End User Information"** means information provided by or generated about End Users during interaction with the X2VOL Product. Typical End User Information may include name, contact information, username, password, gender, interests, matching volunteer opportunities, selected volunteer opportunities, performed volunteer opportunities, and other information.

**1.11. "INTELLIVOL Intellectual Property"** means any intellectual property both tangible and intangible which is now owned or hereafter acquired by INTELLIVOL in any manner including without limitation: inventions, whether patentable or not; patents and/or patent applications filed, issued and/or pending in any countries; proprietary information; copyrights in software, documentation, website pages, and other recorded information, whether the copyrights are registered or not; trademarks, service marks and trade names, whether registered or not; and trade secrets including without limitation software, algorithms, methods, advertising strategies and/or plans, marketing information, and any other information known to INTELLIVOL which is not publicly known and which gives INTELLIVOL any advantage in its businesses or operations.

#### **2. Provision of Services**

**2.1. Providing Services.** INTELLIVOL will provide to the Subscriber the INTELLIVOL Services. Subscriber and INTELLIVOL agree to cooperate in good faith to achieve provision of the Services. INTELLIVOL agrees to provide access to the INTELLIVOL Services (or portion thereof) at the INTELLIVOL Website to allow Subscriber-Associated End Users who are Registered End Users to access the relevant INTELLIVOL Services.

**2.2. Access by Subscriber-Associated End Users.** Access to the INTELLIVOL Website shall be subject to INTELLIVOL's standard terms and conditions, which are posted on the INTELLIVOL Website and are amended from time to time. Subscriber agrees that it will be bound by the standard terms and conditions, including those terms and conditions that change from time to time. Subscriber agrees that it will be responsible for all conduct of any employee or agent of Subscriber that accesses any Restricted Area, whether such conduct has been authorized by Subscriber or not.

**2.3. End User Registration.** Each End User will be required to register with the INTELLIVOL Website before being granted access to the Restricted Area, and thereby the INTELLIVOL Services. During the registration process, each End User will be required to accept the INTELLIVOL's standard terms and conditions. Failure to accept INTELLIVOL's standard terms of service will result in a rejected registration for the End User, and the End User will have no access to the Restricted Area, and thereby no access to the INTELLIVOL Services. INTELLIVOL shall have no responsibility for an End User's decision to reject INTELLIVOL's standard terms and conditions or the consequences resulting from that decision, either to the End User or Subscriber.

**2.4.** INTELLIVOL will not provide Subscriber any software, firmware, or hardware for accessing the INTELLIVOL Website beyond what is available at the INTELLIVOL Website. Subscriber and/or the End Users are responsible for obtaining and maintaining the minimum necessary equipment (hardware, firmware, and/or software) for accessing and using the X2VOL Product through the website interface of the INTELLIVOL Website. Typical equipment



includes a computer with a browser and an Internet connection.

**2.5. Subscriber takes full responsibility for approving/validating any volunteer hours reported by a Subscriber-Associated End User.** INTELLIVOL shall have no responsibility for compliance with any laws or other rules or regulations related to which volunteer hours qualify for school credit or are otherwise approved by the school or appropriate governing entity or authority. Subscriber agrees to comply with all applicable federal, state and municipal statutes, ordinances, laws, rules and regulations governing the schools and/or minors.

**2.6. End User Control of End User Information.** It shall be solely within each End User's discretion whether to share End User Information with Subscriber or any third party in a manner that can be used to identify the End User. INTELLIVOL shall have no obligation to provide to Subscriber any End User Information without the consent of the End User.

**2.7. INTELLIVOL has no responsibility or liability for discrepancies in volunteer hours reported by an End User, confirmation or validation of volunteer hours reported by an End User, an End User's conduct while performing a volunteer opportunity, or an End User's failure to perform a volunteer opportunity.**

**2.8. INTELLIVOL has no responsibility or liability for validation of any volunteer organizations offering volunteer opportunities through the X2VOL Product, the behavior of such volunteer organizations, or the quality of the volunteer opportunity.**

**2.9. INTELLIVOL has the right to modify the X2VOL Product, including the appearance, operation, and any other features, at any time and at INTELLIVOL's sole discretion.**

