

791 PURCHASING COOPERATIVE VENDOR AGREEMENT

Between IXL Learning, Inc.
(Company Name)

with the principal place of business at

777 Mariners Island Blvd, Suite 600

San Mateo, CA 94404

and

791 Purchasing Cooperative

For

RFP #791-2020-03-002

Technology Products, Services & Solutions

Issued: March 20, 2020

General Information

The Vendor Agreement (“Agreement”) made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as “791COOP”) a government cooperative purchasing program authorized by the Region 15 Education Service Center, having its principal place of business 612 Irene Street San Angelo TX 76903 and ***Company listed at the top of page one*** (hereinafter referred to as “Vendor”) Technology Products, Services & Solutions provider having its principal place of business as listed at the top of page one. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the Solicitation (RFP, RCSP, RFQ) as posted, including any addenda and the awarded vendor’s proposal.

The following pages will constitute the Agreement between the successful vendors(s) and 791 PURCHASING COOPERATIVE.

Terms and Conditions

1 Assignment of Vendor Agreement

No assignment of the Vendor Agreement may be made without the prior written approval of 791 PURCHASING COOPERATIVE. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

2 791 PURCHASING COOPERATIVE Technology Products, Services and Solutions Contract

The 791 PURCHASING COOPERATIVE Technology Contract is the final negotiated version of the Vendor's Technology Products, Services & Solutions contract that was submitted as part the RFP for Technology Products, Services & Solutions Provider(s) and negotiated with 791 PURCHASING COOPERATIVE . The 791 PURCHASING COOPERATIVE Technology Products, Services and Solutions Contract will govern all aspects of a sale of technology between Vendor and a 791 PURCHASING COOPERATIVE Member. 791 PURCHASING COOPERATIVE recognizes that a 791 PURCHASING COOPERATIVE Member may, in agreement with Vendor, make modifications to the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract to reflect specific needs of the 791 PURCHASING COOPERATIVE Member. This modified form will still be referred to as the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract.

Vendor may only use the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract with 791 PURCHASING COOPERATIVE Members who have agreed to purchase technology from Vendor through the 791 PURCHASING COOPERATIVE preferred supplier program. If a 791 PURCHASING COOPERATIVE Member solicits proposals for technology products and service from Vendor directly and has specifically provided notice that they will not be using 791 PURCHASING COOPERATIVE as their contract vehicle through the 791 PURCHASING COOPERATIVE preferred supplier program, Vendor cannot use the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract to serve the 791 PURCHASING COOPERATIVE Member. For the avoidance of doubt, if a vendor and a 791 PURCHASING COOPERATIVE Member, execute a 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract, vendor will be obligated to pay 791 PURCHASING COOPERATIVE the participation fee.

To further clarify, vendor may sell to a 791 PURCHASING COOPERATIVE member or potential 791 PURCHASING COOPERATIVE member, which is any governmental or other public entity in Texas through the 791 PURCHASING COOPERATIVE preferred supplier program. If a potential customer is not currently a 791 PURCHASING COOPERATIVE member, they may join 791 PURCHASING COOPERATIVE by contacting 791 PURCHASING COOPERATIVE at admin@791COOP.org. Awarded vendors are not restricted from responding to any Texas entity that issued a Request for Proposals and has chosen not to use the 791 PURCHASING COOPERATIVE interlocal cooperative method of procurement.

If you identify a Texas public or governmental entity that wants to purchase technology and use a cooperative or interlocal contract, and is not a current 791 PURCHASING COOPERATIVE Member, please have them call the number provided above or email the address above so 791 PURCHASING COOPERATIVE may contact the entity to provide all applicable information.

791 PURCHASING COOPERATIVE will provide awarded vendors membership packets for this purpose upon request.

ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND VENDOR THAT REQUIRES THE 791 PURCHASING COOPERATIVE MEMBER TO INDEMNIFY ANY OTHER PARTY, EXCEPT TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791 PURCHASING COOPERATIVE MEMBER OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT, IS NOT PERMITTED UNDER THIS AGREEMENT AND RENDERS THE INDEMNITY REQUIREMENT NULL AND VOID AS IT APPLIES TO THE 791 PURCHASING COOPERATIVE MEMBER'S RESPONSIBILITY TO INDEMNIFY ANY PARTY.

3. Disclosures

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791 PURCHASING COOPERATIVE under a 791 PURCHASING COOPERATIVE Agreement if Vendor feels that such possible conflicts of interest exist. If you believe there is a conflict of interest as described in the form CIQ instruction sheet contained in this RFP, please complete and submit the form CIQ provided as instructed.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

4. Renewal of Agreements

The Agreement with 791 PURCHASING COOPERATIVE is for a three (3) year term with two (2), one (1) year extension option. Any extension of the initial term will be agreed to in writing between 791 PURCHASING COOPERATIVE and Vendor. Nothing herein shall require either party to agree to an extension of the initial term.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with 791 PURCHASING COOPERATIVE Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

