

Board Office Use: Legislative File Info.	
File ID Number	19-0163
Introduction Date	-2/27/19-3/4/19
Enactment Number	19-0291
Enactment Date	3/4/19 os



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Network Superintendent, High School Network
Rebecca Lacocque, Director, Linked Learning Office

Board Meeting Date February 27, 2019
Subject Amendment No. 1 to Client Agreement for Apex Learning Digital Curriculum Solutions
Contractor: Apex Learning, Inc.
Services For: High School Linked Learning Office

Action Requested and Recommendation Approval by the Board of Education of Amendment No. 1 to Client Agreement for Apex Learning Digital Curriculum Solutions between Oakland Unified School District and Apex Learning, Inc., Seattle, WA, for the latter to provide a standards-based state approved program consisting of assessments and course certification to provide interventions for students in their efforts to become proficient in English Language Arts and Math and basic literacy skills. The contract was for a 2-year period; the contract is being amended for the second (current) year to reflect a contract reduction, as requested by the Board of Education

for the period of 10/12/17 through 8/25/19 in an amount not to exceed 92,960.

Prior Contract The Agreement was previously approved by the Board on 10/25/17 (Enactment No. 17-1577).

Modification This amendment modifies the scope of work and compensation. All other provisions remain the same.

Competitively Bid Was this contract competitively bid? No
If no, exception: Educational Materials

Fiscal Impact Funding resource(s): 6387/CTE Incentive Grant

Attachments

- Contract Amendment
- Copy of original contract and all prior amendments (if any)

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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

AMENDMENT NO. 1 TO

Client Agreement for Apex Learning Digital Curriculum Solutions

This Amendment amends Client Agreement for Apex Learning Digital Curriculum Solutions between Oakland Unified School District (OUSD) and Apex Learning, Inc. (Contractor) entered into on 10/12/17 (OUSD Enactment No. 17-1577). The parties agree to amend that Agreement as follows:

1. **Services:** ☐ The scope of work is unchanged. ☒ The scope of work has changed.
If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.
☒ Revised scope of work attached. OR ☐ CONTRACTOR agrees to provide the following amended services:

This amendment is to decrease the agreement amount from \$162,475.00 to an amount not to exceed \$92,960.00. The Board of Education requested Oakland Unified to analyze its contract to align with usage and the reduction of licenses now reflects actual need.

2. **Term (duration):** ☒ The term of the contract is unchanged. ☐ The term of the contract has changed.
If the term has changed: The contract term began on 10/12/17 and expires on 8/25/19. The parties agree to extend the contract through 8/25/19.

3. **Compensation:** ☐ The contract price is unchanged. ☒ The contract price has changed.
If the compensation has changed: The contract price is amended by
☐ Increase of \$_____ to original contract amount.
☒ Decrease of \$ 69,515 to original contract amount.

The new contract total is Ninety-Two Thousand, Nine Hundred and Sixty Dollars (92,960)

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.
5. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

6. **Approval:** Approval requires signature by the Board of Education and/or the Superintendent as its designee. This Amendment shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Eng

3/5/19

☒ President, Board of Education

Date

☐ Superintendent☐ Chief or Deputy Chief*Jeff H. Smith*

Secretary, Board of Education

3/5/19

Date

CONTRACTOR

Chuck Lanphier

Contractor Signature

2/5/2019

Date

Chuck Lanphier, VP-Client Services

Print Name, Title

Form approved by OUSD General Counsel for 2018-19 FY

FOR OUSD PURPOSES ONLY – The following information is not part of the Contract.

OUSD Internal Routing			
Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.			
	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager			
2. Resource Manager (if restricted funds)			
3. Network Superintendent/Executive Director			
4. Chief/Deputy Chief			
5. Legal (if increase takes contract above \$90,200)			
6. Superintendent, Board of Education	Signature on the legal contract		

Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds)

Please select:

- ☐ Action Item included in Board Approved SPSA (no additional documentation required)–Item Number: _____
- ☐ Action Item added as modification to Board Approved SPSA – Submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.
- Relevant page of SPSA with action item highlighted. Page must include header with the word “Modified”, modification date, school site name, both principal and school site council chair initials and date.
 - Meeting announcement for meeting in which the SPSA modification was approved.
 - Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
 - Sign-in sheet for meeting in which the SPSA modification was approved.

