UTAH STUDENT DATA PRIVACY AGREEMENT

Version 2.0

San Juan School District

and

IXL Learning, Inc.

August 23, 2019

This Utah Student Data Privacy Agreement ("DPA") is entered into by and between the San Juan School District (hereinafter referred to as "LEA") and IXL Learning, Inc. (hereinafter referred to as "Contractor") on August 23, 2019 . The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Contractor has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated and the IXL terms of service, available at www.ixl.com/termsofservice (collectively, the ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Contractor may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Contractor's Services are also subject to Utah state student privacy laws, including the Utah Student Data Protection Act UCA Section 53E-9; and

WHEREAS, for the purposes of this DPA, Contractor is a school official with legitimate educational interests in accessing Education Records pursuant to the Service Agreement for the limited purposes of this DPA; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Contractor may, by signing the "General Offer of Privacy Terms" (Exhibit "E"), agree to allow other LEAs in Utah the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

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

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA**. The purpose of this DPA is to describe the duties and responsibilities to protect student Student data Data transmitted to Contractor from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, COPPA, PPRA and other applicable Utah State laws, all as may be amended from time to time. In performing these services, the Contractor shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Contractor shall be under the direct control and supervision of the LEA.

2. Nature of Services Provided. The Contractor has agreed to provide digital educational products and services outlined in Exhibit "A".

3. Student Data to Be Provided. The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached as Exhibit "B".

4. 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 term used in the Service Agreement - to the extent such terms are used in the DPA.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. Student Data Property of LEA. As between the parties, aAll Student Data transmitted to the Contractor pursuant to the
Service Agreement is and will continue to be the property of the student.

2. Parent Access. The LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may request the opportunity to inspect and review Student Data in the student's records, and seek to amend Student Data that are inaccurate, misleading or in violation of the student's right of privacy. Contractor shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA's request for Student Data in a student's records held by the Contractor to view or correct as necessary. In the event that a parent of a student or other individual contacts the Contractor to review any of the Student Data accessed pursuant to the Services, the Contractor shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. Third Party Request. Should a Third Party, including law enforcement and government entities, request data held by the Contractor pursuant to the Services Agreement, the Contractor shall redirect the Third Party to request the data directly from the LEA. Contractor shall notify the LEA in advance of a compelled disclosure to a Third Party. Contractor shall share Student Data with law enforcement if required by law or court order.

4. Subprocessors. Contractor shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA. Contractor shall provide the LEA with a description of the subprocessors or types of subprocessors who have access to the LEA's student data and shall update the list as new subprocessors are added.

ARTICLE III: DUTIES OF CONTRACTOR

1. Privacy Compliance. The Contractor shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA and all other Utah privacy statutes as they relate to the collection, use, storage, or sharing of student data.

2. Authorized Use. The Student Datadata shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in

the Service

Agreement and/or otherwise authorized under the statutes referenced in the prior subsection. Contractor also acknowledges and agrees that it shall not make any re-disclosure of any Student Data.

3. <u>Employee Obligation</u>. Contractor shall require all employees and subprocessors who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

4. <u>Use of De-identified information</u>. De-identified information may be used by the Contractor for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Contractor agrees not to attempt to re-identify de-identified Student Data.

5. <u>Disposition of Data</u>. Upon written request Contractor shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. The duty to dispose of Student Data shall not extend to data that has been de-identified. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as <u>Exhibit "D".</u> Upon receipt of a request from the LEA, the Contractor will ~~immediately~~ provide the LEA with any specified portion of the Student Data within 10 calendar days of receipt of said request.

6. <u>Additional Acceptable Uses of Student Data</u>. Contractor is prohibited from using Student Data for any secondary use not described in this agreement except:

    a. for adaptive learning or customized student learning purposes;
    b. to market an educational application or product to a parent or legal guardian of a student ~~if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product~~;
    c. to use a recommendation engine to recommend to a student
        i. content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or
        ii. services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;
    d. to respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.; and
    e. to use Data to allow or improve operability and functionality of the third-party contractor's internal application.

ARTICLE IV: DATA PROVISIONS

1. Data Security. The Contractor agrees to abide by and maintain adequate data security measures, ~~consistent with standards and best practices within the educational technology industry,~~

and to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. These measures shall include, but are not limited to:

a. **Passwords and Employee Access**. Contractor shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data. Contractor shall only provide access to Student Data to employees or contractors that are performing the Services.

b. **Security Protocols**. Both parties agree to maintain security protocols ~~that meet industry standards~~ in the transfer or transmission of any data, ~~including ensuring~~ designed so that data may only be viewed or accessed by parties legally allowed to do so. Contractor shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit ~~data~~ Student Data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA. The foregoing does not limit the ability of the Provider to allow any subprocessors to view or access data in accordance with Article II, Section 4~~6~~.

c. **Security Technology**. Contractor shall ~~employ internet industry standard measures to~~ protect data from unauthorized access while the data is in transit or at rest. The service security measures shall include server authentication and data encryption. Contractor shall host data pursuant to the Service Agreement in an environment using a firewall that is updated ~~according to industry standards~~.

d. **Audit Rights**. Upon reasonable notice, and at the request of the LEA, the LEA or the LEA's designee may audit the Contractor to verify compliance with this DPA, as required by the Utah Student Data Protection Act. The preceding sentence only applies to the extent required by law.