NO AGREEMENT FOR GOODS OR SERVICES WITH A 791 PURCHASING COOPERATIVE MEMBER BY THE AWARDED VENDOR NAMED IN THIS AGREEMENT THAT RESULTS FROM THE SOLICITATION AWARD NAMED IN THIS AGREEMENT MAY INCORPORATE AN AUTOMATIC RENEWAL CLAUSE WITH WHICH THE 791 PURCHASING COOPERATIVE MEMBER MUST COMPLY. ALL RENEWAL TERMS INCORPORATED IN AN AGREEMENT BY THE VENDOR WITH THE 791 PURCHASING COOPERATIVE MEMBER SHALL ONLY BE VALID AND ENFORCEABLE WHEN THE VENDOR RECEIVES WRITTEN

CONFIRMATION BY PURCHASE ORDER OR EXECUTED AGREEMENT ISSUED BY THE 791 PURCHASING COOPERATIVE MEMBER FOR ANY RENEWAL PERIOD. THE PURPOSE OF THIS CLAUSE IS TO AVOID A 791 PURCHASING COOPERATIVE MEMBER INADVERTENTLY RENEWING AN AGREEMENT DURING A PERIOD IN WHICH THE GOVERNING BODY OF THE 791 PURCHASING COOPERATIVE MEMBER HAS NOT PROPERLY APPROPRIATED AND BUDGETED THE FUNDS TO SATISFY THE AGREEMENT RENEWAL. THIS TERM IS NOT NEGOTIABLE AND ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND A 791 PURCHASING COOPERATIVE AWARDED VENDOR WITH AN AUTOMATIC RENEWAL CLAUSE THAT CONFLICTS WITH THESE TERMS IS RENDERED VOID AND UNENFORCEABLE AS TO THE AUTOMATIC RENEWAL CLAUSE.

5. Invoices

Vendor is responsible for the invoicing and collection of all funds due from a 791 PURCHASING COOPERATIVE Member to Vendor.

6. Member Payments

791 PURCHASING COOPERATIVE Members will make payments directly to the Vendor for all funds owed as provided for in the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract.

7. Pricing

The price Vendor will charge a 791 PURCHASING COOPERATIVE Member will be defined in the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract and determined at the time Vendor and a 791 PURCHASING COOPERATIVE Member enters into a 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract. The price Vendor charges a 791 PURCHASING COOPERATIVE Member will include the 791 PURCHASING COOPERATIVE annual participation fee.

At no time during the initial term or extension term of this Agreement shall the price charged to a 791 PURCHASING COOPERATIVE Member the contracted price per RFP #791-2020-03-002 Technology Products, Services & Solutions.

Language similar to the following will be added to the Representations Section of the Vendor's 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract:

“Seller represents that this Agreement, pursuant to the award to (insert vendor's name) as a result of the 791 PURCHASING COOPERATIVE RFP #791-2020-03-002 Technology Products, Services & Solutions, complies with the terms and conditions contained in a separate agreement between Seller and 791 PURCHASING COOPERATIVE.”

8. Participation Fees

Vendor agrees to pay 791 PURCHASING COOPERATIVE an annual participation fee for all Agreement sales to 791 PURCHASING COOPERATIVE Members utilizing a 791 PURCHASING COOPERATIVE awarded contract. The participation fee will be the total dollars derived from **0.75%** of total sales volume through this program. The participation fee will be included in quotes and invoices between Vendor and a 791 PURCHASING COOPERATIVE Member.

The 791 PURCHASING COOPERATIVE participation fee will not be a provided as a separate line item to the 791 PURCHASING COOPERATIVE Member. Vendor will remit the participation fee to 791 PURCHASING COOPERATIVE within thirty (30) business days of receipt of the payment for technology, which includes the annual participation fee, from the 791 PURCHASING COOPERATIVE Member. Failure to pay the participation fee will result in termination of Agreement and 791 PURCHASING COOPERATIVE reserves the right to take any action under the law or equity for any breach of contract.

Prior to delivering an quote to a 791 PURCHASING COOPERATIVE Member, the awarded vendor(s) will calculate the administrative fee for 791 PURCHASING COOPERATIVE to be included in the quote.

9. Sales Reporting Procedures for Vendor

Vendor will report any sale under this contract that is made to a 791 PURCHASING COOPERATIVE Member with Vendor on a monthly basis. Thus, any order entered in a particular month shall report with thirty (30) business days of the 791 PURCHASING COOPERATIVE Member issuing a Purchase Order or otherwise purchasing from the vendor under this contract.

10. Indemnity

Vendor agrees to indemnify and hold harmless and defend 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance of this Agreement or sales made to 791 PURCHASING COOPERATIVE Members under this agreement , including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, unless such claims are based in whole upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents. If based in part upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents, Vendor shall be responsible for their proportional share of the claim.

11. State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

12. Miscellaneous

Nothing in the Agreement or in any other communication between 791 PURCHASING COOPERATIVE and the Vendor may be construed as a guarantee that 791 PURCHASING COOPERATIVE Members will purchase items and services under this contract from Vendor at any time.

13. Termination

Contract shall terminate at the end of the agreement or at the end of any contract extensions. Either party may terminate for breach of contract which would include bankruptcy, or due to continued failure to perform the terms in this agreement. Prior to exercising termination for breach, the non-breaching party must provide notice by certified mail to provide the other party 30 days to solve the stated problems.