EXHIBIT "A" SCOPE OF WORK

[IF A CONTRACTOR PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES MAY BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

1. **Description of Services to be Provided:** Provide a description of the service(s) the contractor will provide. Be specific about what service(s) OUSD is purchasing and what *this* Contractor will do.

See attached revised Scope of Work.

Apex Learning digital curriculum is a supplemental electronic, standards-based state approved program consisting of assessments and course certifications to provide interventions for students in their efforts to become proficient in English Language Arts and Math and basic literacy skills. The on-line curriculum is administered under the instruction and supervision of a certificated OUSD teacher. The Apex Learning digital curriculum has been used in prior years and provides students with additional academic support in the form of credit recovery of core academic coursework required for high school graduation and college admission. The Apex Learning digital curriculum is aligned with the Content Standards and Frameworks of California and many of the Apex learning courses meet the "a-g" requirements of the University of California and California State University Systems. To continue to provide District students with access to Apex Learning digital curriculum, the District seeks authorization to purchase 2,150 single enrollment subscriptions for comprehensive courses, 500 tutorials subscriptions, 750 AP Exam review subscriptions, and related professional development services for 2 years.

The contract is being amended for the second year (current year of service from 8/26/18-8/25/19) to reflect a contract reduction, as requested by the Board of Education.



AMENDMENT ROUTING FORM 2018-2019

Amendment No. 1 to Client Agreement for Apex Learning Digital Curriculum Solutions

Directions

- Services beyond the original contract cannot be provided until the amendment is fully approved and PO is increased by Procurement.**
- To be eligible for an amendment, term end date of the contract cannot not be expired. If expired, a new contract is necessary.
 - Insert the amendment number (i.e. if this is the first amendment enter "1," second enter "2," etc.) at the top of the amendment.
 - If contract total amount has increased, the scope of work must change.
 - OUSD contract originator **creates new requisition with the original PO number referenced in the item description.**
- When the contract amendment is approved, Procurement will add additional funds to the original Purchase Order.**

Attachment	<ul style="list-style-type: none"> Contract amendment packet including Board Memo and Amendment Form
Checklist	<ul style="list-style-type: none"> Board approved copy of the original contract and any prior Amendments.

Contractor Information

Contractor Name	Apex Learning, Inc.		Contractor's Contact	Cathy Quenzer			
OUSD Vendor ID #	000459		Title	Director, West Region			
Street Address	1215 Fourth Avenue, Suite 1500		City, State	Seattle, WA		Zip Code	98161
Telephone	(206) 381-5600		Email (required)	cathy.quenzer@apexlearning.com			

Compensation and Terms

Current Contract Amount	\$162,475.00	OUSD Vendor ID #	000459	Start Date of Original Contract	10/12/17
Amount of Increase		Original PO #	P1803094	Current Term End Date	8/25/19
Amount of Decrease	69,515	New Requisition #		New Term End Date*	
New Total Contract Amount	92,960	% Change	43	*Must be no more than five years from the start date	

Budget Information (If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition)

Requisition No.	Budget Number	Resource Name	Amount
VR19-07575	010-6387-0-1110-1000-5825-912-9120-3800-0101-99999	CTE Incentive Grant	\$ 92,960.00
			\$ 0.00
			\$ 0.00
			\$ 0.00

Contract History

	OUSD Enactment #	Exact Name of Contract	Contract Amount
Agreement	17-1577	Apex Learning Digital Curriculum Licenses and Supplemental Course Materials	162,475
Amend #	OUSD Enactment #	General Description of Reason for Amendment	Increase/Decrease Amount
1		Modification of Access to Apex Curriculum and Professional Services	92,960

OUSD Contract Originator Information

Name of OUSD Contact	Preston Thomas	Email	Preston.Thomas@ousd.org		
Site/Dept. Name	High School Linked Learning Office	Site #	912	Phone	(5100 879-4118

Approval and Routing (in order of approval steps)

Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.

