

**AMENDMENT FOUR**  
**TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN**  
**APEX LEARNING INC. AND WILLIAM S. HART UNION HIGH SCHOOL DISTRICT**

This amendment effective on June 17, 2020 (“**Amendment Four**”) shall serve to amend the Client Agreement for Apex Learning Digital Curriculum Solutions with the Effective Date of June 9, 2016 (the “**Agreement**”), as previously amended, between Apex Learning Inc., a Washington corporation, with its principal place of business at 1215 Fourth Avenue, Suite 1500, Seattle, WA 98161 (“**Apex Learning**”) and William S. Hart Union High School District, with its principal place of business at 21380 Centre Pointe Parkway, Santa Clara, CA 91350 (“**Client**”).

Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement. The terms and conditions of the Agreement remain in full force and effect. In consideration of the covenants and conditions set forth in this Amendment Four and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to further amend the Agreement as follows:

- A. Modification of Access to Apex Curriculum:** Client’s purchase of 396 Courses Unlimited Enrollment Subscriptions during the period June 17, 2020 through June 16, 2022 as specified in Amendments One through Three (excluding the respective Summer School periods) is cancelled and restated as follows:

Apex Learning will provide Client with 531 Courses Unlimited Enrollment Subscriptions from June 17, 2020 through June 16, 2022 allocated to Client and the Client schools as specified in Table 1 below. Courses subscriptions do not include access to Technology Courses.

Table 1		
Client / School	# of Unlimited Enrollment Subscriptions	Subtotal Price
William S. Hart Union High School District	330	\$82,500.00 (\$41,250.00 per 12-month period)
Golden Oak Adult School	100	\$25,000.00 (\$12,500.00 per 12-month period)
Valencia High School	25	\$6,250.00 (\$3,125.00 per 12-month period)
Golden Valley High School	40	\$10,000.00 (\$5,000.00 per 12-month period)
Castaic High School	36	\$9,000.00 (\$4,500.00 per 12-month period)

The number of students enrolled at the same time may not exceed the number of subscriptions purchased. Client may purchase additional subscriptions for Client and/or such Client schools during each 12-month period June 17, 2020 through June 16, 2022 at \$125.00 per subscription per period.

*Total Price:* \$132,750.00 (\$66,375.00 per 12-month period)

[Remainder of this page intentionally left blank.]

- B. Modification of Payment Schedule:** Given the modification of access to the Apex Curriculum as specified in Section A of this Amendment Four, the Payment Schedule text as specified in Section B.2 of Amendment Three is deleted in its entirety and restated as follows:

Apex Learning will invoice Client in the amount of \$71,375.00 on June 18, 2020 and June 18, 2021, for a total amount of \$142,750.00. Apex Learning's invoices will reflect the respective Client and Client school information specified in Table 2 below.


Table 2			
Client / School	Invoice Amount on 6/18/2020	Invoice Amount on 6/18/2021	Total Invoice Amount
William S. Hart Union High School District	*\$46,250.00	**\$46,250.00	\$92,500.00
Golden Oak Adult School	\$12,500.00	\$12,500.00	\$25,000.00
Valencia High School	\$3,125.00	\$3,125.00	\$6,250.00
Golden Valley High School	\$5,000.00	\$5,000.00	\$10,000.00
Castaic High School	\$4,500.00	\$4,500.00	\$9,000.00

\* This includes \$5,000.00 for Client's purchase of access to Summer School Courses under Amendment One for the period June 1, 2020 through August 7, 2020.

\*\* This includes \$5,000.00 for Client's purchase of access to Summer School Courses under Amendment One for the period June 1, 2021 through August 6, 2021.

Agreed.

