

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

IXL Learning, Inc., a corporation organized under the laws of Delaware with its principal place of business located at 777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404 (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to the Board.

WHEREAS, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, the Board and Provider agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Entire Agreement.** This DPA is the entire agreement between the Parties and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
2. **Term.** This DPA shall be effective as of March 29, 2023 (the “**Effective Date**”) and shall continue for three (3) years, terminating on March 28, 2026.
3. **Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
4. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and

performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
6. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit “C”**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.** All Confidential Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the Board. The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board’s request for Confidential Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board, transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the

Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.

6. **Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation or research purposes, or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

ARTICLE III: DUTIES OF THE BOARD

1. **Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
4. **Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. **Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated IXL Membership Team (orders@ixl.com) as the data custodian ("Data Custodian") of the Confidential Data. The Board will release all data and information under this DPA to Data Custodian. Data Custodian shall be responsible for transmitting all data requests and maintain

a log or other record of all data requested and received pursuant to this DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.

3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.
5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to present the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except for Subprocessors, Provider agrees not to transfer de-identified Confidential Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice

has been given to the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.

8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The JCPS may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit "D"**. If the JCPS and Provider employ **Exhibit "D"**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit "D"**.
9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or JCPS employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits.
10. **Liability.** Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this DPA.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the United States. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the JCPS. The Provider will cooperate reasonably with the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access to the Provider's facilities, staff, agents and the Board's Confidential Data and all records pertaining to the Provider, the Board and delivery of Services to the Board. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the standards set forth in Exhibit "E". Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in Exhibit "E". Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:
- a) Encrypting all data, at rest and in transit;
 - b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
 - c) Securing access to any physical areas/electronic devices where sensitive data are stored;
 - d) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users' access to the data necessary for this to perform their job functions;
 - e) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
 - f) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the individual reporting a breach subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and

- i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (1) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
- (2) The Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
- (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data.

5. Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act. If Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "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:
 - i. 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;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or

- vi. 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 FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

6. **Cloud Computing Service Providers.** If Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Provider agrees that:

Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

Pursuant to KRS 365.734(2), Provider 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(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

ARTICLE VI: MISCELLANEOUS

1. **Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and this DPA shall remain in force. The Board may terminate this DPA in whole or in part at any time by giving written notice to Provider of such termination and specifying the effective date thereof, at Least thirty (30) days before the specified effective date. In accordance with **Attachment A**, the Board shall compensate Provider for Services satisfactorily performed through the effective date of termination.

2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of JCPS's Confidential Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
4. **Modification.** No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.
5. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Robert Moore Title: Chief of Schools

Address: 3332 Newburg Rd. Louisville, KY 40218

Phone: 502-485-3481 Email: Robert.moore4@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

Name: IXL Contracts Administration Team Title: Contracts

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

Phone – 855-255-8800 Email: legalnotices@ixl.com

7. **Amendment and Waiver.** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
8. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without

invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

9. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
10. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
11. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
12. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.
13. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.
14. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

15. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.
16. Access to School Grounds. No employee or agent of Provider shall access the Board's school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY

By: _____ Date: _____
Printed Name: Dr. Martin Pollio
Title/Position: Superintendent

IXL LEARNING, INC.

By: Paul Mishkin Date: 3/13/2023
Printed Name: Paul Mishkin
Title/Position: CEO

EXHIBIT “A”

DESCRIPTION OF SERVICES

Provider shall provide software licenses and support for the following products at prices equal or below Provider's standard pricing rates for the products:

Comprehensive curriculum and personalized guidance

- IXL's comprehensive PK-12 curriculum supports essentially anything you want to teach, with 8,500+ skills in five subjects.
- Integrating our curriculum into instruction is easy, with skill plans showing teachers the skills that match popular textbooks, all state standards, and assessments like NWEA MAP, SAT and ACT, WIDA, and more.
- IXL's curriculum automatically targets and differentiates learning. Every skill is adaptive, supporting and challenging each student at the right level.
- IXL provides each student with a personalized pathway for growth. Based on students' previous work, IXL generates personalized recommendations in real time. This guides learners to the skills that will help them make the most progress, right now.