2. Data Breach. In the event that Contractor discovers that Student Data has been accessed or obtained by an unauthorized individual, Contractor shall provide notification to LEA within a reasonable amount of time of the ~~incident~~discovery, not to exceed 72 hours.

ARTICLE V- GENERAL OFFER OF PRIVACY TERMS

~~Contractor may, by signing the attached Form of General Offer of Privacy Terms in Exhibit "E", be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit.~~Deleted.

ARTICLE VI: MISCELLANEOUS

1. Term. The Contractor shall be bound by this DPA for the duration of the Service Agreement or so long as the Contractor maintains any Student Data.

2. Termination. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach

of the terms of this DPA.

3. **<u>Effect of Termination Survival</u>**. If the Service Agreement is terminated, the Contractor shall

destroy all of LEA's ~~Student Data~~ data pursuant to Article III,
section 5 above.

4. **Priority of Agreements**. This DPA shall govern the treatment of ~~s~~Student ~~d~~Data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

5. **Notice**. All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives below:

    a. **Designated Representatives**

The designated representative for the LEA for this Agreement is:

Name: __Aaron C. Brewer__
Title: __Technology Director__

Contact Information:
200 North Main, Blanding, UT 84511
       abrewer@sjsd.org
        4356783217

The designated representative for the Contractor for this Agreement is:

Name: _____
Title: _____

Contact Information:
  ~~777 Mariners Island Blvd., Suite 600, San~~ Mateo, CA 94404

    With a copy to: legalnotices@ixl.com

    b. ~~**Notification of Acceptance of General Offer of Terms**. Upon execution of Exhibit "E", General Offer of Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.~~

The designated representative for notice of acceptance of the General Office of Privacy Terms is:

Name: _____
Title: _____

Contact Information:

6. Entire Agreement. This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. 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.

7. 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.

8. Governing Law; Venue and Jurisdiction. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF UTAH FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. Authority. Contractor represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein~~, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way~~. ~~Contractor agrees that any purchaser of the Contractor shall also be bound to this DPA.~~

10. Waiver. No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient. LEA hereby waives and releases any and all claims against the Utah State Board of Education and/or its members, departments, office, and staff (collectively, "USBE"), for USBE's efforts and conduct related to the negotiations and/or formation of this DPA. The parties agree that USBE is not an agent nor a representative of LEA in the formation or execution of this DPA, and that LEA negotiated with Contractor at arm's length in the creation of this DPA. USBE is thus not responsible or liable to either party under this DPA, and owes no duty to either party under this DPA.

10. Successors Bound. This DPA is and shall be binding upon the respective successors in interest to Contractor 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 WITNESS WHEREOF, the parties have executed this Utah Student Data Privacy Agreement as of the last day noted below.

IXL Learning, Inc.~~Contractor~~:

BY:_____Date: _____

Printed Name: Paul Mishkin___Title/Position: _CEO_____

Local Education Agency:

BY:_____Date: _____September 3, 2019_____

Printed Name:__Aaron C. Brewer_Title/Position: _____Technology Director_____

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EXHIBIT "A"

DESCRIPTION OF SERVICES

https://www.ixl.com/
The IXL Service, pursuant to the IXL terms of service (www.ixl.com/termsofservice) and IXL privacy policy (www.ixl.com/privacypolicy).

https://www.quia.com/web
The Quia Service, pursuant to the Quia terms of service (https://www.quia.com/web/terms_of_service.html) and Quia privacy policy (https://www.quia.com/web/privacy_policy.html).

EXHIBIT "B"

SCHEDULE OF STUDENT DATA

Please see attached rostering spreadsheet. The District has the option of providing as much or little of the information on the spreadsheet as deemed necessary by the District. The IXL Service may be used on a pseudonymous basis.

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	

Category of Data	Elements	Check if used by your system
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information- Please specify:	
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information- Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created	

Conduct	Conduct or behavioral data	
Demographics	Date of Birth	

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
	to link parents to students)			number	
				State ID number	
Parent/Guardian Name	First and/or Last			Vendor/App assigned student ID number	
				Student app username	
Schedule	Student scheduled courses			Student app passwords	
	Teacher names				
			Student Name	First and/or Last	
	English language learner information				
	Low income status		Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
	Medical alerts /health data				
Special Indicator	Student disability information				
	Specialized education services (IEP or 504)		Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
	Living situations (homeless/foster care)				
	Other indicator information— Please specify:		Student Survey Responses	Student responses to surveys or questionnaires	
Student Contact Information	Address		Student work	Student generated content; writing, pictures etc.	
	Email				
	Phone				
				Other student work data–	
Student Identifiers	Local (School district) ID				

Category of Data	Elements	Check if used by your system
	Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time _____.
*Contractor shall immediately notify LEA if this
designation is no longer applicable.