**Apex Learning Inc.**

By: 

Print Name: Chuck Lanphier

Title: Vice President, Client Services

Date: 5/19/2020

**William S. Hart Union High School District**

By: 

Print Name: Raula Peschen

Title: CBO

Date: 05/18/2020

**AMENDMENT THREE  
TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN  
APEX LEARNING INC. AND WILLIAM S. HART UNION HIGH SCHOOL DISTRICT**

This amendment effective on execution by both parties ("Amendment Three") shall serve to amend the Client Agreement for Apex Learning Digital Curriculum Solutions with the Effective Date of June 9, 2016 (the "Agreement"), as previously amended, between Apex Learning Inc., a Washington corporation, with its principal place of business at 1215 Fourth Avenue, Suite 1500, Seattle, WA 98161 ("Apex Learning") and William S. Hart Union High School District, with its principal place of business at 21380 Centre Pointe Parkway, Santa Clara, CA 91350 ("Client").

Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement. The terms and conditions of the Agreement remain in full force and effect. In consideration of the covenants and conditions set forth in this Amendment Three and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to further amend the Agreement as follows:

- A. **Additional Access to Apex Curriculum:** Apex Learning will provide Client with 36 additional Courses Unlimited Enrollment Subscriptions during the period commencing on execution of this Amendment Three by both parties through June 16, 2022, excluding the respective Summer School periods, bringing the maximum number of subscriptions for Client to 396.

Price: \$15,120.00

- B. **Payment Schedule:** Apex Learning will invoice Client a total amount of \$15,120.00 for Client's purchase under this Amendment Three as follows:

1. In the amount of \$5,040.00 on execution of this Amendment Three by both parties, and
2. In the amount of \$5,040.00 on June 18, 2020 and June 18, 2021, bringing the total amount to be invoiced on those dates (including \$54,000.00 to be invoiced under Amendment One and \$1,400.00 to be invoiced under Amendment Two) to \$60,440.00.

Agreed.

Apex Learning Inc.

By: 

Print Name:

Chuck Lanphier

Title:

VP, Client Services

Date:

1/15/2020

William S. Hart Union High School District

By: 

Print Name:

Randy Pesch

Title:

CEO

Date:

01/13/2020

**AMENDMENT TWO  
TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN  
APEX LEARNING INC. AND WILLIAM S. HART UNION HIGH SCHOOL DISTRICT**

This amendment effective as of October 18, 2019 ("Amendment Two") shall serve to amend the Client Agreement for Apex Learning Digital Curriculum Solutions with the Effective Date of June 9, 2016 (the "Agreement"), as previously amended, between Apex Learning Inc., a Washington corporation, with its principal place of business at 1215 Fourth Avenue, Suite 1500, Seattle, WA 98161 ("Apex Learning") and William S. Hart Union High School District, with its principal place of business at 21380 Centre Pointe Parkway, Santa Clara, CA 91350 ("Client").

Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement. The terms and conditions of the Agreement remain in full force and effect. In consideration of the covenants and conditions set forth in this Amendment Two and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to further amend the Agreement as follows:

- A. **Additional Access to Apex Curriculum:** Apex Learning will provide Client with 10 additional Courses Unlimited Enrollment Subscriptions during the period October 18, 2019 through June 16, 2022, excluding the respective Summer School periods, bringing the maximum number of subscriptions for Client to 360.

Price: \$4,200.00

- B. **Payment Schedule:** Apex Learning will invoice Client a total amount of \$4,200.00 for Client's purchase under this Amendment Two as follows:

1. In the amount of \$1,400.00 on execution of this Amendment Two by both parties, and
2. In the amount of \$1,400.00 on June 18, 2020 and June 18, 2021, bringing the total amount to be invoiced on those dates (including \$54,000.00 to be invoiced under Amendment One) to \$55,400.00.

Agreed.

Apex Learning Inc.

By: 

Print Name: Cheryl Vedoe

Title: CEO

Date: 10/22/19

William S. Hart Union High School District

By: 

Print Name: RALPH PESCHIER

Title: CFO

Date: 10/21/19



**AMENDMENT ONE  
TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN  
APEX LEARNING INC. AND WILLIAM S. HART UNION HIGH SCHOOL DISTRICT**

This amendment effective on execution by both parties ("**Amendment One**") shall serve to amend the Client Agreement for Apex Learning Digital Curriculum Solutions with the Effective Date of June 9, 2016 (the "**Agreement**") between Apex Learning Inc., a Washington corporation, with its principal place of business at 1215 Fourth Avenue, Suite 1500, Seattle, WA 98161 ("**Apex Learning**") and William S. Hart Union High School District, with its principal place of business at 21380 Centre Pointe Parkway, Santa Clara, CA 91350 ("**Client**").

Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement. Other than the modifications provided under this Amendment One as set forth below, the terms and conditions of the Agreement remain unchanged and in full force and effect. In consideration of the covenants and conditions set forth in this Amendment One and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

**A. Term Extension:** The Agreement Term under Section 9.1 is extended through June 16, 2022.

**B. Access to Apex Curriculum:** Apex Learning will provide Client with the following:

1. **Courses:** 350 Courses Unlimited Enrollment Subscriptions during the period June 17, 2019 through June 16, 2022.

*Price:* \$147,000.00

Client may purchase additional subscriptions for access during each of the 12-month periods (a) June 17, 2019 through June 16, 2020, (b) June 17, 2020 through June 16, 2021, and (c) June 17, 2021 through June 16, 2022 at \$157.50 per subscription per period.

2. **Courses during Summer School:** 100 Courses Unlimited Enrollment Subscriptions during each of the 10-week periods (a) June 3, 2019 through August 9, 2019, (b) June 1, 2020 through August 7, 2020, and (c) June 1, 2021 through August 6, 2021.

*Price:* \$15,000.00

Client may purchase additional subscriptions for access during each of the 10-week periods (i) June 3, 2019 through August 9, 2019, (ii) June 1, 2020 through August 7, 2020, and (iii) June 1, 2021 through August 6, 2021 at \$50.00 per subscription per period.

**C. Payment Schedule:** Apex Learning will invoice Client in the amount of \$54,000.00 on June 17, 2019, June 18, 2020, and June 18, 2021, for a total amount of \$162,000.00.

Agreed.

Apex Learning Inc.

By: 

Print Name: Cheryl Vedoe

Title: CEO

Date: 3/26/19

William S. Hart Union High School District

By: 

Print Name: \_\_\_\_\_

Title: CEO

Date: 3/15/19

**CLIENT AGREEMENT  
for  
APEX LEARNING DIGITAL CURRICULUM SOLUTIONS**

This Client Agreement for Apex Learning Digital Curriculum Solutions ("Agreement") is effective on execution by both parties ("Effective Date") and is made by and between Apex Learning Inc., a Washington corporation with its principal place of business at 1215 Fourth Avenue, Suite 1500, Seattle, WA 98161 ("Apex Learning") and William S. Hart Union High School District, with its principal place of business at 21380 Centre Pointe Parkway, Santa Clarita, CA 91350-2947 ("Client").

**RECITALS**

Apex Learning provides digital curriculum solutions for secondary education and related services.

Client desires to have its students, teachers and staff access and use the Apex Curriculum (as defined below) and to have Apex Learning perform certain related services, all pursuant to the terms and conditions set forth below.

In consideration of the covenants and conditions set forth below and for other good and valuable consideration, the adequacy of which the parties hereby acknowledge, the parties agree as follows:

**AGREEMENT**

1. **Definitions.** Each of the following initially capitalized terms has the meaning set forth below. All other initially capitalized terms have the meanings assigned in this Agreement.
  - 1.1. "**Apex Curriculum**" means the Apex Learning curriculum offerings identified in Section 1 of Exhibit A (e.g., Comprehensive Courses, Tutorials, AP Exam Review, and ALVS enrollments). The Apex Curriculum does not include any Course Materials.
  - 1.2. "**Client User**" means each Client student and Client teacher, administrator or staff member, who registers with Apex Learning and establishes a password to access the Apex Curriculum made available under this Agreement.
  - 1.3. "**Course Materials**" mean items or materials separate from the Apex Curriculum that are identified as either required or optional for the Apex Curriculum (e.g., calculators, microphones/headsets, textbooks, novels, other literature, lab manuals, and lab materials).
  - 1.4. "**Professional Services**" mean the Apex Learning professional services described in Section 2 of Exhibit A.
  - 1.5. "**Term**" will have the meaning set forth in Section 9.1 below.
  - 1.6. "**User Support**" means the Apex Learning support services described in Exhibit C.
2. **Apex Obligations.**
  - 2.1. **Apex Curriculum.** Commencing on June 17, 2016 and continuing throughout the Term, Apex Learning will host and make available the Apex Curriculum for access and use by Client Users.
  - 2.2. **User Support.** Apex Learning will provide Client and Client Users with User Support throughout the Term.

