

**DATE:**

11/07/2022

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the agreement and renewed purchase of the online learning platform Xello for students to create their individual learning plans (ILP) and plan for future course and career objectives.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

Kentucky law requires that all middle and high school students complete an individual learning plan (ILP) each school year. The Kenton County School District is currently utilizing the Xello learning platform to complete this activity according to state requirements. Through this program, students complete interactive career, personality, and learning style assessments to help them better understand their unique interests, skills, and strengths. All middle and high school students, excluding Ignite Institute students complete their ILP each school year.

**FISCAL/BUDGETARY IMPACT:**

The board of education would pay \$21,523.59 through the general fund and the remaining \$21,523.59 would be paid for using school SBDM funds. The cost for Xello is \$3.75 per student at each middle and high school. The request is for the school board to fund half of the total cost. 3,225 M.S. licenses and 4,022 H.S. licenses for a total of 7,247 licenses. This would be a total cost of \$43,047.18. This purchase will enable KCSD to utilize Xello through July 31, 2024.

**RECOMMENDATION:**

Approval to accept the agreement and renewed purchase of the online learning platform Xello for students to create their individual learning plans (ILP) and plan for future course and career objectives.

**CONTACT PERSON:**

Matt Moore, Director of District Wide Programs

  
Mary Beth Huss  
Principal & Moore

Principal/Administrator

  
Dave Barry  
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.

# Xello Quote

Proposal for **Kenton County School District**

Prepared By:

**Amanda Molinaro**

(800) 965-8541 x137 Ext.137

amandam@xello.world

**ORDER / QUOTE****xello**

REF-060407

**QUOTE FOR:**

ATTN: **Accounts Payable**  
Kenton County School District  
1055 Eaton Dr  
Ft Wright, KY 41017

**REQUESTED BY:**

Matt Moore  
Kenton County School District  
1055 Eaton Dr  
Ft Wright, KY 41017

**SUBSCRIPTION PERIOD:**

Start Date: **Jan 1, 2023**  
End Date: **Jul 31, 2024**  
Duration: **19 months \***

PRODUCT	QTY	ANNUAL RATE	PRICE	SUBTOTAL
Xello for High School ▼ Kentucky Special Pricing	4,022	<b>\$3.75</b> Per Student Reg \$4.95	\$5.94 24% (\$1.20) discount	\$23,890.68
Xello for Middle School ▼ Kentucky Special Pricing	3,225	<b>\$3.75</b> Per Student Reg \$4.25	\$5.94 12% (\$0.50) discount	\$19,156.50

\* Prorated based on a 12-month subscription

**NOTES:****ANNUAL TOTAL:****\$27,176**

\* Price subject to change

**GRAND TOTAL:****\$43,047.<sup>18</sup>**

USD

Xello Terms of Use Agreement  
W8 Form  
Billing + Renewals FAQ's



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# Xello Terms of Service

## Welcome to Xello

Xello is an online program made available to schools, educational establishments and similar entities that helps student users (“Students”) create a successful future through self-knowledge, exploration, and planning and helps parents of Students provide support to their children.

With Xello, Students discover the unique pathway that’s right for them using an investigative, discovery-based learning process that opens their minds to exciting possibilities. As Students gain self-knowledge through assessments and reflection, they build a profile with careers of interest, schools, colleges and universities, programs, and experiences to form a vibrant, visual roadmap that’s easy to update and share.

Xello also provides educators, including teachers, advisors, and administrators (collectively, “Educators”) and parents or guardians of Students (“Parents”) with access to tools that enable them to monitor the progress of their Students and children, and to communicate with Students to help them achieve their future readiness goals.

## Agreement to the Terms

These Terms of Service (“Terms”) are entered into by and between Xello Inc. or CASCAID Ltd, as specified in the Xello Quote or purchase order (“Quote”) and the school or educational establishment or other entity who has signed the Quote (collectively “Customer”) and the Students or Parents who use the Xello platform. These Terms govern Customer’s and administrators or educators who are acting on a Customer’s behalf (“Authorized Administrator”) and Students’ and Parents’ access to and use of the Xello platform, website, or any other website or application of Xello that link to or incorporate the Terms (collectively the “Services”). These Terms are effective: (i) as of the date the Customer, Students, and/or Parents accept or agree to these Terms or, (ii) if these Terms are attached to a separate agreement such as a Quote, the date such separate agreement is accepted by you.