### **3. Subscriber Use of the INTELLIVOL Website**

**3.1. License Grants to Subscriber.** Subject to the terms of this Agreement and for the Term of this Agreement only, INTELLIVOL grants to Subscriber and the Subscriber-Associated End Users who are Registered Users (solely within the scope of their association with Subscriber), a revocable, world-wide, non-exclusive, non-transferable license, without the right to sublicense, to access and use the X2VOL Product (including the Restricted Area), in executable form only and solely for Subscriber's internal purposes. In no event will Subscriber or any End User obtain any right to use the X2VOL Product, or portion thereof, for purposes of operating a service bureau, acting as an application service provider, providing volunteer management services to third parties, etc. The X2VOL Product contains INTELLIVOL Intellectual Property and any unauthorized use of thereof may violate intellectual property laws. Except as expressly set forth herein, Subscriber and End Users do not obtain any rights (by implication, estoppel, waiver, or otherwise) under any INTELLIVOL Intellectual Property rights. Notwithstanding the foregoing, no End User shall obtain any license rights under this section unless such End User has agreed to be bound by the standard terms and conditions posted on the INTELLIVOL Website.

**3.2. Usage Limits.** Subscriber agrees that neither Subscriber nor any Subscriber-Associated End User obtains any rights to use the X2VOL Product for any purpose other than the intended purpose. INTELLIVOL reserves the right to revoke the rights of the Subscriber or any Subscriber-Associated End User to view, download, retrieve, access, store, and print information available through the INTELLIVOL Website and Subscriber agrees that it will discontinue or cause to be discontinued the same immediately upon written notice from INTELLIVOL. Subscriber and Subscriber-Associated End Users may not modify, reproduce, or otherwise use any materials available through the INTELLIVOL Website for any purpose other than for the intended use thereof.

Subscriber agrees that it will cease use of and cease attempting to access the Restricted Area of the INTELLIVOL Website upon termination of this Agreement.

**3.3. Proprietary Markings.** Subscriber agrees that it will not remove any copyright or other proprietary notices contained in the X2VOL Product or other materials provided by INTELLIVOL.

**3.4. Further Limitations on Use.** Subscriber agrees that it shall not, shall not allow or encourage others to, and obtains no rights hereunder to reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the X2VOL Product (including without limitation the source code), in whole or in part, in any manner whatsoever for any purpose. Subscriber agrees that it will not study the operation of the X2VOL Product in order to develop a competing system or a system that operates with the X2VOL Product, and Subscriber breaching this provision agrees to assign all intellectual property rights in any competing system to INTELLIVOL.

**3.5. Security.** Subscriber not to take any steps to avoid, study, or defeat the purpose of security measures associated with the X2VOL Product. Subscriber agrees that it will not access data not intended to be accessed by it or log into an account which it is not allowed to access. Subscriber agrees that it will not attempt to interfere with INTELLIVOL Service to any End User, the X2VOL Product, or any portion thereof including without limitation via means of submitting a virus, overloading, flooding, spamming, mailbombing, crashing, etc. Subscriber agrees not to delete any data associated with the INTELLIVOL Website without authorization. Subscriber expressly acknowledges that security risks are an inherent risk of doing business on the Internet. In particular, third parties may unlawfully intercept or access private communications of yours or the INTELLIVOL Website. Although INTELLIVOL takes measures to secure the X2VOL Product, you acknowledge that INTELLIVOL does not warrant or represent that information communicated to or from the X2VOL Product will be free from tampering, interception, interference, or destruction by third parties.

### **4. Fees, Taxes, and Invoices**

**4.1. Fees/Invoices.** Subscriber shall pay INTELLIVOL the yearly amount of \$250 for use by the NHS Chapter only for subscription to the INTELLIVOL Services (the "Fee"). The initial setup fee of \$349 is waived. The annual support fee of \$99 is waived as part of this special offer. INTELLIVOL will invoice Subscriber at the address set forth in the notice provision herein. Fees for services are payable when the invoice is mailed to the Subscriber, and shall be past due if they remain unpaid fifteen (15) days after they become payable. Any amounts past due more than fifteen days will bear interest, which Subscriber agrees to pay to INTELLIVOL, at a rate of interest equal to the lesser of (i) the prime rate established from time to time by Citibank of New York plus two percent, or (b) the maximum rate of interest allowed by applicable law. Subscriber agrees to pay INTELLIVOL the Fee at the address provided for INTELLIVOL under the notices provision herein. All fees include online set-up, online training and online support.