However, if this agreement is terminated prior to the end date of the initial term or the end date of an agreed to extension term, any 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract entered into between Vendor and a 791 PURCHASING COOPERATIVE Member shall survive and will not be terminated. Upon termination of this agreement between 791 PURCHASING COOPERATIVE and the Vendor, this agreement shall survive only insofar as to govern all surviving 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contracts between the Vendor and 791 PURCHASING COOPERATIVE Member's. Termination for convenience is required under 2 CFR part 200.

14. Marketing

Awarded vendor agrees to allow 791 PURCHASING COOPERATIVE to use their name and logo within the 791 PURCHASING COOPERATIVE website, marketing materials and advertisement. Vendor may use the 791 PURCHASING COOPERATIVE name and logo in marketing the 791 PURCHASING COOPERATIVE Technology Products, Services & Solutions Contract to 791 PURCHASING COOPERATIVE Members or other Texas government or public entities.

15. Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

16. Audit rights

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by any 791 PURCHASING COOPERATIVE Member that utilizes this Agreement. 791 PURCHASING COOPERATIVE and Region 15 ESC each reserve the right to audit the accounting for a period of four (4) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of four (4) years from the effective date of termination. 791 PURCHASING COOPERATIVE shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 15 ESC or 791 PURCHASING COOPERATIVE. 791 PURCHASING COOPERATIVE shall bear the cost of such audit requested by 791 PURCHASING COOPERATIVE, but all documents maintained by the vendor shall be produced and made available to 791 PURCHASING COOPERATIVE or its agents at no cost.

17. Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice,

so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

18. Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the ESC Region 15/791 PURCHASING COOPERATIVE to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Tom Green County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the ESC Region 15 Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

19. Choice of Law

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

20. Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Tom Green County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

21. Alternative Dispute Resolution

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venue shall be at a location in Tom Green County, Texas or agreed by the parties. The parties agree to share equally the cost of the mediation process and venue cost.

22. Acts or Omissions

The successful vendor will be expected to indemnify and hold harmless the ESC Region 15/791 PURCHASING COOPERATIVE, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related

costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by ESC Region 15/791 PURCHASING COOPERATIVE and the vendor.

23. Contract Governance

Any contract made or entered into by the ESC Region 15/791 PURCHASING COOPERATIVE is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, ESC Region 15/791 PURCHASING COOPERATIVE does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

24. Supplemental Agreements

The 791 PURCHASING COOPERATIVE Member entity participating in the 791 PURCHASING COOPERATIVE Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. 791 PURCHASING COOPERATIVE, its agents, 791 PURCHASING COOPERATIVE Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791 PURCHASING COOPERATIVE and/or 791 PURCHASING COOPERATIVE Member to sign an additional agreement, those agreements shall comply with the award made by 791 PURCHASING COOPERATIVE to the Vendor. Supplemental Vendor's Agreement documents may not become part of 791 PURCHASING COOPERATIVE's Agreement with vendor unless and until an authorized representative of 791 PURCHASING COOPERATIVE reviews and approves it. 791 PURCHASING COOPERATIVE permits 791 PURCHASING COOPERATIVE Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791 PURCHASING COOPERATIVE Agreement.

25. Survival Clause

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and 791 PURCHASING COOPERATIVE or the 791 PURCHASING COOPERATIVE Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by 791 PURCHASING COOPERATIVE or a 791 PURCHASING COOPERATIVE Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

26. Smoking

Persons working under Agreement shall adhere to the 791 PURCHASING COOPERATIVE Member's or local smoking statutes, codes or policies.

27. Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

28. Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. 791 PURCHASING COOPERATIVE and its Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

29. 791 PURCHASING COOPERATIVE Member Purchasing Procedures

Purchase orders or their equal are issued by participating 791 PURCHASING COOPERATIVE Member to the awarded vendor and should indicate on the order that the purchase is per the applicable 791 PURCHASING COOPERATIVE Agreement number. Orders are typically emailed to 791 PURCHASING COOPERATIVE at admin@791COOP.org

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating 791 PURCHASING COOPERATIVE Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to 791 PURCHASING COOPERATIVE (unless prior arrangements have been made with 791 PURCHASING COOPERATIVE for an alternative submission schedule).

30. Incorporation of Solicitation

The 791 Purchasing Cooperative Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

791 PURCHASING COOPERATIVE Vendor Agreement,

Signature Form

RFP #791-2020-03-002 Technology Products, Services & Solutions

Vendor:

Company Name IXL Learning, Inc.

Address 777 Mariners Island Blvd, Suite 600

City San Mateo State CA Zip 94404

Phone (650) 372-4300 Fax (650) 372-4072

Email of Authorized Representative proposals@ixl.com

Name of Authorized Representative Paul Mishkin

Title Chief Executive Officer


Signature of Authorized Representative 

Date 6.2.2020

791 PURCHASING COOPERATIVE:

791 PURCHASING COOPERATIVE Authorized Representative

Name Jeffrey Shokrian

Signature: 

Title President 791 Cooperative

Date June 2, 2020