  OTHER: Use this box, if more space needed

EXHIBIT "C"

DEFINITIONS

~~**Contractor:** For purposes of the Service Agreement, the term "Contractor" means Contractor of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Contractor" includes the term "Third Party Contractor" as used in the Student Data Protection Act and "Operator" as used in COPPA.~~

De-Identified Information (DII): De-Identification refers to the process by which the Contractor removes or obscures any Personally Identifiable Information ("PII") from Education Records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

~~**Education Records**: Educational Records are official records, files and data directly related to a student and maintained by the 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. For purposes of this DPA, Education Records are referred to as Student Data.~~

~~**Personally Identifiable Information (PII):** The terms "Personally Identifiable Information" or "PII" has the same meaning as that found in U.C.A § 53E-9-301, and includes both direct identifiers (such as a student's or other family member's name, address, student number, or biometric number) and indirect identifiers (such as a student's date of birth, place of birth, or mother's maiden name). Indirect identifiers that constitute PII also include metadata or 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. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.~~

~~**Student Generated Content:** The term "student-generated content" means materials or content created by a student during and for the purpose of education 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.~~

R277-487, Public School Data Confidentiality and Disclosure: The implementing Rule authorized by Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board, and further authorities the Board to make rules to establish student data protection standards for public education, pursuant to Subsection 53E-9-302(1) of the Utah Student Data Protection Act.

~~**Service Agreement**: Refers to the Contract or Purchase Order to which this DPA supplements~~

~~and modifies.~~

School Official: For the purposes of this Agreement 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 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.

Student Data: ~~Student Data means personally identifiable information, whether gathered by Contractor or provided by LEA 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, home address, telephone number, email address, or other information allowing 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, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Education Records for the purposes of this Agreement, and for the purposes of Utah and federal laws and regulations.~~ <u>Student Data is used as defined in Utah title 53E-9-301(17).</u> Student Data as specified in <u>Exhibit "B"</u> is confirmed to be collected or processed by the Contractor pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Contractor's services.

~~**Subscribing LEA:** An LEA that was not party to the original Services Agreement and who accepts the Contractor's General Offer of Privacy Terms.~~

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Contractor, who Contractor uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to ~~PH~~<u>Student Data</u>.

Targeted Advertising: means presenting advertisements to a student where the advertisement is selected based on <u>Student Data</u> ~~information~~ obtained or inferred over time from that student's online behavior, usage of applications, or student data. Targeted advertising does not include advertising to a student (i) at an online location based upon that student's current visit to that location; or (ii) in response to that student's request for information or feedback, without retention of that student's online activities over time for the purpose of targeting subsequent ads.

Utah Student Data Protection Act (Utah Title 53E-9-301 through 53E-9-310**)**: Means the applicable Utah regulations regarding student data, as further implemented by the Superintendent pursuant to R277-487.

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF STUDENT DATA

[Name or District or LEA] directs [Name of Contractor] to dispose of data obtained by Contractor pursuant to the terms of the Service Agreement between LEA and Contractor. The terms of the Disposition are set forth below:

Extent of Disposition Disposition shall be:	_____Partial. The categories of data to be disposed of are as follows: _____Complete. Disposition extends to all categories of data.
Nature of Disposition Disposition shall be by:	_____Destruction or deletion of data. _____Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Contractor shall destroy or delete all applicable data.
Timing of Disposition Data shall be disposed of by the following date:	_____ As soon as commercially practicable _____By (Insert Date) _____

_____
Authorized Representative of LEA

_____
Date

_____
Verification of Disposition of Data
by Authorized Representative of Contractor

_____
Date

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EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Contractor offers the same privacy protections found in this DPA between it and [Name of LEA] and which is dated [Enter Date] to any other LEA ("Subscribing LEA") who accepts this General Offer though its signature below. This General Offer shall extend only to privacy protections and Contractor's signature shall not necessarily bind Contractor to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Contractor and the other LEA may also agree to change the data provided by LEA to the Contractor in Exhibit "B" to suit the unique needs of the LEA. The Contractor may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; or (2) a material change in the services and products subject listed in the Originating Service Agreement. Contractor shall notify the Utah State Board of Education (privacy@schools.utah.gov) in the event it withdraws Exhibit E so that the withdrawal may be disseminated to the LEAs.

Contractor:

BY:_____   Date:____

Printed Name: ___   Title/Position:____

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Contractor, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Contractor shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY:_____   Date:____

Printed Name:____   Title/Position:____

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name:____ Title:_
Email Address:__