**4.2. Taxes.** The Fee payable to INTELLIVOL is exclusive of any sales or use or other taxes or governmental charges. Subscriber shall be responsible for payment of all such taxes or charges, except for any taxes based solely on INTELLIVOL's net income.

**4.3. Suspension of Service.** Should any payments due to INTELLIVOL under this Agreement fall past due according to the above paragraph, INTELLIVOL may at its sole option and on written notice to Subscriber at the address provided at the notice provision below, suspend the use of the INTELLIVOL Services, including suspending access by Subscriber and/or the Subscriber-Associated End Users, until such time the past due payments are paid and the Subscriber's obligations to make payments are current.

### **5. Intellectual Property Rights/Ownership**



**5.1. Title and Ownership.** It is expressly agreed that INTELLIVOL Intellectual Property including all intellectual property rights in the X2VOL Product, all INTELLIVOL provided documentation, manuals, CD-ROMs, diskettes, files website pages, source code, object codes, executable code, databases and the like provided to or otherwise accessed by Subscriber or the End Users under this Agreement shall be and remain the property of INTELLIVOL during the Term of this Agreement and thereafter. No title transfer to Subscriber or any End User is effected by this Agreement. Subscriber's and End Users' rights to use the X2VOL Product during the Term of this Agreement is limited to the license granted under this Agreement, and the Subscriber and End Users will have no other ownership and/or use rights in the same. Upon termination of this Agreement, all copies of documentation, software, files and other materials such as manuals, diskettes, CD-ROMs and the like provided by INTELLIVOL to Subscriber under this Agreement are to be returned to INTELLIVOL at Subscriber's sole expense.

**5.2. Improvements and Modifications.** Subscriber acknowledges that it may gain a deeper understanding of the X2VOL Product, including the INTELLIVOL Services, the INTELLIVOL Website, and the INTELLIVOL Software, while this Agreement is in effect. To the extent that Subscriber, its employees, or agents, develops any patentable improvement to the X2VOL Product during the term hereof, Subscriber agrees to assign and hereby does assign all right title and interest in and to such invention to INTELLIVOL, including without limitation the right to seek patents (and foreign equivalents) thereon. Other than the license expressly granted hereunder, Subscriber obtains no right or license of any kind (whether implied or by exhaustion) to use the X2VOL Product. Subscriber agrees that all intellectual property rights in any modifications and/or improvements made to the X2VOL Product, which are made by INTELLIVOL during the Term of this Agreement, even if such improvements or modifications are suggested by Subscriber or its employees or agents or are made at Subscribers' expense, become and are the sole property of INTELLIVOL and may be used by INTELLIVOL for any purpose whatsoever. Subscriber agrees to assign and hereby does assign to INTELLIVOL its rights in the same. Subscriber further agrees that, if requested in writing by INTELLIVOL, Subscriber shall cooperate with and assist INTELLIVOL in perfecting its title and ownership in the improvements and modifications.

**5.3. Trademarks and Domain Names.** Subscriber shall not use a trademark, service mark, trade name, Uniform Resource Locator or domain name of INTELLIVOL without express written consent; except that Subscriber and End Users are hereby authorized by INTELLIVOL to access the INTELLIVOL Website and to use links and bookmarks on their own systems to enhance access to the INTELLIVOL Website.

**5.4. Right to Perform Services For Others.** Subscriber expressly acknowledges that INTELLIVOL has an existing business using the X2VOL Product, and that INTELLIVOL intends to continue in providing the INTELLIVOL Services to other subscribers, during the Term of this Agreement and thereafter. Subscriber agrees that INTELLIVOL may provide services identical to or similar in nature to the INTELLIVOL Services for any third parties both during and after the Term of this Agreement. Subscriber further agrees that nothing in this Agreement will impair INTELLIVOL's right to acquire, license, market, distribute, develop for itself or others or have others develop for INTELLIVOL similar software technology, performing the same or similar functions as are used by Subscriber hereunder.