Instructional resources and classroom engagement tools

- IXL's built-in instructional resources support students when they're working independently. With 1,400 video tutorials, step-by-step lessons, and corrective feedback after every question, students always have the guidance they need to learn with confidence.
- IXL helps educators make classroom learning engaging and exciting. Through features like IXL Group Jams and IXL Leaderboards, teachers can create collaborative learning opportunities, friendly competitions, and more.
- Teachers can leverage IXL's comprehensive curriculum to create custom quizzes, allowing them to quickly and easily evaluate student knowledge.

First-of-its-kind assessment suite

- IXL offers an assessment suite that works in concert with our curriculum to give you real-time insight into performance, pinpoint gaps in knowledge, and provide specific next steps to help each student grow. Our assessments pair with our curriculum to create a seamless solution that unlocks maximum growth.
 - IXL's universal screener allows you to accurately identify students for intervention in as little as 20 minutes.
 - With Diagnostic Snapshots, administrators can conduct benchmarking on key strands, in a flexible and lightweight format.
 - The Real-Time Diagnostic provides immediate insights that support your teachers' daily instruction. Using students' diagnostic results, it creates personalized action plans that help students close gaps quickly, and provides reports that help educators plan for small-group and individualized instruction.

IXL Analytics: Actionable insights for all levels of your district

Our analytics suite gives you clear and useful insights from the district to the school to the classroom.

- Administrators can quickly get a birds' eye view of how well learners and teachers are engaging with the program and whether students are meeting grade-level expectations. With this information, you can identify where support is needed and lead improvement efforts across your schools.

- For teachers, IXL Analytics provides powerful, up-to-the-minute insights that help them support every student at the right level. IXL Analytics alerts teachers when students need help, pinpoints specific trouble spots, and forms small groups for reteaching, and even shows parents how they can help their child at home. With this information, teachers are able to respond to student needs quicker and make meaningful progress happen.

District partnership, professional learning, and implementation services

- Through our district partnership services, our team provides ongoing consultation and support to help you achieve the goals you've set for IXL. Our services include personalized implementation strategies to help your schools optimize instruction, quarterly consultation on how to improve your usage of the platform to maximize learning, custom alignment of IXL skills to your district's scope and sequence, and more.
- Our professional development sessions are delivered by our skillful team of former educators. These trainings provide teachers and administrators with practical strategies and best practices they can use in their classroom the next day.
- Our implementation team will help you get up and running right away. You'll also have ongoing support from a dedicated Account Manager throughout your time with IXL, who will work with you to understand your evolving needs and provide ongoing guidance about how to best support your educators and students.

COMPENSATION

Purchase orders shall be entered by each participating school. Funds for purchase shall come from individual school budgets. Total payments under this DPA shall not exceed \$24 per student per fiscal year, running from July 1-June 30.

EXHIBIT "B"

SCHEDULE OF DATA

| Category of Data | Elements | Check if Used by Your System |
|----------------------------------|--|-------------------------------------|
| Application Technology Meta Data | IP Addresses of users, Use of cookies, etc. | <input checked="" type="checkbox"/> |
| | Other application technology meta data-Please specify: | <input type="checkbox"/> |
| Application Use Statistics | Meta data on user interaction with application | <input checked="" type="checkbox"/> |
| Assessment | Standardized test scores | <input type="checkbox"/> |
| | Observation data | <input type="checkbox"/> |
| | Other assessment data-Please specify: | <input type="checkbox"/> |
| Attendance | Student school (daily) attendance data | <input type="checkbox"/> |