- 2.3. **Uptime.** Apex Learning will use commercially reasonable efforts to make the Apex Curriculum available for access by Client and Client Users 99% of the time, measured on a monthly basis, excluding Planned Outages. "Planned Outages" means the installation of upgrades, routine application, server, or network configuration changes, and other reasonable maintenance activities. Planned Outages will be conducted during off-peak Apex Curriculum utilization times. Apex Learning will post an advance announcement of any Planned Outage on the Apex Learning website through which Client Users access the Apex Curriculum.
- 2.4. **Security.** Apex Learning will implement commercially reasonable security measures to protect against incidents of unauthorized access to personally identifiable Client User information.
- 2.5. **Professional Services.** Apex Learning will perform the Professional Services as described in Section 2 of Exhibit A.
- 2.6. **Course Materials.** Apex Learning will provide the specific Course Materials described in Section 3 of Exhibit A. Apex Learning reserves the right to make substitutions to Course Materials listed in Exhibit A provided that any such substitutions will satisfy the requirements of the Apex Curriculum and will be provided at the same price set forth in Exhibit A.
- 2.7. **All Rights Reserved.** Apex Learning and its suppliers own all right, title and interest in and to the Apex Curriculum. Other than granting Client Users the right to access and use the Apex Curriculum as described in this Agreement, Apex Learning expressly reserves all right, title and interest therein.
3. **Client Obligations.**
- 3.1. **Hardware/Software.** The Apex Curriculum is made available to Client Users over the Internet through a web-browser interface. To access the Apex Curriculum, therefore, Client Users must have a suitable Internet connection and access to an appropriately configured computer, as well as an appropriately configured computer network (where applicable).
- 3.2. **Parental Consent.** Client will obtain any necessary parental consent for each Client User student to access and use the Apex Curriculum.
- 3.3. **Terms of Use.** All Client Users that access the Apex Curriculum must comply with the Apex Learning terms of use for the Apex Curriculum ("Terms of Use"). The current version of those Terms of Use is posted at [www.apexvs.com](http://www.apexvs.com) and on the Apex Learning website through which Client Users access the Apex Curriculum. Apex Learning reserves the right to suspend or discontinue a Client User from accessing the Apex Curriculum at any time if the Client User violates the Terms of Use. Client will notify Apex Learning of any activity by its Client Users in violation of the Terms of Use.
- 3.4. **Laboratory Activities.** If hands-on laboratory activities included in the Apex Curriculum are implemented by Client Users, Client is responsible for all such hands-on laboratory activities, including ensuring that qualified personnel are available to supervise such hands-on laboratory activities. Apex Learning will have no liability whatsoever with regard to any hands-on laboratory activities.
- 3.5. **No Resale Rights.** Client will not resell to any third party the right to access or use the Apex Curriculum or provide any third party who is not a Client User with access to, or the ability to use, the Apex Curriculum.

4. **Payment.**

- 4.1. **General.** In consideration for the rights granted and services provided under this Agreement, Client will pay Apex Learning the amounts set forth in Exhibit A pursuant to the "Payment Schedule" set forth in Exhibit B.
- 4.2. **Payment Terms.** Client will pay all Apex Learning invoices issued under this Agreement within thirty (30) days of the invoice date. If payment is made via credit card Apex Learning will assess a processing fee equal to 3% of the amount charged to such card.
- 4.3. **Taxes.** Amounts stated under Section 4.1 do not include any applicable sales, use, gross income, occupational, or similar taxes; import or export fees; duties, imports, or tariffs; or any other taxes, duties, charges, or fees of any kind which may be levied in connection with the transactions covered under this Agreement. Any such taxes (if any are due) are the responsibility of Client, and Client will indemnify and hold Apex Learning harmless from any liability with respect to such taxes.