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understand these Terms and any accompanying agreement such as a purchase order, subscription terms, or Quote; (iii) you agree, on behalf of the Customer, to these Terms and any accompanying agreement such as a purchase order or Quote; and (iv) Customer or any Authorized Administrator setting up user accounts is solely responsible for providing any legally required notices and obtaining any necessary permissions to use and share information in the Services and providing any legally required means for a parent or legal guardian to review or correct any student data. The term “you” as used herein shall refer to Customer or Authorized Administrator with respect to the Services.

Educators, Students, parents or guardians of a Student, or Authorized Administrators of a Customer account who use the Services through an account are each individually a “User” and collectively “Users.”

IMPORTANT: AS SET FORTH BELOW, THE SERVICES ARE PROVIDED “AS IS” AND XELLO’S TOTAL LIABILITY FOR ANY CLAIMS RELATED TO THE SERVICES IS LIMITED AS PROVIDED HEREIN.

## Using the Services

**(a) Usage Limits.** The Services are subject to usage limits (including number of users) specified in the Quote. If Customer wishes to increase such usage limits, Xello and Customer may work together to increase Customer’s usage limits subject to increased fees for such usage. Any additional usage (including number of users) are subject to these Terms and will terminate as set forth herein.

**(b) Usage Restrictions.** Users agree not to use the Services for any purpose or in any way that is unlawful or prohibited by these Terms. Without limiting the foregoing, Users may not: (a) knowingly use the Services in any manner that could damage, disable, overburden, or impair the Services or interfere with any other party’s use and enjoyment of the Services; (b) obtain or attempt to obtain any Content (as defined below) or information through any means not intentionally made available or provided for through the Services; (c) submit or transmit any content, files, videos, photos, web links, or other materials to the Services, including but not limited to User Content (as defined below) or otherwise use the Services in ways that: (i) are defamatory, threatening, obscene, or harassing, (ii) contain a virus, worm, Trojan horse, or any other harmful component, (ii) interfere with the operation, appearance, security or functionality of the Services; (iv)

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person or entity; (d) use the Services on any computers and/or accounts on which you do not have permission to operate and on which the Services cannot be legally and rightfully operated; or (e) use the Services for a commercial purpose (beyond a Customer's internal business purposes).

We, in our sole discretion, may suspend or stop providing the Services to any User for actions that violate these Terms, or to protect the security, safety, and rights of other Users, Xello or the Services, including without limitation to investigate suspected misconduct.

## Intellectual Property and Licenses

**(a) Intellectual Property.** The Platform may contain material, information and data derived in whole or in part from material supplied by Xello and other sources (the "Content"), and such Content is protected by Canadian and United States copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. Except as licensed to Users herein, all content, information, materials, computer code, and software part of the Services is the property of Xello or third parties. Xello and its licensors reserve all past, present, and future right, title, ownership, and interest in the Services, and derivative works thereof (including, but not limited to, all photographs, animations, statistics, graphics, text, user interface, scripts and software used to implement the Services or any other materials in the Services), associated copyrights, trademarks, logos, trade secrets, patents, service marks, know-how, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to the Services (collectively, the "Xello Intellectual Property"). Users understand that subject to subsection (c) of this Intellectual Property and Licenses section, Xello and its licensors solely and exclusively own the Xello Intellectual Property, and Users have no ownership rights to any Xello Intellectual Property or the Services. All rights to the Platform not expressly granted herein are reserved by Xello. Using the Services does not give Users ownership of any intellectual property rights in the Services or the Content accessed.

Users shall abide by all copyright and other intellectual property laws and shall promptly notify Xello of any unauthorized access or use of the Services.