2.27.2023- 1XL (G-DRIVE)

| | | |
|----------------|--|--------------------------|
| | Student class attendance data | <input type="checkbox"/> |
| Communications | Online communications captured (emails, blog entries) | <input type="checkbox"/> |
| Conduct | Conduct or behavioral data | <input type="checkbox"/> |
| Demographics | Date of Birth | <input type="checkbox"/> |
| | Place of Birth | <input type="checkbox"/> |
| | Gender | <input type="checkbox"/> |
| | Ethnicity or race | <input type="checkbox"/> |
| | Language information (native, or primary language spoken by student) | <input type="checkbox"/> |
| | Student disability information | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|------------------|---|------------------------------|
| | Other demographic information-Please specify: | <input type="checkbox"/> |
| Enrollment | Student school enrollment | <input type="checkbox"/> |
| | Student grade level | <input type="checkbox"/> |
| | Homeroom | <input type="checkbox"/> |
| | Guidance counselor | <input type="checkbox"/> |
| | Specific curriculum programs | <input type="checkbox"/> |
| | Year of graduation | <input type="checkbox"/> |
| | Other enrollment information-Please specify: | <input type="checkbox"/> |

| | | |
|-------------------------------------|--|-------------------------------------|
| Parent/Guardian Contact Information | Address | <input type="checkbox"/> |
| | Email | <input type="checkbox"/> |
| | Phone | <input type="checkbox"/> |
| Parent/Guardian ID | Parent ID number (created to link parents to students) | <input type="checkbox"/> |
| Parent/Guardian Name | First and/or Last | <input type="checkbox"/> |
| Schedule | Student scheduled courses | <input type="checkbox"/> |
| | Teacher names | <input checked="" type="checkbox"/> |
| Special Indicator | English language Learner information | <input type="checkbox"/> |
| | Low income status | <input type="checkbox"/> |
| | Medical alerts/ health data | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|-----------------------------|---|-------------------------------------|
| | Specialized education services (IEP or 504) | <input type="checkbox"/> |
| | Living situations (homeless/foster care) | <input type="checkbox"/> |
| | Other indicator information-Please specify: | <input type="checkbox"/> |
| Staff Data | First and Last Name | <input type="checkbox"/> |
| | Email Address | <input type="checkbox"/> |
| | Staff ID number | <input type="checkbox"/> |
| | Other information – Please specify | <input type="checkbox"/> |
| Student Contact Information | Address | <input type="checkbox"/> |
| | Email | <input checked="" type="checkbox"/> |
| | Phone | <input type="checkbox"/> |

| | | |
|----------------------------|--|-------------------------------------|
| Student Identifiers | Local (School district) ID number | <input checked="" type="checkbox"/> |
| | State ID number | <input checked="" type="checkbox"/> |
| | Provider/App assigned student ID number | <input checked="" type="checkbox"/> |
| | Student app username | <input checked="" type="checkbox"/> |
| | Student app passwords | <input checked="" type="checkbox"/> |
| Student Name | First and/or Last | <input checked="" type="checkbox"/> |
| Student In App Performance | Program/application performance (typing program- student types 60 wpm, reading program- student reads below grade level) | <input checked="" type="checkbox"/> |
| Student Program Membership | Academic or extracurricular activities a student may belong to or participate in | <input type="checkbox"/> |
| Student Survey Responses | Student responses to surveys or questionnaires | <input type="checkbox"/> |
| Student work | Student generated content; writing, pictures, etc. | <input type="checkbox"/> |

| Category of Data | Elements | Check if Used by Your System |
|------------------|---|------------------------------|
| | Other student work data -Please specify: | <input type="checkbox"/> |
| Transcript | Student course grades | <input type="checkbox"/> |
| | Student course data | <input type="checkbox"/> |
| | Student course grades/ performance scores | <input type="checkbox"/> |
| | Other transcript data - Please specify: | <input type="checkbox"/> |
| Transportation | Student bus assignment | <input type="checkbox"/> |
| | Student pick up and/or drop off location | <input type="checkbox"/> |
| | Student bus card ID number | <input type="checkbox"/> |

| | | |
|-------|---|--------------------------|
| | Other transportation data – Please specify: | <input type="checkbox"/> |
| Other | Please list each additional data element used, stored, or collected by your application: | <input type="checkbox"/> |
| None | No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable. | <input type="checkbox"/> |

EXHIBIT “C”
DEFINITIONS

Compensation: Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

Provider: For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Confidential Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Regulations: The Board Procurement Regulations, available on the JCPS website, as may be amended from time to time.