5. **Confidentiality and Public Disclosure.**

- 5.1. **Confidentiality.** Each party agrees that during the Term of this Agreement, and for two (2) years thereafter, it will not disclose to any third party any Confidential Information of the other party, except to the extent required by law or as otherwise expressly authorized herein. The term "Confidential Information" means all non-public information that either party designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. Apex Learning's Confidential Information includes, without limitation, information relating to unreleased product offerings. Confidential Information does not include information that was known to the receiving party prior to the disclosing party's disclosure to the receiving party, or information that becomes publicly available through no fault of the receiving party. Nothing in this Section 5 precludes either party from disclosing Confidential Information when and as required by law. Further, notwithstanding the first sentence of this Section 5.1, during the Term and thereafter Apex Learning will protect the personally identifiable information of Client Users against unauthorized disclosure in accordance with applicable law. In the event either party is asked to disclose Confidential Information, as required by law, the disclosing party shall provide written notice to the other party, reasonably in advance of any disclosure, and give the non-disclosing party an opportunity to identify and enforce any authorized exceptions to public disclosure that may apply to such request.
- 5.2. **Public Disclosure.** The parties acknowledge that Client is subject to certain laws governing the disclosure of public records. The parties also acknowledge that this Agreement includes terms and conditions regarding the business practices of Apex Learning that Apex Learning considers proprietary information. Apex Learning acknowledges that Client shall make this Agreement public by attaching it to the agenda of the public meeting during which Client's Governing Board will consider approving this Agreement. Other than the foregoing, Client agrees that it will not disclose the terms of this Agreement to any third party except and only to the extent that Client is required to do so under applicable public disclosure laws. Further, if Client receives a request to disclose any terms of this Agreement, then to the extent permitted by law Client will provide Apex Learning with notice of such request, reasonably in advance of any disclosure, and give Apex Learning an opportunity to identify and enforce any authorized exceptions to public disclosure that may apply to such request.

6. **Representations and Warranties.**

- 6.1. **By Both Parties.** Each party hereby represents and warrants to the other party that: (a) it has the power and authority to enter into this Agreement and is permitted by applicable law and regulations to enter into this Agreement; and (b) it will comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family



Educational Rights and Privacy Act, California Education Code Section 49073.1, and the California Education Code Section 49073.1 (AB No. 1584) Addendum as specified in Exhibit D.

- 6.2. **By Apex Learning.** Apex Learning further represents and warrants that Client's and Client Users' access to and use of the Apex Curriculum as described in this Agreement will not infringe any third party copyright.
- 6.3. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH IN SECTION 6.2 ABOVE, APEX LEARNING DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE APEX CURRICULUM, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE. EXCEPT AS SET FORTH IN SECTION 6.2, THERE IS NO WARRANTY OF NON-INFRINGEMENT OR TITLE.

**7. Indemnity.**

- 7.1. **Duty to Indemnify.** Subject, in the case of Client, to any applicable laws restricting Client's ability to provide the indemnification described in this Section, each party will indemnify, defend, and hold the other party and its officers, employees, and agents harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising out of or in connection with any breach or alleged breach of any representation or warranty set forth in Section 6 above.
- 7.2. **Procedure.** If an action is brought for which indemnity is sought under this Section 7, the party seeking indemnity will send reasonably prompt written notice to the other party specifying the nature of the action and the total damages or other relief sought and will permit the indemnifying party to answer and defend such claim. The party seeking indemnity will provide the indemnifying party with such information and assistance as is reasonably necessary to assist the indemnifying party, at the indemnifying party's expense, in defending any such action. The party seeking indemnity reserves the right to employ separate counsel and participate in the defense at its expense. The indemnifying party will not be responsible for any settlement made by the party seeking indemnity without the indemnifying party's written consent, which will not be unreasonably withheld or delayed, nor will the indemnifying party settle any claim under this Section 7 without first obtaining the written consent of the party seeking indemnity, which will not be unreasonably withheld or delayed.