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assignable, non-transferable, limited right to (i) access and use the Services during the Term solely for noncommercial educational purposes, and (ii) to use, download, copy, modify, perform, or display educational materials provided in the Services for noncommercial, in-class instructional purposes during the Term. This limited license shall apply to any updates, upgrades, and/or additional features of the Services not distributed with a separate license or other agreement.

**(c) License from Customer.** Customer grants Xello a limited, transferable license to use and display Customer's name and logo to operate the Services. Customer grants Xello a limited, transferable license to use Student Personal Information (as defined in the [Privacy Policy](#)) as set forth in this Agreement. Customer is solely responsible for the selection, compatibility, licensing, development, accuracy, performance, operation, maintenance, and support of all applications, information, software, and data, including any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, or images, that Customer or its Licensed Users create, install, upload or transfer on, from or through the Services. All Student Personal Information transmitted to Xello pursuant to this Agreement is and will continue to be the property of and under the control of the Customer.

**(d) Feedback.** If Customer or any Users provides feedback, comments or suggestions for improvements to the Service (in written, oral, or any other form) ("Feedback"), Customer or such User, as applicable, represents and warrants that (a) it may disclose the Feedback, (b) the Feedback does not violate the rights of any other person or entity, and (c) the Feedback does not contain the confidential or proprietary information of any third party or parties. Customer (i) acknowledges that Xello may have something similar to the Feedback already under consideration or in development and (ii) assigns to Xello its entire right, title, and interest (including any intellectual property rights) in and to Feedback without any restrictions, attribution, or compensation to you. If any right, title, or interest in the Feedback cannot be assigned under law, Customer or User, as applicable, waives such right, title or interest and consents to any action of Xello, its service providers, successors, and assigns that would violate such right, title, or interest absent such consent. Customer or User, as applicable, agrees to execute any documents necessary to affect the foregoing assignment, waivers, or consents.

**(e) Customer Testimonials.** Xello may display personal testimonials and endorsements of satisfied customers with respect to the Services, including, if Customer agrees, its personnel, and, if Customer agrees, Xello may associate Customer's name and logo with such postings from its personnel.

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## Security and Confidentiality

All parties will use commercially reasonable efforts to maintain the security and confidentiality of personal information, including Student Personal Information collected in the Services, consistent with applicable law, in order to help protect such personal information from unauthorized access, provided that certain information may be available to Customer and Users or third parties pursuant to the direction of Customer, Educators, or Authorized Administrators and depending on how Users choose to use the Services' features.

We may disclose Student Personal Information that is confidential: (a) at the direction of the Customer or Authorized Administrator; (b) as required or permitted by applicable law; (c) in accordance with valid legal process; or (d) with the written consent of the Customer or Parent (to the extent required or permitted by applicable law). Before disclosing such information in accordance with legal process, we will use commercially reasonable efforts to promptly notify the Customer. We shall not be required to provide notice before such disclosure if (i) we are legally prohibited from giving notice or (ii) the legal process relates to exceptional circumstances involving danger of death or serious physical injury to any person. Users understand that we will rely on one or more subcontractors to provide the Services. We have contracts in place with such subcontractors requiring them to protect Student Personal Information in a way that is at least as protective as we have undertaken to treat such information in these Terms and comply with applicable law.

## FERPA

For Customers subject to United States federal law, we acknowledge that data from Student Users may include "personally identifiable information" from "education records" that are subject to Family Educational Rights and Privacy Act ("FERPA") ("FERPA Records"). To the extent that we receive FERPA Records in providing the Services, the parties agree that Xello functions as a "school official" with a "legitimate educational interest" in Customer's Student's Education Records pursuant to FERPA regulation 34 CFR § 99.31(a)(1), or if applicable, is acting under another applicable FERPA exception listed under FERPA regulation 34 C.F.R. § 99.31(a)(1), such as the "directory information" exception. With respect to FERPA Records, Xello will maintain its status as a School Official and acknowledges that a failure to do so may result in a termination of these



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Records, provided in the Services, whether provided by the Customer, another User, or any other third-party.