Student Generated Content: The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Confidential Data: Confidential Data includes any data, whether gathered by Provider or provided by the Board or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student's use of Provider's services.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Board or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Confidential Data.

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"**DIRECTIVE FOR DISPOSITION OF DATA**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

_____ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

_____ Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

_____ As soon as commercially practicable.

_____ By **[Insert Date]**

Signature

Authorized Representative of the Board

Date

Verification of Disposition of Data

Authorized Representative of Provider

Date

EXHIBIT "E"**DATA SECURITY REQUIREMENTS****Adequate Cybersecurity Frameworks**

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

| | MAINTAINING ORGANIZATION/GROUP | FRAMEWORK(S) |
|---|--|---|
| | American Institute of CPAs | SOC2 |
| | International Standards Organization (ISO) | Information technology — Security techniques — Information security management systems (ISO 27000 series) |
| X | The Board of Education of Jefferson County | Board provided standardized questionnaire |

Client#: 498510

IXLLEARNIN

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/21/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|---|--|---|--|
| PRODUCER Marsh & McLennan Agency LLC Marsh & McLennan Ins Agency LLC 1340 Treat Blvd #250 Walnut Creek, CA 94597 | | CONTACT NAME: Felicia McAroy PHONE (A/C, No, Ext): 925 482-9337 FAX (A/C, No): 925 482-9390 E-MAIL ADDRESS: Felicia.McAroy@MarshMMA.com | |
| | | INSURER(S) AFFORDING COVERAGE | |
| | | INSURER A: National Fire Insurance Co of Hartford | |
| | | INSURER B: Continental Casualty Company | |
| | | INSURER C: Columbia Casualty Company | |
| | | INSURER D: | |
| | | INSURER E: | |
| | | INSURER F: | |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|--------------------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG OTHER: | X | 6079015684 | 11/01/2022 | 11/01/2023 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$ |
| B | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY | X | 6079015698 | 11/01/2022 | 11/01/2023 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| B | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000 | X | 6079015720 | 11/01/2022 | 11/01/2023 | EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | 6079015703 | 11/01/2022 | 11/01/2023 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000 |
| C | Professional / Cyber Liability | | 652142286 | 08/21/2022 | 08/21/2023 | \$5,000,000 Aggregate \$5,000,000 Occurrence \$25,000 Deductible |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Board of Education of Jefferson County is included as Additional Insured (General Liability and Auto Liability), per the attached. Umbrella follows form over General Liability.

CERTIFICATE HOLDER

CANCELLATION

Board of Education of Jefferson County
 Attn: Insurance/Real
 Estate Dept.
 3332 Newburg Road
 Louisville, KY 40218

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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Technology General Liability Extension Endorsement

1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through K. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through K. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the occurrence giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the occurrence giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The



Technology General Liability Extension Endorsement

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury** or **property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury** or **property damage** for which such person or organization is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury** or **property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) the exceptions contained in Subparagraphs d. or f. above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph J. does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph J. also does not apply:
 - a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
 - b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
 - c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an **Insured** solely for **bodily injury**, **property damage** or **personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor



Technology General Liability Extension Endorsement

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES**, Coverage A – **Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.



Technology General Liability Extension Endorsement

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

- ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. amend the definition of **Insured** to:

- a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a co-volunteer worker while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an employee while in the course of the employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

- D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance



Technology General Liability Extension Endorsement

The Damage To Premises Rented To You Limit is \$500,000, unless a different Damage to Premises Rented to You Limit is shown in the Declarations.