**8. EXCLUSION OF CERTAIN DAMAGES & LIMITATION ON LIABILITY.**

- 8.1. **EXCLUSION OF CERTAIN DAMAGES.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE.
- 8.2. **LIMITATION ON LIABILITY.** IN NO EVENT WILL APEX LEARNING'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CLIENT TO APEX LEARNING UNDER THIS AGREEMENT.
- 8.3. **APPLICATION.** THE EXCLUSION OF DAMAGES AND LIMITATION ON LIABILITY IN THIS SECTION 8 SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF ANY CLAIM AND EVEN IF THE REMEDIES OTHERWISE PROVIDED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE.

**9. Term and Termination.**

- 9.1. **Term.** This Agreement shall commence on the Effective Date and continue through June 16, 2019, unless earlier terminated as provided in this Section 9.
- 9.2. **Termination.** Either party may suspend performance or terminate this Agreement immediately upon written notice to the other party at any time if the other party is in material breach of any provision of this Agreement and has failed to cure that breach within thirty (30) days after receipt of written notice thereof. Without limiting the foregoing, Apex Learning may suspend performance or terminate this Agreement immediately upon written notice to Client if Client is thirty (30) days overdue on any payment due to Apex Learning under this Agreement.
- 9.3. **Termination for Insufficient Funding:** Client may terminate the Agreement effective on June 16, 2017 or on June 16, 2018 if sufficient funds have not been appropriated in Client's budget to cover amounts that will come due under this Agreement, provided that Client gives Apex Learning written notice of termination at least sixty (60) days in advance of the termination date.
- 9.4. **Effect of Expiration/Termination.** Upon the expiration or termination of this Agreement, all access to the Apex Curriculum will promptly cease, and Client will immediately pay all amounts due to Apex Learning up to the date of expiration/termination. The following Sections will survive the expiration or termination of this Agreement: 4 (with respect to amounts due and owing upon expiration/termination), 5, 6, 7, 8, 9.4 and 10.

**10. Miscellaneous.**

- 10.1. **Relationship of Parties.** Client and Apex Learning are independent contractors with respect to one another, and nothing in this Agreement will be interpreted to create any agency, joint venture, employment or partnership relationship.
- 10.2. **Force Majeure.** For a reasonable time period, Apex Learning will be excused from delay, breach of this Agreement or failure in performance under this Agreement due to causes beyond Apex Learning's reasonable control including without limitation, acts of God, government action, strikes, acts of public enemies, civil disturbance or riots, war, national emergency, floods, power outages, telecommunications failures, fires, earthquakes, storms or other similar causes.
- 10.3. **Notices.** Any notices given under this Agreement shall be delivered either by messenger or overnight delivery service, or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and addressed to Apex Learning or Client at the address stated below, and shall be deemed to have been given on the day when received by the party to whom the notice is given.

	<b>Apex Learning Contact</b>	<b>Client Contact</b>
Name, Title	Manager, Contracts	Pete Getz
Organization	Apex Learning Inc.	William S. Hart Union High School District
Address	1215 Fourth Avenue, Suite 1500	21380 Centre Pointe Parkway
City, State, Zip	Seattle, WA 98161	Santa Clarita, CA 91350-2947
Phone	206-381-5600	661-259-0033
Facsimile	206-381-5601	661-254-8653

- 10.4. **Assignment.** Neither party will assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the immediately preceding sentence, either party may assign this Agreement without the other party's prior written consent as part of a merger, acquisition or a sale or transfer of a majority of the assigning party's assets. This

Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and permitted assignees.

- 10.5. **Waiver/Severability.** No provision of this Agreement will be deemed waived unless the waiver is in writing and signed by the waiving party, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then such unenforceable term or portion thereof will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk among the parties reflected in the original provision, and the remainder of this Agreement shall continue in effect.
- 10.6. **Governing Law/Venue.** This Agreement will be governed by and construed under the laws of the State of California (except to the extent federal law is controlling on the subject matter), without regard to its conflict of laws provisions. The parties agree that venue for any legal action or proceeding relating to this Agreement shall be exclusively Los Angeles County, California Superior Court. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its reasonable costs.
- 10.7. **No Third Party Beneficiaries.** This Agreement is for the benefit of, and shall be enforceable by, the parties only. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third-party beneficiary of this Agreement.
- 10.8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, oral or written. Changes, modifications or waivers to this Agreement must be in writing and signed by both parties. If there is an inconsistency between this Agreement and the Terms of Use, then this Agreement shall control but solely to the extent of the inconsistency and solely with respect to Apex Learning and Client (as the parties to this Agreement).