The limitations set forth in this section shall not apply to any information which we receive or that is provided to the Services pursuant to consent of Student User's Parent or consent of a Student User who is at least 18 years of age or the age of majority in such User's jurisdiction of residence. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities.

## Services' Accounts

Customer and Authorized Administrators and Users are responsible for maintaining the security and confidentiality of their account credentials and taking reasonable steps to prevent unauthorized access to such account (e.g., logging out when done using the Services or away from your device). Customer and Authorized Administrators are responsible for (a) creating Student accounts and (b) providing all required notices and obtaining all necessary rights, permissions, or consents to access, monitor, use, or disclose any information, including Student Personal Information, from accounts of other Users. As between Xello and Customer, Customer is responsible for any activities, including any violation of the Terms, that occur under a Customer account, an Authorized Administrator account, and any User accounts created by Customer or Authorized Administrator account.

You shall notify Xello of any known or suspected unauthorized use of your account, other User accounts, or any known or suspected breach of security of the Services, including loss, theft, or unauthorized disclosure of your password.

## User Content

While using the Services, Customers and Users can upload, submit, store, send, or receive content ("User Content"). User Content does not include Feedback. As between the parties, Customer retains ownership of any intellectual property rights held in User Content. You agree that we can use, host, display, modify and publish such content for

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As set forth in the [Privacy Policy](#), upon request or upon termination of the Agreement, we shall, at direction and election of the Customer, destroy Student Personal Information, including FERPA Records, and User Content or return them to the Customer with rights to such information and direct our subcontractors to do the same, provided that we may comply with applicable law regarding the transfer of and/or retention of such records. Such records or User Content may persist in backup copies for a reasonable period of time following deletion (but will not be available to others).

At all times, you and your Customer are responsible for, and agree you have the rights to submit, post and upload the User Content or Feedback you submit to the Services.

We reserve the right, at any time and without prior notice, to pre-screen, reject, move, edit, delete, or remove any User Content submitted to the Services that we, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or otherwise harmful to Xello, the Services or its users, consistent with applicable law, but we do not assume the obligation.

## Fees

Customer will pay all fees specified in the Quote. Except as otherwise specified herein or in a Quote, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Period or Term. Unless otherwise stated in a Quote, Fees are paid in advance of each billing period. Upon your cancellation or termination in accordance with these Terms, you remain responsible for payment of all outstanding Fees referenced in the applicable Quote without any refund owed to Customer, unless otherwise mutually agreed to in writing between Customer and Xello.

Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction; you are responsible for paying all such taxes, levies, duties and assessments associated with purchases and transactions under these Terms or Quote.

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**(a) Term.** Unless otherwise set forth on the Quote, this Agreement commences on the date of Quote execution ("Effective Date") and shall continue for the term set forth in the Quote (the "Term"), unless terminated earlier by either party pursuant to this Agreement.

**(b) Termination.** In the event that Customer wishes to terminate the Agreement earlier than the Subscription Period as set forth in the Quote, Authorized Administrator for the Customer must provide Xello with written notice of its intent to terminate not fewer than ninety (90) days prior to the conclusion of the current Subscription Period (as defined in the Quote). Either party may terminate this Agreement if the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after its receipt of notice thereof.

**(c) Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, Users will have no rights to continue to use the Services and immediately will cease accessing and/or using Services, including by, where applicable, erasing and/or uninstalling all downloaded or copied versions of the Services.

**(d)** The following will survive any expiration or termination of these Terms or the Quote: Accounts; Fees; Intellectual Property (except as specified therein); Term and Termination; Security and Confidentiality; Warranties, Disclaimers and Release; and Limitation of Liability.

## Third Party Services

Certain third-party products or services may be available for you to choose to use within the Services. You are not required to use such additional products in relation to the Services. If you elect to use such third-party services, you should review the terms, policies and practices of the third-party products and services to understand their terms and policies with respect to any personal information, including Student Personal Information, they may collect from Users. We are not responsible for any practices of the third-party services you select and make no assurances that their services will meet your needs.

## Privacy Policy



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Policy. If a conflict exists between Xello's [Privacy Policy](#) and these Terms, these Terms will govern.

