

CLIENT AGREEMENT
for
APEX LEARNING DIGITAL CURRICULUM SOLUTIONS

This Client Agreement for Apex Learning Digital Curriculum Solutions (“**Agreement**”) is effective on August 15, 2017 (“**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 Todd County School District, with its principal place of business at 205 Airport Road, Elkton, KY 42220 (“**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 the Effective Date 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 as further specified in Exhibit D “Student Data Privacy & Protection.”
- 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 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.
- 3.6. **Security.** Client will comply with its obligations as specified in Exhibit D.

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 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.
- 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. Accordingly, 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 (“**FERPA**”).
- 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 August 14, 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 August 14, 2018 if sufficient funds have not been adopted by Client's Board of Education for Client's budget to cover amounts that will come due under this Agreement, provided that Client gives Apex Learning written notice of termination under this Section 9.3 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.

	Apex Learning Contact	Client Contact
Name, Title	Manager, Contracts	B. Wayne Benningfield
Organization	Apex Learning Inc.	Todd County School District
Address	1215 Fourth Avenue, Suite 1500	205 Airport Road
City, State, Zip	Seattle, WA 98161	Elkton, KY 42220
Phone	206-381-5600	270-265-2436
Facsimile	206-381-5601	270-265-5414

- 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/Attorneys' Fees.** This Agreement will be governed by and construed under the laws of the Commonwealth of Kentucky (except to the extent federal law is controlling on the subject matter), without regard to its conflict of laws provisions. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the Todd Circuit Court of Kentucky has jurisdiction.

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.

Todd County School District

By: _____

By: _____

Print Name: Cheryl Vedoe

Print Name: B. Wayne Benningfield

Title: CEO

Title: Superintendent

Date: _____

Date: _____

EXHIBIT A

Apex Curriculum, Professional Services and Course Materials

1. ***Apex Curriculum:***

- Unlimited enrollments in Comprehensive Courses for all students in grades 6-12 during the period August 15, 2017 through August 14, 2019.

Price: \$19,560.00

- 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. There are no returns, credits, or refunds on Course Materials purchased.

2. ***Professional Services:***

- The following professional services to be delivered during the period August 15, 2017 through August 14, 2018 via a combination of phone, web conference, and one (1) 6-hour onsite session:
 - Implementation Strategy and Planning;
 - Coaching and Mentoring; and
 - Program Review and Optimization.

Price: \$2,500.00

3. ***Course Materials:***

- None purchased.

Total Price: \$22,060.00

EXHIBIT B
Payment Schedule

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

- Apex Learning will invoice Client in the amount of \$12,280.00 on execution of this Agreement by both parties.
- Apex Learning will invoice Client in the amount of \$9,780.00 on August 15, 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
STUDENT DATA PRIVACY & PROTECTION

1. **Use of Student Data.** Student Data means Personally Identifiable Information (as defined under FERPA) from an Education Record (as defined under FERPA) maintained or processed by Apex Learning in connection with this Agreement. Apex Learning will only use Student Data to provide access to and support Client and Client Users in their use of the Apex Curriculum and to deliver related Professional Services.
2. **Confidentiality of Student Data.** Apex Learning will not disclose Student Data to a third party except as follows: (a) with the prior written consent of the parent or guardian of the student to whom the Student Data pertains or, if the student is an adult, the adult student; (b) as may be required by law, including subpoena or court order; (c) to authorized representatives in connection with Apex Learning's performance under this Agreement and provided such authorized representatives have agreed in writing to maintain the confidentiality of such Student Data; (d) to law enforcement to protect the safety of individuals; or (e) to a successor entity following the purchase, merger, or other type of acquisition of Apex Learning, or the purchase of Apex Learning's assets, so long as the successor entity continues to be subject to the provisions of this Agreement. Client agrees to maintain the confidentiality of access credentials made available to Client to access the Apex Curriculum and that such access credentials will be revoked from Client personnel who no longer need access to such credentials for Client's educational purpose.
3. **Parental Consent.** Client agrees to obtain any necessary consent from parents and adult students for the disclosure of Student Data by Client to Apex Learning, and by Apex Learning to Client, in connection with Apex Learning's performance under this Agreement.
4. **Data Privacy & Security Safeguards.** Apex Learning will establish and maintain reasonable administrative, physical, and technical safeguards to protect the security, confidentiality and integrity of Student Data in its custody, including encryption of Student Data while in motion and at rest.
5. **Correction of Inaccurate Information.** Upon request, Apex Learning will assist Client in using the Apex Curriculum administrative tools so that Client may access and correct any factually inaccurate Student Data.
6. **Prohibition on Targeted Advertising.** Apex Learning will not use Student Data to engage in any targeted advertising.
7. **Notice of Data Breach.** Apex Learning will notify Client if Apex Learning becomes aware of any breach of Apex Learning security resulting in an unauthorized release of or unauthorized access to Student Data, in accordance with applicable state or federal law. Similarly, Client will notify Apex Learning if Client becomes aware of any misuse of Client access credentials for the Apex Curriculum.
8. **Storage in the United States.** Student Data will be stored on servers or other computers operated and maintained by or on behalf of Apex Learning in the United States.
9. **Treatment of Student Data on Conclusion of Client Access to Apex Curriculum.** Unless Client requests otherwise, following conclusion of Client's access to the Apex Curriculum in connection with this Agreement, Apex Learning will store Student Data on Client's behalf for a reasonable period of time not to exceed one year so that the Student Data remain available should Client seek to renew access to Apex Curriculum. Any maintenance of Student Data in this manner will constitute part of Apex Learning's obligations under this Agreement. Thereafter, or at Client's written request, Apex Learning will de-identify all Student Data (i.e., modify Student Data so that they cannot be used to identify an individual student and therefore no longer qualify as "Student Data").