	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager		2/5/19	
2. Resource Manager (if restricted funds)			
3. Network Superintendent/Executive Director			
4. Chief/Deputy Chief		2/5/19	
5. Legal (if increase takes contract above \$92,600)			
6. Superintendent, Board of Education	Signature on the legal contract		

Procurement-Date Received: _____

THIS FORM IS NOT A CONTRACT

**AMENDMENT ONE
TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN
APEX LEARNING INC. AND OAKLAND UNIFIED 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 November 2, 2017 (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 Oakland Unified School District, with its principal place of business at 1000 Broadway, Suite 680, Oakland, CA 94601 ("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. Notices: The name and title of Client's contact in the table in Section 10.3 are updated to Preston Thomas, High School Network Superintendent.

B. Modification of Access to Apex Curriculum and Professional Services:

- Client's purchase of access to the Apex Curriculum and Professional Services for the period August 26, 2018 through August 25, 2019 as specified in Exhibit A, Sections 1 and 2, respectively, is deleted in its entirety and restated as follows:

Apex Learning will provide Client with the following during the period August 26, 2018 through August 25, 2019:

1. Apex Curriculum:

- **Courses:**
 - 1,476 Courses Single Enrollment Subscriptions.

Price: \$88,560.00

Client may purchase additional subscriptions for access during the period August 26, 2018 through August 25, 2019 at \$60.00 per subscription.

- 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:

- In support of Courses:
 - Four (4) 6-hour onsite sessions.

Price: \$4,400.00 (two sessions at no charge)

Total Price: \$92,960.00

C. **Modification of Payment Schedule:** The text in the second bullet point of Exhibit B is deleted in its entirety and restated as follows: Apex Learning will invoice Client in the amount of \$92,960.00 on August 27, 2018.

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

Apex Learning Inc.

By: 

Print Name: Cheryl Vedoe

Title: CEO

Date: 9/17/18

Oakland Unified School District

By: 

Print Name: Preston Thomas

Title: High School Superintendent

Date: 9/13/18

By: _____

Print Name: _____

Title: _____

Date: _____


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File #: 17-2128 **Version:** 1 **Name:** Client Agreement for Apex Learning Digital Curriculum Solutions - Counseling and Career Department - Office of Post Secondary Readiness
Type: Agreement or Contract **Status:** Passed
File created: 10/3/2017 **In control:** [Superintendent](#)
On agenda: 10/11/2017 **Final action:** 10/25/2017
Enactment date: 10/25/2017 **Enactment #:** **17-1577**

Title: Approval by the Board of Education of Client Agreement for Apex Learning Digital Curriculum Solutions, Seattle WA and District, for the former to provide its own line "Apex Curriculum" identified in Section 1 of Exhibit A of Agreement, e.g., Comprehensive Courses, Tutorials, AP Exam Review, and ALV S enrollments, for students to become proficient in English Language Arts, mathematics, and basic literacy skills, for the term October 12, 2017 through August 25, 2019, at a cost of \$162,475.00 for each year or cumulatively for term, \$324,950.00.

Attachments: 1. [17-2128 Client Agreement for Apex Learning Digital Curriculum Solutions - Counseling and Career Department - Office of Post Secondary Readiness](#)

Contact: bernard.mccune@ousd.org

[History \(2\)](#)
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Date ▼	Ver.	Action By	Action	Result	Action Details	Meeting Details	Video
10/25/2017	1	Board of Education	Adopted	Pass	Action details	Meeting details	Video
10/11/2017	1	Board of Education	Postponed to a Date Certain		Action details	Meeting details	Not available

Board Office Use: Legislative File Info.	
File ID Number	172128
Introduction Date	10-11-17
Enactment Number	17-1877
Enactment Date	10/25/17



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools. Thriving Student

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
By: Bernard McCune, Deputy Chief, Office of Post Secondary Readiness

Board Meeting Date

Subject Authorizing the Purchase of Apex Learning Digital Curriculum Licenses and Supplemental Course Materials – Counseling and Career Department

Action Requested Approval by the Board of Education – Authorizing the purchase of Apex Learning Digital Curriculum licenses and supplemental course materials for students enrolled in the Oakland Unified School District, for the period of October 12, 2017 through July 31, 2019, in an amount of \$162,475 per year for Apex Learning Digital Curriculum licenses and related professional development services.

