

APEX LEARNING STUDENT DATA PRIVACY AND PROTECTION AGREEMENT

This Apex Learning Student Data Privacy and Protection Agreement (“**Agreement**”) is entered into between Lackland Independent School District (“**Client**”) and Apex Learning Inc. (“**Apex Learning**”) as of the later of the signature dates below (“**Effective Date**”). This Agreement is made in connection with the purchase by Client on or around the Effective Date of access to certain Apex Learning digital curriculum (“**Client Purchase**”) and related professional services.

1. Definitions.

- a. “**Apex Curriculum**” means the Apex Learning digital curriculum to which Client has a right of access as a result of the Client Purchase.
 - b. “**FERPA**” means the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g and the applicable regulations promulgated thereunder, as amended from time to time.
 - c. “**Services**” means providing (i) Client and Client’s authorized users with access to the Apex Curriculum and (ii) Client with any related professional services, where each of (i) and (ii) are part of the Client Purchase.
 - d. “**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 the provision of the Services to Client.
 - e. “**Targeted Advertising**” means presenting an advertisement to a student where the advertisement is selected based on information obtained or inferred over time from that student’s online behavior, usage of applications, or Student Data. Targeted Advertising does not include advertising to a student at an online location based on that student’s current visit to that location or in response to a student’s request for information or feedback, without the retention of a student’s online activities or requests over time for the purpose of targeting advertisements.
2. **Compliance with Laws.** Apex Learning agrees to comply with all Applicable Laws (as defined below in this paragraph) in the performance of the Services. Client agrees to comply with all applicable laws in its use of the Services, including when providing Apex Learning with access to Student Data to allow Apex Learning to provide the Services. “**Applicable Laws**” as used herein include FERPA and other applicable federal and state laws regarding the protection of Student Data.
3. **Use of Student Data.** Apex Learning will only use Student Data to provide the Services.
4. **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 of Apex Learning in connection with Apex Learning’s performance of the Services 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 will maintain the confidentiality of Client user credentials that enable access by such Client users to the Apex Curriculum. Further, Client is responsible for cancelling the Client user credentials of any Client user who no longer needs access to the Apex Curriculum.
5. **Parental/Legal Guardian/Adult Student Consent.** Client is responsible for obtaining any necessary consent from parents, legal guardians and adult students for the disclosure of Student Data by Client to

Apex Learning, and by Apex Learning to Client, as is reasonably necessary for Apex Learning's provision of the Services.

6. **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.
7. **Correction of Inaccurate Information.** Upon request, Apex Learning will assist Client in using the Apex Curriculum administrative tools so Client may access and correct any factually inaccurate Student Data.
8. **Prohibition on Targeted Advertising.** Apex Learning will not use Student Data to engage in any Targeted Advertising.
9. **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.
10. **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.
11. **Treatment of Student Data on Conclusion of Client Access to Apex Curriculum.** Following conclusion of Client's access to the Apex Curriculum under the Client Purchase, Apex Learning will store Student Data on Client's behalf for the lesser of (a) up to thirteen months so that the Student Data remain available should Client seek to renew access to Apex curriculum, (b) a period specified by Client in writing, or (c) the period (if any) dictated by Applicable Law (the applicable (a), (b) or (c) being the "Maintenance Period"). The maintenance of Student Data in this manner will constitute part of the Services. At the end of the Maintenance Period, Apex Learning will de-identify all Student Data (i.e., so that they no longer qualify as Personally Identifiable Information under FERPA) in accordance with Applicable Laws, unless Client has renewed access to Apex Curriculum.

The authorized representatives of Apex Learning and Client identified below agree to the terms and conditions set forth in this Agreement.

Apex Learning Inc.

By: _____

Print Name: Chuck Lanphier

Title: Vice President, Client Services

Date: 9/23/2019

Lackland Independent School District

By: _____

Print Name: Dr. Burnie Roper

Title: Superintendent of Schools

Date: December 11, 2019