

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

# Issue Paper

**DATE:**

1/19/22

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve The sales contract with IXL Learning for Summit View Academy to purchase site licenses for the remainder of the 2021-2022 school year and the 2022-2023 school year

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

IXL allows teachers to identify students strengths and needs in the areas listed below, target specific skills to close gaps, as well as maintain and grow students' education knowledge. Additionally, new updates to IXL for virtual learning and Tier 2/Tier 3 interventions would provide teachers with resources and data to best support math instruction and increase student achievement. This agreement will allow a license for every student at SVA: Grades K-1: Math and ELA; Grades 2-8: Math ELA, Science, and Social Studies with unlimited instructor accounts included.

**FISCAL/BUDGETARY IMPACT:**

\$42, 768 over two installments- Title I Funds

**RECOMMENDATION:**

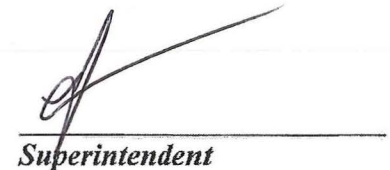
Approval to the sales contract with IXL Learning for Summit View Academy to purchase site licenses for the remainder of the 2021-2022 school year and the 2022-2023 school year.

**CONTACT PERSON:**

Alex Fangman

  
Principal Administrator

  
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.



IXL Learning  
777 Mariners Island Blvd., Suite 600  
San Mateo, CA 94404

**SALES CONTRACT**  
CONTRACT #88050  
January 12, 2022

**CUSTOMER**

Alex Fangman  
Summit View Academy  
5006 MADISON PIKE  
INDEPENDENCE, KY 41051-7538

**SUBSCRIPTION INFO**

Salesperson	Quote #	Subscription duration
Dawn Katte	1098252-5	1 year 6 months

**PAYMENT PLAN**

	Amount	Invoice date
First installment	\$14,113 (33%)	February 3, 2022
Second installment	\$28,655 (67%)	August 3, 2022
<b>TOTAL</b>	<b>\$42,768</b>	

*Price valid until February 3, 2022*

**ACCEPTANCE OF SALES CONTRACT**

This is a binding agreement of payment between IXL Learning and the Purchaser. Your signature indicates that you have received, reviewed, and accepted the attached Terms and Conditions of Sale and that you agree to pay the full license price listed above within 60 days of the invoice date. Without a signature, your order may not be processed.

Acknowledged and agreed to:

**AUTHORIZED SIGNATURE**

**DATE**

\_\_\_\_\_



## TERMS AND CONDITIONS OF SALE

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

1. **PRICING:** The quoted purchase price of the license is valid through the "Price valid until" date on page 1. This price is not binding on IXL unless you have accepted it by sending us an executed Sales Contract by that date.
2. **PAYMENT:** If IXL decides to accept your Sales Contract, we will issue you an invoice. Complete payment of the amount of the stated purchase price is due within sixty (60) days of the invoice date. If payment is not received by the Seller within 60 days, the invoice is considered past due. IXL licenses with past due payments will be put on hold and are subject to termination. Termination does not relieve the Purchaser of the obligation to pay fees due to the Seller.

The full invoice amount must be paid either by check or by credit card. We accept Visa, MasterCard, American Express, and Discover.

All checks should be mailed to:

IXL Learning  
777 Mariners Island Blvd., Suite 600  
San Mateo, CA 94404

Credit card payments may be made by phone at (855) 255-8800.

Any late payment will incur interest at the rate of the lesser of 1% a month or the maximum permissible by law.

3. **CANCELLATION AND REFUND:** No cancellation will be accepted, and no refund issued, if it is more than thirty (30) days beyond the date of purchase for the license referenced in this Sales Contract. For cancellations and refunds of the license tendered under this Sales Contract to be accepted, the Seller must receive written notification of the cancellation within 30 days of purchase. Cancellations requested outside of the 30-day period will not be refunded, and the Purchaser will be responsible for completing the purchase as stated in the Sales Contract.
4. **LICENSES:** IXL grants you the right to provide access, through unique log-in IDs, to no more individuals than the quantity indicated on the first page. The terms and conditions of use for each of these individuals are governed by our websites Terms of Service. You agree to be responsible for their accounts, to monitor their use of their accounts, and to indemnify, defend, and hold us harmless for any claims arising out of or related to their use of IXL Learnings website and services. To the extent that these individuals are minors, you consent to our collection of their personal information as described in our Privacy Policy.