IN WITNESS WHEREOF, the authorized representatives of Apex Learning and Client agree to the terms and conditions set forth in this Agreement.

Apex Learning Inc.

By: \_\_\_\_\_

Print Name: Cheryl Vedoe

Title: CEO

Date: \_\_\_\_\_

6/9/16

William S. Hart Union High School District

By: \_\_\_\_\_

Print Name: ERIN HILLBRIDGE

Title: CHIEF FINANCIAL OFFICER

Date: \_\_\_\_\_

6/7/16

## **EXHIBIT A**

### **Apex Curriculum, Professional Services and Course Materials**

#### **1. *Apex Curriculum:***

- 250 Unlimited Enrollment Subscriptions to Comprehensive Courses during the period June 17, 2016 through June 16, 2019.

**Price:** \$118,125.00

Each "Unlimited Enrollment Subscription" provides access for one student enrolled in any number of Comprehensive Courses at the same time. If a student completes or withdraws from all Comprehensive Courses in which he or she is enrolled, the Unlimited Enrollment Subscription may be used to enroll another student in any number of Comprehensive Courses. The number of students enrolled at the same time may not exceed the number of Unlimited Enrollment Subscriptions purchased. Client may purchase additional Unlimited Enrollment Subscriptions for access during each of the 12-month periods (i) June 17, 2016 through June 16, 2017, (ii) June 17, 2017 through June 16, 2018, and (iii) June 17, 2018 through June 16, 2019 at \$175.00 per Unlimited Enrollment Subscription per period.

- The price for the Apex Curriculum does not include any Course Materials. A list of Course Materials offered for sale by Apex Learning can be found at [http://www.apexlearning.com/info/materials\\_list.pdf](http://www.apexlearning.com/info/materials_list.pdf). There are no returns, credits, or refunds on Course Materials purchased.

#### **2. *Professional Services:***

- One (1) 6-hour onsite training session to be delivered during the period June 17, 2016 through June 16, 2017.

**Price:** \$2,200.00

#### **3. *Course Materials:***

- None purchased.

**Total Price:** \$120,325.00

**EXHIBIT B**  
**Payment Schedule**

Client will pay Apex Learning according to the following Payment Schedule:

- Apex Learning will invoice Client in the amount of \$41,575.00 on June 17, 2016.
- Apex Learning will invoice Client in the amount of \$39,375.00 on June 19, 2017.
- Apex Learning will invoice Client in the amount of \$39,375.00 on June 18, 2018.



## **EXHIBIT C**

### **User Support**

1. **General.** Apex Learning will provide Client Users with support via a toll-free phone number (for U.S. calls only) and email. Phone support will be available from Apex Learning Monday–Friday from 5:00 a.m. to 7:00 p.m. Pacific Time. Apex Learning will give Client Users notice of any intermittent or seasonal changes to the phone support schedule by posting an announcement on the Apex Learning website through which Client Users access the Apex Curriculum and/or by a voicemail greeting.
2. **Disclaimer.** Apex Learning’s ability to support Client and Client Users with respect to the Apex Curriculum depends on Client (a) providing Apex Learning with prompt notice if Client becomes aware of any problem that affects the ability of Client Users to access and/or use the Apex Curriculum, (b) cooperating in a timely manner with Apex Learning’s efforts to diagnose the source of problems, (c) making available to Apex Learning appropriate staff and system information for resolving issues as they may arise, and (d) implementing reasonable technical solutions suggested by Apex Learning in a timely manner. In addition, Apex Learning is not responsible for Client User problems that stem from Client’s Internet connection, any Client or third party hardware or software, or Client’s own network.