D. The **Other Insurance** Condition is amended to delete Paragraph b.(1)(a)(ii), and replace it with the following:

(ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

E. This Provision 11. does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

12. MEDICAL PAYMENTS

A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) \$15,000 unless a different amount is shown here: \$<insert (\$) amount>; or

(2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement** of **Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:



Technology General Liability Extension Endorsement

- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph e.(2) of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages for personal and advertising injury** and will not reduce the limits of insurance.

- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this Coverage Part.

17. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES**, Coverage A – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES**, Coverage A – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs (3) and (4) of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per policy period applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:

- A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and
- B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

INSURED: IXL Learning, Inc.

POLICY#: 6079015698

POLICY PERIOD: 11/01/2022

TO: 11/01/2023



EXTENDED COVERAGE - BA PLUS - FOR HIRED AND NON-OWNED AUTOS

It is understood and agreed that this endorsement amends the BUSINESS AUTO COVERAGE FORM as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement to such provision do not apply.

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I. AMENDMENTS TO LIABILITY COVERAGE

A. Amendments to Who Is An Insured

Under SECTION II – COVERED AUTOS LIABILITY COVERAGE, the paragraph entitled Who Is An Insured is amended to add the following:

1. Majority Owned Corporations

Any incorporated entity in which you own a majority of the voting stock on the inception date of this Coverage Form is an "insured", but only if such entity is not an "insured" under any other liability "policy" that provides "auto" coverage.

2. Newly Acquired Organizations

Any organization you newly acquire or form during the policy period, other than a limited liability company, partnership or joint venture, and in which you maintain majority ownership interest is an "insured", but only if such organization is not an "insured" under any other liability "policy" that provides "auto" coverage. The insurance afforded by this provision:

III. AMENDMENTS TO BUSINESS AUTO CONDITIONS

A. Knowledge of Accident or Loss

Under **BUSINESS AUTO CONDITIONS**, the **Loss Condition** entitled **Duties In the Event of Accident, Claims, Suit, or Loss** is amended to add the following subparagraph a.(4):

- (4) If your "employees" know of an "accident" or "loss", this will not mean that you have such knowledge until such "accident" or "loss" is known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an "employee" designated by any of the above to be your insurance manager.

B. Knowledge of Documents

Under **BUSINESS AUTO CONDITIONS**, the **Loss Condition** entitled **Duties In the Event of Accident, Claims, Suit, or Loss** is amended to add the following subparagraph b.(6):

- (6) If your "employees" know of documents concerning a claim or "suit", this will not mean that you have such knowledge until such documents are known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an "employee" designated by any of the above to be your insurance manager.

C. Waiver of Subrogation

Under **BUSINESS AUTO CONDITIONS**, the **Loss Condition** entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an "accident" or "loss."

D. Unintentional Failure To Disclose Hazards

Under **BUSINESS AUTO CONDITIONS**, the **General Condition** entitled **Concealment, Misrepresentation or Fraud** is amended to add the following:

Your failure to disclose all hazards existing on the inception date of this Coverage Form shall not prejudice you with respect to the coverage provided by this insurance, provided such failure or omission is not intentional.

E. Primary and Non-Contributory When Required By Contract

Under **BUSINESS AUTO CONDITIONS**, the **General Condition** entitled **Other Insurance** is amended to add the following:

Notwithstanding provisions 5.a. through 5.d. above, the coverage provided by this Coverage Form shall be on a primary and non-contributory basis when required to be so by a written contract entered into prior to "accident" or "loss."

IV. AMENDMENTS TO DEFINITIONS

A. Broadened Bodily Injury

Under **DEFINITIONS**, the definition of "bodily injury" is deleted and replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including death, mental anguish or mental injury sustained by that person which results as a consequence of the physical injury, sickness or disease.

All other terms and conditions of the Policy remain unchanged.