

AMENDMENT TWO
TO THE CLIENT AGREEMENT FOR DIGITAL CURRICULUM SOLUTIONS BETWEEN
APEX LEARNING INC. AND MAKING WAVES ACADEMY

This amendment effective on June 15, 2020 (“**Amendment Two**”) shall serve to amend the Client Agreement for Apex Learning Digital Curriculum Solutions with the Effective Date of October 22, 2018 (the “**Original Agreement**”), as previously amended by Amendment One dated June 15, 2019 (“**Amendment One**”), 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 Making Waves Academy with its principal place of business at 4123 Lakeside Drive, Richmond, CA 94806-1942 (“**Client**”) (the Original Agreement and Amendment One together, the “**Agreement**”).

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 except as amended below. 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 and once executed by both parties this Amendment Two shall be incorporated into and be a part of the Agreement:

- A. Term Extension:** The Agreement Term under Section 9.1 is extended through June 14, 2021.
- B. Access to Apex Curriculum:** Apex Learning will provide Client with 80 Courses Unlimited Enrollment Subscriptions during the period June 15, 2020 through June 14, 2021. Courses subscriptions do not include access to Technology Courses.

Price: \$12,000.00

Each "Unlimited Enrollment Subscription" provides access for one student enrolled in any number of Courses at the same time. If a student completes or withdraws from all Courses in which he or she is enrolled, the subscription may be reused to enroll another student in any number of Courses. The number of students enrolled at the same time may not exceed the number of subscriptions purchased. Client may purchase additional subscriptions for access through June 14, 2021 at \$150.00 per subscription.

- C. Invoice Schedule:** Apex Learning will invoice Client in the amount of \$12,000.00 on June 15, 2020.
- D. Modification of Insurance Coverage:** The text in Amendment One, Section F is deleted in its entirety and restated as follows:

Without in anyway limiting Apex Learning’s liability pursuant to the Agreement, Apex Learning will maintain policies of workers compensation, automobile liability, general liability, professional liability and errors and omissions applying to the services provided by Apex Learning to Client for the entire duration of the Term.

If any policies are written on a claims-made form, Apex Learning agrees to maintain such coverage continuously throughout the Term and, without lapse, for a period of at least one year beyond the expiration of the Term, such that should occurrences during the Term give rise to claims made after expiration of the Term, such claims shall be covered.

Such insurance shall have a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Such insurance shall be issued by an insurance company or companies authorized to engage in such insurance business in the State of California and rated not less than A-VIII in Best's Insurance Guide. In addition, Apex Learning shall maintain a policy of cyber liability coverage, with a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Apex Learning shall provide thirty (30) days advance written notice to Client of cancellation, nonrenewal or reduction in coverage.

General Liability and Business Automobile Liability policies must provide the following: (1) name as Additional Insured Making Waves Academy, its Board, officers, authorized volunteers, agents, and employees and the Contra Costa County Office of Education; and (2) that such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of these Terms and that such policies apply separately to each insured against who claim is made or suit is brought.

Upon execution of this Amendment Two and before any payment is due to Apex Learning by Client, Apex Learning will provide Client with the certificates of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative, and additional insured policy endorsements in form (CG 20 10 11 85 or its equivalent) as applicable, evidencing all coverages set forth above and shall furnish complete copies of policies promptly upon Client's request. Client may withhold payment for services or products for any violation of or noncompliance with these insurance obligations.

- E. Modification of Indemnity:** The text in Section 7.1 of the Agreement is deleted in its entirety and amended to read as follows:

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 (the "**Indemnifying Party**") will indemnify, defend, and hold the other party and its Board, directors, officers, employees, and agents harmless from any and all actions, causes of action, claims, demands, costs, including reasonable attorneys' fees and costs, penalties, fines, judgments, awards, liabilities, expenses and damages ("Loss") arising out of or in connection with any breach or alleged breach by the Indemnifying Party of any of the provisions of the Agreement or Apex Learning's Privacy Policy or Terms of Use. Notwithstanding the foregoing, Apex Learning shall have no obligation under this section with respect to any Loss that is caused by the negligence or willful misconduct of Client or its agents or employees and Client shall have no obligation under this section with respect to any Loss that is caused by the negligence or willful misconduct of Apex Learning or any of its agents or employees.

- F. Modification of Exclusion of Certain Damages and Limitation on Liability:** The text of Section 8 of the Agreement is deleted in its entirety and amended to read as follows:

8.1 **EXCLUSION OF CERTAIN DAMAGES.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 TO THE EXTENT (AND SOLELY TO THE EXTENT) THAT SUCH DAMAGES FORM A PART OF THE THIRD PARTY CLAIMS FOR WHICH IDEMNIFICATION IS SOUGHT, 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 EITHER PARTY'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, EXCEPT THAT THIS SECTION 8.2 SHALL NOT APPLY TO A PARTY FOR ANY CLAIMS ARISING OUT OF THAT PARTY'S WILLFUL MISCONDUCT.

8.3 **APPLICATION.** THE EXCLUSION OF DAMAGES AND LIMITATION ON LIABILITY IN THIS SECTION 8 SHALL APPLY AS SET FORTH ABOVE 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.

- G. Modification of Force Majeure:** The text of Section 10.2 of the Agreement is deleted in its entirety and amended to read as follows:

Force Majeure. For a reasonable time period, either party will be excused from delay, breach of this Agreement or failure in performance under this Agreement due to causes beyond the party'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, pandemics, telecommunications failures, fires, earthquakes, storms or other similar causes. If Apex Learning is not able to perform under the Agreement due to force majeure, Client will be released from its obligation to pay any costs/charges under the Agreement associated with Apex Learning's non-performance until such time as Apex Learning is able to commence performance again and Client shall be entitled to a proportional refund of any costs/charges paid by Client under the Agreement for the period of Apex Learning's nonperformance due to force majeure.

Agreed.

Apex Learning Inc.

Making Waves Academy

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____