## **6. Confidentiality**

**6.1. Definition of Confidential Information.** Confidential Information of Subscriber means all information provided by

Subscriber to INTELLIVOL in writing, whether provided before or after the date of this agreement that is marked by Subscriber as confidential. Confidential Information of INTELLIVOL shall include all information concerning the X2VOL Product, and any information provided in writing, whether provided before or after the date of this agreement that is marked by INTELLIVOL as confidential. Confidential Information of either Party shall also include information generated by the Party receiving the information or by its representatives that contains, reflects, or is derived from the furnished information. Notwithstanding the foregoing, Confidential Information shall not include information which (i) is known or becomes known to the receiving Party through no unauthorized act by the receiving Party or by any third party, (ii) is independently developed by the receiving Party without use of either the information provided by the disclosing Party or any information received through an unauthorized act of the receiving Party or any third party, provided that such independent development can be clearly documented and verified by clear and convincing evidence, or (iii) is generally available to the public.

**6.2. Duty as to Confidential Information.** Each Party agrees that, with respect to the other Party's Confidential Information, it will keep the Confidential Information confidential and that the Confidential Information will not, without the prior written consent of the disclosing Party be disclosed by the receiving Party or by its officers, directors, partners, employees, affiliates, agents, or representatives (collectively "representatives") in any manner whatsoever, in whole or in part to any third party. The receiving Party also agrees that the Confidential Information shall not be used nor copied by the receiving Party or by its representatives other than in connection with this Agreement and shall not at any time incorporate any or all of the Confidential Information into any other work or product unrelated to this Agreement. The receiving Party of Confidential Information will take commercially reasonable precautions to prevent use or disclosure of the Confidential Information in violation of this Agreement.

## **7. Ownership/Use of Data**

**7.1. Data Storage and Use.** INTELLIVOL will retain data related to the use by Subscriber and the Subscriber-Associated End Users of the X2VOL Product in accordance with its standard procedures. If Subscriber would like special data retention, then it is Subscriber's responsibility to negotiate with INTELLIVOL for the same, and such special data retention may incur fees in addition to the Fee described herein. Subscriber agrees that INTELLIVOL is permitted to use data generated with respect to Subscriber's and Subscriber-Associated End Users' permitted use of the X2VOL Product in aggregate form for its own commercial and statistical purposes. INTELLIVOL agrees that the identity of End Users, including names and addresses, included in such data will not intentionally be disclosed to third parties without the prior written consent of the corresponding End User. Subscriber agrees that INTELLIVOL shall have no liability for any loss of data for any reason. Upon termination of this Agreement, INTELLIVOL shall have the right to destroy all remaining data of Subscriber and the Subscriber-Associated End Users but shall not have the obligation to do so and will continue to be able to use such data for its own commercial and statistical purpose.

## **8. Representations and Warranties/Disclaimers**

**8.1. Representation of Authority.** Each Party represents and warrants that it has the right and authority to enter into this Agreement. The undersigned represent that they are duly authorized to sign this Agreement on behalf of the Parties.

**8.2. Warranty.** Subscriber acknowledges and understands that the operations of any website and INTELLIVOL's ability to provide the INTELLIVOL Services involve functions outside the control of INTELLIVOL, including third-party software and transmission



services that INTELLIVOL cannot represent or warrant to be uninterrupted or error-free.

**8.3. Warranty of Subscriber.** Subscriber warrants that it will not take any action in its use of any of the X2VOL Product that constitutes an infringement of the intellectual property rights of any third party.

**8.4.** INTELLIVOL does not warrant that the X2VOL Product shall meet all of Subscriber's requirements, or that the use of the X2VOL Product will be uninterrupted or error-free. Except as otherwise provided for in this Agreement, the X2VOL Product and related services are provided on an "as is, as available" basis without any representations, warranties, guarantees, or conditions whatsoever, including, without limitation, any representation, warranty, guarantee, or condition concerning the operation of the X2VOL Product or related services. Subscriber shall be solely responsible for the consequences of its use of the X2VOL Product and any related services.

**8.5. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTELLIVOL MAKES NO OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE INTELLIVOL WEBSITE, THE INTELLIVOL SERVICES, AND/OR THE INTELLIVOL SOFTWARE. SUBSCRIBER ACKNOWLEDGES THAT INTELLIVOL DOES NOT WARRANT THAT ACCESS TO THE INTELLIVOL WEBSITE WILL BE UNINTERRUPTED, WITHOUT DEFECT AND ERROR, ABSOLUTELY SECURE, AND/OR FREE OF VIRUSES.