## WARRANTIES, DISCLAIMERS, AND RELEASE

WE PROVIDE THE SERVICES USING A COMMERCIALY REASONABLE LEVEL OF SKILL AND CARE. WE HOPE YOU WILL ENJOY USING THE SERVICES. OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS, WE DO NOT MAKE ANY SPECIFIC PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF THE CONTENT WITHIN THE SERVICES, THE SPECIFIC FUNCTIONS OF THE SERVICES, OR THE SERVICES' RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. **WE PROVIDE THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, WITHOUT WARRANTY OF ANY KIND, AND USERS' USE IS AT THEIR SOLE RISK.** XELLO MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. XELLO MAKES NO WARRANTY THAT THE SERVICES WILL MEET USERS' REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. SOME JURISDICTIONS DO NOT ALLOW DISCLAIMERS OF VARIOUS WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SO, ONE OR MORE OF THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT SUCH WARRANTIES CANNOT BE DISCLAIMED UNDER THE LAWS OF YOUR JURISDICTION, XELLO LIMITS THE DURATION AND REMEDIES OF SUCH WARRANTIES TO THE FULL EXTENT PERMISSIBLE UNDER THOSE LAWS.

## LIMITATIONS ON LIABILITY OF XELLO

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL XELLO BE LIABLE TO ANY USER FOR PERSONAL INJURY, PROPERTY DAMAGE, ANY LOST PROFITS, LOST DATA OR INFORMATION, COSTS OF PROCUREMENT OF SUBSTITUTE

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SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY USER'S USE OF, OR INABILITY TO USE THE SERVICES, EVEN IF XELLO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF THE SERVICES IS AT USERS' OWN DISCRETION AND RISK, AND USERS WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ANY DEVICES OR COMPUTER SYSTEMS USED TO ACCESS OR USE THE SERVICES, OR LOSS OF DATA OR INFORMATION RESULTING THEREFROM.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF XELLO, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES.

THE ABOVE LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY CLAIMS FOR ACTUAL DAMAGES RESULTING FROM XELLO'S BREACH OF THIS AGREEMENT CAUSED BY ITS GROSS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR FRAUD. IF YOU ARE A RESIDENT OF THE UNITED KINGDOM, NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT OUR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE (AS SUCH TERM IS DEFINED BY THE UNFAIR CONTRACT TERMS ACT 1977); OR FRAUD; OR MISREPRESENTATION AS TO A FUNDAMENTAL MATTER; OR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER UK LAW.

## Changes to The Services

We may, at any time, make changes to the Services, including its "look and feel," features, and Content.

We may also modify these Terms or any additional terms that apply to the Services, for example, to reflect changes to the law or changes to the Services. We will post modifications to these Terms on this page and in the Services. We will provide notice to the Customer and seek its consent to material changes to the Terms. Such material changes will not apply retroactively and will become effective no sooner than 14 days after they are posted and notification is provided. Depending on the changes, if you do not agree to the modified terms for the Services, we may not be able to continue to provide the Services to you and may have to discontinue your use of the Services.

If there is a conflict between these Terms and the additional terms, the additional terms will control for that conflict.

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## How to Contact Us

If you are located in the United States or Canada and you would like to contact us, please visit our [Contact Page](#). If you are located outside the United States or Canada and would like to contact us, please visit this [Contact Page](#).

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### Getting Started

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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

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

#### Data Security and Breach Protocols

Vendors that receive Personal Information from 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 number, 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 any agency as defined under the Act;
- 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" includes 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.

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

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

The vendor hereby agrees to report to the 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.

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

The 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, the 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), the 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 (Kentucky) 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 the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The 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 the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the 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, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the 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, the KCBOE discloses to the 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.*), the 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.

The vendor hereby agrees to report to the 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.

The 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.

The 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.

The 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.

Xello Inc

Vendor Name

1867 Yonge Street Suite 700, Toronto, Ontario M4S 1Y5

Vendor Address

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Signature by Vendor's Authorized Representative

Imran Khan

Print Name

October 26th, 2022

Date