Discussion Apex Learning digital curriculum is a supplemental electronic, standards-based state approved program consisting of assessments and course certifications to provide interventions for students in their efforts to become proficient in English Language Arts and Math and basic literacy skills. The online curriculum is administered under the instruction and supervision of a certificated OUSD teacher. The Apex Learning digital curriculum has been used in prior years and provides students with additional academic support in the form of credit recovery of core academic coursework required for high school graduation and college admission. The Apex Learning digital curriculum is aligned with the Content Standards and Frameworks of California and many of the Apex learning courses meet the "a-g" requirements of the University of California and California State University Systems. To continue to provide District students with access to Apex Learning digital curriculum, the District seeks authorization to purchase 2,150 single enrollment subscriptions for comprehensive courses, 500 tutorials subscriptions, 750 AP Exam review subscriptions, and related professional development services for 2 years for \$162,475 per year.

Recommendation Approval by the Board of Education – Authorizing the purchase of Apex Learning Digital Curriculum licenses and supplemental course materials for students enrolled in the Oakland Unified School District, for the period of October 12, 2017 through July 31, 2019, in an amount of \$162,475 per year for Apex Learning Digital Curriculum licenses and related professional development services.

Fiscal Impact \$162,475 in 17-18 from Central Office Supplemental Resource #: 0005 (Org Key 9981110187); \$162,475 to be budgeted in 18-19

Attachments Agreement



OAKLAND UNIFIED
SCHOOL DISTRICT

Continuously Redefining. Thriving. Inspiring.

CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. 17-2128

Department: Office of Post-Secondary Readiness

Vendor Name: Apex Learning, Inc.

Contract Term: Start Date: 10/12/17 (on Board Authorization) End Date: 8/25/2019

Annual Cost: \$ 162,475

Approved by: Bernard McCune

Is Vendor a local Oakland business? Yes ☐ No ☒

Why was this Vendor selected?

This curriculum has been used for the last several years with successful outcomes for students, including supporting students in learning the skills needed to successfully complete the next course-level. Also, teachers are familiar with its content and many courses meet the a-g requirements for UC and CSU.

Summarize the services this Vendor will be providing.

The vendor will provide online subscriptions/ licenses for students to engage in credit recovery courses. The vendor will provide 2,150 subscriptions for comprehensive courses, 500 Tutorials, 750 AP Exam subscriptions, and related professional development.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

The District compared other vendors' prices, quality of product/ anticipated student outcomes, and factored in additional professional development costs that would be incurred by moving to a new vendor.

2) Please check the competitive bid exception relied upon:

- ☒ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts [requires Board resolution declaring an emergency]
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - ☐ Western States Contracting Alliance Contracts (WSCA)
 - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**

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 Oakland Unified School District, with its principal place of business at 1000 Broadway, Suite 680, Oakland, CA 94607 ("**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.
- 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.

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.

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 August 25, 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. Client may terminate this Agreement with 30 days written notice if Apex Learning curriculum ceases to meet the California standards for instructional materials and Apex Learning will refund the amounts prepaid for any remaining months on the license terms on a pro rata basis. 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 Convenience.** Client may terminate this Agreement effective August 25, 2018 for its convenience or any reason, 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. In the event of termination, no further payments will be due for year two of this Agreement.
- 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	Bernard McCune
Organization	Apex Learning Inc.	Oakland Unified School District
Address	1215 Fourth Avenue, Suite 1500	1000 Broadway, Suite 680
City, State, Zip	Seattle, WA 98161	Oakland, CA 94601
Phone	206-381-5600	510-879-8200
Facsimile	206-381-5601	510-879-0227
Copy to:	N/A	Marion McWilliams

- 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 State of California (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 prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

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. **Non-Discrimination.** Apex Learning is an equal opportunity employer and does not discriminate with regard to race, color, sex, creed, religion, age, marital status, national origin, citizenship, the presence of any sensory, mental, or physical disability, veteran status, sexual orientation, gender identity, gender expression, genetic information, or any other status or characteristic protected by local, state, or federal law.