**8.6. Limitations on Liability and Damages.** IN NO EVENT SHALL INTELLIVOL BE LIABLE TO THE SUBSCRIBER FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF PROFITS, REVENUE OR DATA, LOST BUSINESS OPPORTUNITIES, INTERRUPTION OF BUSINESS, OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, ARISING OUT OF THIS AGREEMENT AND/OR THE INTELLIVOL SERVICES, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTELLIVOL'S TOTAL LIABILITY TO SUBSCRIBER, IF ANY, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY SUBSCRIBER HEREUNDER, EVEN IF MULTIPLE CLAIMS ARE MADE.

#### **9. Indemnity**

**9.1. Indemnity by Subscriber.** Subscriber agrees to indemnify, defend, and hold harmless INTELLIVOL and its subsidiaries, affiliates, officers, directors, partners, employees, and agents from and against any and all third party claims, actions, disputes, and suits, and will pay all resulting losses liabilities, expenses, damages, costs, and expenses, including reasonable attorneys fees, that (a) are attributable to any acts or omissions of Subscriber that result in any intellectual property claim against INTELLIVOL or its subsidiaries, affiliates, officers, directors, partners, employees, and agents, (b) that arise from any act of any Subscriber-Associated End User or any other employee or agent of Subscriber while using or otherwise accessing the X2VOL Product, or (c) that arise from the breach by the Subscriber of its obligations under this Agreement.

**9.2. Procedure.** If INTELLIVOL seeks indemnification under this Agreement, INTELLIVOL will notify the Subscriber in writing of any such claim, give the Subscriber the opportunity to direct the investigation, defense and settlement of such claim, and cooperate with the Subscriber in defending or settling such claim, provided that INTELLIVOL shall have the right to approve any settlement in its sole discretion. Notwithstanding the obligations of the Subscriber to defend INTELLIVOL under the above paragraph, INTELLIVOL shall also have the right under this provision to be represented by separate counsel of its own choosing at its own expense.

#### **10. Term/Termination**

**10.1. Terms.** The Initial Term of this Agreement shall be for twelve months from the Effective Date and shall automatically renew on each yearly anniversary of the Effective Date for an additional Renewal Term of one year. A Renewal Term shall not become effective in the event that either Party issues notice to the other of its intent not to renew this Agreement within sixty (60) days prior to the yearly anniversary of the Effective Date.

**10.2. Termination.** This Agreement may be terminated by either Party upon thirty (30) days' prior written notice if the other Party materially breaches or fails to perform any material term hereof and the breaching Party fails to cure such breach within the 30-day period. A failure to make a payment due under this Agreement is a material breach. The Parties further agree that this Agreement may be terminated by mutual consent of the Parties expressed in writing. The Subscription Fee will not be refunded in the event of termination.

**10.3. Survival.** Each Party's rights and obligations under Sections 1.1-1.11, 3.2-3.4, 5.1-5.4, 6.1-6.2, 7.1, 8.5-8.6, 9.1-9.2, 11.1, 11.4-11.6, and 11.12 shall survive termination or expiration of the Agreement. Upon termination of this Agreement, the license granted to Subscriber herein immediately terminates and Subscriber agrees to immediately cease use of the Restricted Portion of INTELLIVOL's Website.

#### **11. Miscellaneous**

**11.1. Relationship of the Parties.** The Parties are independent contractors. Neither Party shall be deemed to be an employee, agent, partner, joint venturer, or legal representative of the other Party for any purpose and neither Party shall have any right, power, or authority to create any obligation or responsibility on behalf of the other Party.

**11.2. Force Majeure.** Each Party will be excused from performance under this agreement, except for any outstanding payment obligations, for any period and to the extent that it is prevented from performing in whole or in part, as a result of any act of God, earthquake, labor dispute, communication line failures, power failures, or other cause beyond its reasonable control.

