UTAH STUDENT DATA PRIVACY AGREEMENT

Version 2.0

Ogden Preparatory Academy

and

IXL
Learning,Inc.

6/24/2020

This Utah Student Data Privacy Agreement ("DPA") is entered into by and between the **Ogden Preparatory Academy** (hereinafter referred to as "LEA") and **IXL Learning, Inc.** (hereinafter referred to as "Contractor") on 6/24/2020. 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 12/17/2019
("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

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 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, all 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.

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 Data 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. **Employee Obligation**. 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. **Use of De-identified information**. 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. **Disposition of Data**. 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 Exhibit "D". Upon receipt of a request from the LEA, the Contractor will provide the LEA with any specified portion of the Student Data within 10 calendar days of receipt of said request.

6. **Additional Acceptable Uses of Student Data**. 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;
   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.

1.   Data Security. The Contractor agrees to abide by and maintain adequate data security measures 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 in the transfer or transmission of any data, 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 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.

c. **Security Technology**. Contractor shall 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.

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 discovery, not to exceed 72 hours.

ARTICLE V- GENERAL OFFER OF PRIVACY TERMS

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.   Effect of Termination Survival. If the Service Agreement is terminated, the Contractor shall destroy all of LEA's Student Data pursuant to Article III, section 5 above.

4. **Priority of Agreements**. This DPA shall govern the treatment of Student 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: Debbie Deem

Title: Student Data Manager and Business Admnistrator

Contact Information:
 ddeem@ogdenprep.org
 801.627.3066

_____

 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

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.

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.: BY:

Date: 6.24.2020

Printed Name: Paul Mishkin
Title/Position: CEO

Local Education Agency: Ogden Preparatory Academy

BY: Date: 6/25/2020

Printed Name: Title/Position: Andrew Smith   IT Security Manager

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

IXL IS PERSONALIZED LEARNING

IXL helps students excel! Featuring a comprehensive curriculum, the IXL Continuous Diagnostic, and real-time Analytics, IXL delivers everything teachers need to help students reach their full potential. Released in 2007, IXL has set a new standard for online learning by delivering a truly personalized learning experience. Trusted by schools in 95 of the 100 top districts and used by over 8 million students, IXL is proven to accelerate learning. In studies of 42,940 schools across 12 states, IXL schools consistently outperform non-IXL schools, ranking as much as 16 percentile points higher on state assessments.

QUIA WEB

CREATE-YOUR-OWN TOOLS FOR EDUCATORS

Quia Web provides educators with tools to create, customize, and share their curricula online. Quia Web pioneered the "create-your-own" concept, giving educators the freedom to go beyond publisher-provided materials and create their own

interactive, online experiences for their students. Through a thriving online community, teachers collaboratively develop and share their Quia-based materials, all the while contributing to a constantly expanding library of educational content.

ABCya

ENGAGING EDUCATIONAL GAMES

ABCya is the leader in educational games for kids. Since 2004, ABCya has created more than 400 educational computer games and apps for students in pre-K to 5th grade. In addition to a focus on math and language arts, ABCya also covers topics such as science and holiday trivia, and provides fun activities to help kids improve typing skills and even create animations. To date, ABCya has reached more than 120 million learners who have played more than 1.5 billion games. The brainchild of a public school teacher, ABCya was founded to make learning fun and help kids feel inspired when they learn something new.

Education.com

Education.com is the award-winning provider of engaging, standards-aligned math, reading, and science resources, including online games, worksheets, and guided lessons.

EXHIBIT

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 rostering spreadsheet as deemed necessary by the District. The IXL Service may be used on a pseudonymous basis.

DEFINITIONS

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.

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.

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 is used as defined in Utah title 53E-9-301(17). Student Data as specified in Exhibit "B" 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.

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 Student Data.

Targeted Advertising: means presenting advertisements to a student where the advertisement is selected based on Student Data 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

 Ogden Preparatory Academy directs IXL Learning 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) _____ [Insert or attach special instructions]

_____ __6/25/2020_____
Authorized Representative of LEA   Date

_____ _____
Verification of Disposition of Data Date
by Authorized Representative of Contractor