10.9. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** Client certifies to the best of its knowledge and belief, that it and its officials, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that Apex Learning does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

11. **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: _____

Oakland Unified School District

By: _____

Print Name: _____

Title: James Harris

Date: President, Board of Education

By: _____

Print Name: _____

Title: Kyla R. Johnson-Trammell
Secretary, Board of Education

Date: _____

Apex Learning - Oakland Unified School District

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE

By: _____
Attorney at Law

EXHIBIT A

Apex Curriculum, Professional Services and Course Materials

1. **Apex Curriculum:** Apex Learning will provide Client with the following through August 25, 2019:

- 2,150 Single Enrollment Subscriptions to Comprehensive Courses.

Price: \$245,100.00

Each "Single Enrollment Subscription" provides access for one student enrolled in any one Comprehensive Course. If a student completes or withdraws from the Comprehensive Course in which he or she is enrolled, the Single Enrollment Subscription may be used to enroll that student or another student in any one Comprehensive Course. The number of Comprehensive Course enrollments at the same time may not exceed the number of Single Enrollment Subscriptions purchased. Client may purchase additional Single Enrollment Subscriptions for access during each of the periods (i) through August 25, 2018, and (ii) August 26, 2018 through August 25, 2019 at \$60.00 per Single Enrollment Subscription per period.

- 500 Tutorials Subscriptions.

Price: \$52,250.00

Each "Tutorials Subscription" provides access for one student enrolled in any number of Tutorials at the same time. If a student completes or withdraws from all Tutorials in which he or she is enrolled, the Tutorials Subscription may be used to enroll another student in any number of Tutorials. The number of students enrolled at the same time may not exceed the number of Tutorials Subscriptions purchased. Client may purchase additional Tutorials Subscriptions for access during each of the periods (i) through August 25, 2018, and (ii) August 26, 2018 through August 25, 2019 at \$55.00 per Tutorials Subscription per period.

- 750 AP Exam Review Subscriptions to all AP Exam Review subjects.

Price: No Charge (\$12,000.00 in value)

Each "AP Exam Review Subscription" provides access for one student enrolled in any one AP Exam Review subject. If a student completes or withdraws from the AP Exam Review subject in which he or she is enrolled, the AP Exam Review Subscription may be used to enroll that student or another student in any one AP Exam Review subject. The number of AP Exam Review enrollments at the same time may not exceed the number of AP Exam Review Subscriptions purchased. Client may purchase additional AP Exam Review Subscriptions for access during each of the periods (i) through June 30, 2018, and (ii) July 1, 2018 through June 30, 2019 at \$16.00 per AP Exam Review 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. There are no returns, credits, or refunds on Course Materials purchased.

[Remainder of this page is intentionally left blank.]

2. **Professional Services:** Apex Learning will provide Client with the following through August 25, 2019:

- Twelve (12) 6-hour onsite sessions.

Price: \$26,400.00

- Four (4) 6-hour onsite sessions.

Price: No Charge (\$8,800.00 in value)

- Two (2) 3-hour web conference sessions.

Price: \$1,200.00

3. **Course Materials:**

- None purchased.

Total Price: \$324,950.00

EXHIBIT B
Payment Schedule

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

- Apex Learning will invoice Client in the amount of \$162,475.00 on execution of this Agreement by both parties.
- Apex Learning will invoice Client in the amount of \$162,475.00 on August 27, 2018 unless this Agreement is terminated pursuant to Section 9.

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

Addendum

Terms and Definitions Per California Education Code Section 49073.1 (AB No. 1584)

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.