**11.3. Assignment.** Neither Party may assign this Agreement, or any of their respective rights and obligations under this Agreement, without the prior written consent of the other Party, which such consent will not be unreasonably withheld. It is agreed that a merger of Subscriber with another entity, an acquisition of Subscriber by another entity, a consolidation of Subscriber with other entities to form an entity, and any other event which effects a change in control of Subscriber shall be deemed an assignment under this paragraph. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, and their respective successors and permitted assigns. Any attempted or purported assignment without the required consent will be void. Notwithstanding the foregoing, INTELLIVOL may assign this Agreement to any entity that acquires all or substantially all of INTELLIVOL's assets and who agrees to be bound by the provisions of this Agreement.



**11.4. Choice of Law.** THE VALIDITY, CONSTRUCTION, PERFORMANCE, AND ALL MATTERS RELATING TO THE EFFECT OF THIS AGREEMENT AND ANY AMENDMENTS HERETO SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES THAT MAY REQUIRE APPLICATION OF THE LAW OF A DIFFERENT JURISDICTION.

**11.5. Choice of Forum.** THE PARTIES (A) AGREE THAT THE COURTS SITTING IN DALLAS, TEXAS SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTIONS ARISING OUT OF OR RELATED TO OR IN CONNECTION WITH THIS AGREEMENT AND THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR ANY OTHER FORM OF ACTION ("RELATED ACTION"). (B) AGREE TO INITIATE ANY SUCH RELATED ACTION AGAINST THE OTHER PARTY ONLY IN SUCH COURTS. (C) AGREE THAT THEY SHALL NOT RAISE ANY DEFENSE TO THE LAWFUL JURISDICTION OF SUCH COURTS, AND (D) AGREE THAT THEY SHALL NOT ATTEMPT TO REMOVE ANY ACTION TO ANY OTHER COURT, WHETHER LOCAL, STATE OR FEDERAL COURTS OF THE UNITED STATES OR THE COURTS OF ANY OTHER COUNTRY.

**11.6. Waivers and Amendments.** No failure or delay by either Party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power or remedy. No waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties. No waiver by either Party of any provision of this Agreement will be construed as a waiver of any other provision of this Agreement, and no such waiver will operate or be construed as a waiver of such provision respecting any future event or circumstance. No modification/amendment of any provision of this Agreement will be effective unless made in writing and signed by both Parties. No addenda to this Agreement with respect to any changes in the terms hereof will be deemed effective unless it is subsequently dated in writing and signed on behalf of both Parties by their duly authorized representatives.

**11.7. Judicial Modification.** Subscriber agrees that if a court of competent jurisdiction determines that the length of time or any other restriction, or portion thereof, set forth in this Agreement is overly restrictive and unenforceable, the court may reduce or modify such restrictions to those which it deems reasonable and enforceable under the circumstances.

**11.8. Complete Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations, and understandings between the Parties, both oral and written.

**11.9. Severability.** If any provision of this Agreement shall be held void, voidable, invalid, or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid, or inoperative provision had not been contained herein.

**11.10. Cumulative Remedies.** Except as otherwise provided in this Agreement, all rights and remedies herein or otherwise shall be cumulative and none of them shall limit any other rights or remedies.

**11.11. Headings.** The headings in this Agreement are for convenience and shall not be used in interpreting this Agreement.

**11.12. Construction.** Each Party has had the opportunity to receive independent legal advice from its attorney with respect to this Agreement. No provision in this Agreement shall be construed against the drafter of such provisions.

**11.13. Confidentiality of Agreement.** The terms of this Agreement are INTELLIVOL's Confidential Information and Subscriber shall not disclose any of the terms hereof without the prior written consent of INTELLIVOL, provided that Subscriber may disclose that they have

entered into this Agreement and disclose the purpose for doing so.