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

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

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

5. **PRIVACY:** If you are a school, district, or teacher, you acknowledge and agree that you are responsible for complying with COPPA, meaning that you must obtain advance written consent from all parents or guardians whose children under 13 will be accessing the website and services and you represent and warrant that you have obtained that consent. When obtaining consent, you must provide parents and guardians with our Privacy Policy. You are to keep all consents on file and provide them to us if we request them.

**6. DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:**

- a. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS. IXL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
- b. IXL MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IXL OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

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

- 7. **LIMITATION OF LIABILITY:** YOU EXPRESSLY UNDERSTAND AND AGREE THAT IXL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES RESULTING FROM THE USE OR INABILITY TO USE THIS SERVICE. IN ALL INSTANCES, DAMAGES SHALL BE CAPPED AT ONE MONTHS FEES.
- 8. **SEVERABILITY:** If any provision of this agreement is deemed invalid, illegal, or unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions of this Sales Contract, which shall remain in full force and effect.
- 9. **ARBITRATION:** You agree that any dispute or claim you may have against IXL arising out of or related to this Sales Contract or the use of Services must be submitted to arbitration, before a single arbitrator appointed by JAMS/Endispute and conducted according to their rules in San Francisco, CA, USA, and that the determination of any such arbitrator shall be binding. The courts located in San Francisco, CA, USA, have exclusive jurisdiction over any judicial proceedings related to this agreement, and you waive any claim that such a court is an improper venue, inconvenient, or lacks jurisdiction over you.
- 10. **GOVERNING LAW:** The Sales Contract and the relationship between you and IXL are governed by the laws of the State of California without regard to conflict of law provisions.
- 11. **ENTIRE AGREEMENT:** This Sales Contract, which incorporates the Terms of Service by reference, is the final expression of the agreement between Purchaser and Seller and supersedes all prior representations, understandings, and agreements between the Purchaser and Seller relating to its subject matter. This Sales Contract cannot be modified, amended, or changed except in writing and signed by IXL.

Please contact IXL Learning with any questions regarding this sales contract:  
Toll-free (855) 255-8800 | Direct (650) 372-4300 | E-mail [orders@ixl.com](mailto:orders@ixl.com)  
Completed sales contracts should be emailed to your sales consultant.

**ADDENDUM TO IXL LEARNING TERMS AND CONDITIONS OF SALE  
FOR Summit View Academy**

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

1. **Section 2 (Payment)** is hereby amended by removing the following language:

"Any late payment will incur interest at the rate of the lesser of 1% a month or the maximum permissible by law."

2. **Section 9 (Arbitration)** is hereby amended by replacing San Francisco, CA, USA with Independence, Kentucky, USA

3. **Section 10 (Governing Law)** is hereby amended by replacing California with Kentucky.

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

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

**IXL Learning, Inc.**

**Summit View Academy**

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

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

**VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL  
AND CONFIDENTIAL INFORMATION**

**Data Security and Breach Protocols**

Vendors that receive Personal Information from the Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement."

Vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

Vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and Vendor abides by the requirements set forth in that exception. Notification shall be in writing.

Vendor hereby agrees to report to KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

Vendor hereby agrees that the KCBOE may withhold payment(s) owed to Vendor for any violation of the Act's notification requirements.

Vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933. Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, Vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) Vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if Vendor is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates cloud computing services"), or, through service to KCBOE, becomes the equivalent of a cloud computing service provider, contractor does further agree that:

- Vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless Vendor receives express permission from the student's parent. Vendor shall work with KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, Vendor may assist KCBOE to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, Vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, Vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, Vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, KCBOE discloses to Vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, et seq.), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 et seq.), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 et seq.), Vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

Vendor hereby agrees to report to KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

Vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's

social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

Vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

Vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

IXL Learning, Inc.

Vendor Name

777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404

Vendor Address

(855) 255-8800

Vendor Telephone

orders@ixl.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Paul Mishkin

Printed Name

11/30/2021

Date