## **EXHIBIT D**

### **California Education Code Section 49073.1 (AB No. 1584) Addendum**

**A. DEFINITIONS.** The following terms will have the following meanings for purposes of this Addendum:

1. **"Deidentified Information"** means information that cannot be used to identify an individual Client student.
2. **"Eligible Pupil"** means a Client student who has reached 18 years of age.
3. **"Pupil-Generated Content"** means materials created by a Client student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of Client student content. **"Pupil-Generated Content"** does not include Client student responses to a standardized assessment where Client student possession and control would jeopardize the validity and reliability of that assessment.
4. **"Pupil Records"** mean both of the following:
  - a. Any information directly related to a Client student that is maintained by Client, and
  - b. Any information acquired directly from a Client student through the use of Apex Curriculum assigned to the Client student by a teacher or other Client employee.

**"Pupil Records"** do not mean any of the following:

- a. Deidentified Information, including aggregated deidentified information, used by Apex Learning to improve educational products for adaptive learning purposes and for customizing student learning,
- b. Deidentified Information, including aggregated deidentified information, used to demonstrate the effectiveness of Apex Learning's products in the marketing of those products, or
- c. Deidentified Information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.

**B. ADDITIONAL TERMS REGARDING PUPIL RECORDS/PUPIL-GENERATED CONTENT**

1. Pupil Records obtained by Apex Learning under this Agreement are and will continue to be the property of and under the control of Client.
2. Notwithstanding Section 1 above, Client students may retain possession and control of their own Pupil-Generated Content created using the Apex Curriculum as follows:

Students may retain a copy of each item of Pupil-Generated Content as it is generated (e.g., by making a digital or hard copy).

3. Apex Learning will not use any information in any Pupil Record for any purpose other than those purposes required or specifically permitted by this Agreement. For clarification, these purposes include use of Pupil Records as reasonably necessary for Apex Learning to provide the Apex Curriculum and related services and support to Client and Client students under this Agreement.

4. A parent, legal guardian or Eligible Pupil may review personally identifiable information in a Client student's Pupil Records and correct erroneous information as follows:

Client students have access to their Pupil Records through their access to the Apex Curriculum. A parent, legal guardian or Eligible Pupil may contact Client to request a correction to erroneous personally identifiable information and Apex Learning will make such changes as directed by Client.

5. Apex Learning takes the following actions to protect the security and confidentiality of Pupil Records:

Pupil Records will be stored in electronic memory (on servers or other computers) operated and maintained by or on behalf of Apex Learning in the United States. The measures that Apex Learning will take to protect the security and confidentiality of Pupil Records containing personally identifiable Client student information while it is stored in that manner include, but are not necessarily limited to: encryption to protect personally identifiable information while in motion or at rest; restricted physical access to the servers/computers; software-based solutions intended to prohibit unauthorized entry such as regularly updated virus scans, firewalls, and use of passwords; and administrative controls such as selective user access rights, and including the designation and training of responsible individuals.

6. In the event of an unauthorized disclosure of a Client student's Pupil Records, the following procedures will be followed for notifying the parent, legal guardian or Eligible Pupil:

Apex Learning shall notify Client without unreasonable delay of any breach of security resulting in an unauthorized release of a Client student's personally identifiable information in a Pupil Record, by Apex Learning or its assignees in violation of applicable state or federal law.

7. Apex Learning certifies that Pupil Records will not be retained or available to Apex Learning upon completion of the terms of this Agreement. This certification will be enforced as follows:

As a term of this Agreement, the parties agree that following the expiration or termination of this Agreement, Apex Learning will store Pupil Records for renewed access by Client (*i.e.*, by way of renewal of this Agreement or execution of a subsequent Agreement with Apex Learning) until such time as Client provides written notice to Apex Learning that Client no longer wishes to have Apex Learning provide such ongoing storage. Within a reasonable time period following receipt of any such written notice from Client, Apex Learning will deidentify all such Pupil Records (*i.e.*, modify Pupil Records so that they cannot be used to identify an individual Client student and therefore no longer qualify as "Pupil Records").

8. Client agrees to work with Apex Learning to ensure compliance with the federal Family Educational Rights and Privacy Act (if applicable) pursuant to procedures agreed upon by the parties.
9. Apex Learning is prohibited from using personally identifiable information in Pupil Records to engage in targeted advertising.