**11.14. Notice.** Any notice required to be given hereunder shall be deemed given if in writing and sent by confirmed facsimile transmission or personally delivered, or actually deposited in the United States mail in registered or certified form (except for invoices which may be sent by regular mail), return receipt requested, postage prepaid, and addressed to the notified Party at the address as set forth below or as changed by either Party upon written notice to that effect to the other Party:

**If to INTELLIVOL:**

intelliVOL  
P.O. Box 613  
Coppell, Texas 75019  
Attention: D. Michele Pitman, President and CEO  
Phone: ( 214 ) 669- 2083  
Email: mpitman@intelliVOL.com

**If to Subscriber:**

Simon Kenton High School 181255  
11132 Madison Pike, Independence, KY 41051  
Melissa Cross, NHS Sponsor  
melissa.cross@kenton.kyschools.us (859) 960-0144

IN WITNESS HEREOF, the duly authorized representatives of the Parties have executed this Agreement on their behalf where indicated below:

**INTELLIVOL, LLC.:**

\_\_\_\_\_  
Signature of Authorized Representative

D. Michele Pitman

\_\_\_\_\_  
Name of Authorized Representative

President and CEO

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date of Execution

**Subscriber: Simon Kenton High School**

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date of Execution

## AMENDMENT TO ANNUAL SUBSCRIPTION AGREEMENT

INTELLIVOL and Subscriber enter into this Amendment to Annual Subscription Agreement (the "Amendment") on the date fully executed below.

### RECITALS

WHEREAS, Subscriber and its designated Subscriber-Associated End User(s) shall have full access to the Restricted Area normally accessed only by Registered End Users;

WHEREAS, during an initial startup period to be defined by Subscriber, designated Subscriber-Associated End User(s) shall input data and maintain access to data that is normally provided and accessed by student End Users; and

NOW, THEREFORE, in consideration of the promises and covenants and other good, valuable and mutual consideration provided herein and in the Annual Subscription Agreement, the Parties agree as follows.

#### **1. Amendments.**

**1.1. "Subscriber-Associated End User(s)".** Section 1.8 of the Annual Subscription Agreement is amended by adding the sentence, "Subscriber-Associated End User(s) designated by the Subscriber shall be provided access and authority to input and review data in any End User's or Registered End User's account or Restricted Area." after the last sentence currently in Section 1.8.

**1.2. "End User Information".** Section 1.10 of the Annual Subscription Agreement is amended by adding "or Subscriber-Associated End User(s)" after the phrase "information provided by or generated about End Users" and before "during interaction with the X2VOL Product."

**1.3. End User Control of End User Information.** Other than its heading, the entirety of Section 2.6 of the Annual Subscription Agreement shall be stricken and replaced with the following, "Subscriber-Associated End User(s) designated by the Subscriber shall have access to the Restricted Area and all information associated with each End User or Registered End User INTELLIVOL account. Subscriber agrees to issue written notification to each End User and Registered End User of such access in a form and manner similar to that provided on Exhibit A to the Amendment."

**1.4. Reporting Volunteer Hours and Related Matters.** Section 2.7 of the Annual Subscription Agreement is stricken in its entirety and replaced with the following, "INTELLIVOL has no responsibility or liability for: (a) discrepancies in volunteer hours reported by any End User or Subscriber-Associated End User; (b) confirmation or validation of volunteer hours reported by any End User or Subscriber-Associated End User; (c) any End User's conduct or omission while performing a volunteer opportunity; and/or (d) any End User's failure to perform a volunteer opportunity."



1.5. Entity Description. In the first paragraph of the Annual Subscription Agreement the phrase "Five For A Dollar, Inc." is stricken and replaced with the phrase "Five For A Dollar, LLC."

2. Addition.

2.1. End User Confidential Information. Section 6.3 shall be added to the Annual Subscription Agreement to provide the following, "6.3. End User Confidential Information. Subscriber and Subscriber-Associated End User(s) shall consider any personally identifying information in the Restricted Area and/or any personally identifying information associated with any End User's or Registered End User's INTELLIVOL account to be "Confidential Information.""

IN WITNESS HEREOF, the duly authorized representatives of the Parties have executed this Agreement on their behalf where indicated below:

**INTELLIVOL, LLC**

**SUBSCRIBER**

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

D. Michele Pitman

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

President and CEO

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Date of Execution



**EXHIBIT A**

<SUBSCRIBER NAME>  
<SUBSCRIBER ADDRESS>

<DATE>

Re: Notice Regarding Volunteer Reporting

Dear Parent(s) and Student,

We are tracking community service hours with x2VOL via Family Connection. This letter is issued to provide you notice that the school will have access to each of your accounts so that it may assist you with these reporting and monitoring requirements.

Please let the school's Service Director, or other administrator, know if you have any questions or comments.

Sincerely,

<AUTHORIZED REPRESENTATIVE>