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March 29, 2019

VIA ELECTRONIC MAIL

Andrea.bennett@cetpa.net

Andrea Bennett
Executive Director
CETPA
980 9th Street
16th Floor, Suite 21
Sacramento, CA, 95814

Re: Compliance of Apple School Manager with FERPA and AB 1584

Dear Ms. Bennett:

We have undertaken the task of determining whether the Apple School Manager ("ASM") Agreement complies with Federal and State of California student privacy laws. We have concluded that ASM fully complies with the Family Educational Rights and Privacy Act ("FERPA") and California Education Code section 49073.1 (commonly referred to by its legislative enactment, "AB 1584"). Our findings are set forth below. We have also attached the text of the main ASM Agreement ("Agreement") for the convenience of the reader.

Throughout this extended process of review, we have engaged in numerous discussions with Apple to clarify issues and to discuss minor revisions to the Agreement so that compliance with FERPA and AB 1584 could be more clearly shown. Apple's cooperation in this review has been extraordinary and we give special thanks to Mr. Dave Douglas, who has been patient and helpful in answering our many questions.

A Description of the ASM Product

Apple School Manager (ASM) is a free web-based service that helps technology managers deploy iPad and Mac in schools, create Managed Apple ID accounts for students and staff, set up class rosters for the Schoolwork and Classroom apps, enable progress recording in Schoolwork and manage apps and books for teaching and learning. Apple School Manager forms the basis for Apple Education services and apps. Apple's administrative portal for IT is built with student privacy in mind.

Apple School Manager can be integrated with a school's existing systems, including a Student Information System (SIS) to create accounts with class rosters, an identity provider (Microsoft

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Azure Active Directory) to enable federated authentication, and a mobile device management system (MDM) to wirelessly configure device settings and distribute apps and books.

Apple's Approach to Privacy is Reflected Amongst A Number of Agreements

Not uncommon for providers of Apple's size and scope, the Agreement is not a single document, but rather consists of several documents, most of which are referenced in the main Agreement. These documents include enforceable instruments, as well as internationally recognized security and privacy standards. We list them below:

- Apple School Manager Agreement
- Apple Education Parent Guide to Privacy
- Apple in Education Data and Privacy Overview for Schools
- Apple Privacy Policy
- ISO 27001
- ISO 27018

The ASM approach is unusual because most of the digital privacy and security clauses required by FERPA and AB 1584 can be found in the main text of the Agreement. The reader is not required to frequently consult and cross-reference the other documents to determine compliance. This is a welcome departure from our experiences with many other technology companies.

The Requirements of AB 1584 and FERPA

For reasons we will discuss below, our analysis will focus on the requirements of AB 1584 (found at California Education Code section 49073.1). (During our discussion of AB 1584 we will also weave in references to FERPA.) AB 1584 applies to agreements between California public school districts technology vendors providing digital storage services and educational software. The statute requires all subject technology agreements to contain nine (9) provisions:

1. A statement that pupil records continue to be the property of and under the control of the local education agency.
2. A description of the means by which a pupil may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account.
3. A prohibition against the third party using any information in the pupil record for any purpose other those required or specifically permitted by the contract.

4. A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information.

5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the confidentiality of pupil records.

6. A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records.

7. A certification that the pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced.

8. A description of how the local education agency and the third party will jointly ensure compliance with FERPA (20 U.S.C. Sec. 1232g).

9. A prohibition against the third party using personally identifiable information contained in pupil records to engage in targeted advertising.

1. A Statement that Pupil Records Continue to be the Property of the District

The Agreement recognizes, in detailed and clear language, that ownership of pupil records and any pre-existing software applications associated with the pupil records, remain the property of the school district:

"You retain all of Your ownership and intellectual property rights in your Content and any pre-existing software applications owned by you as used or accessed in the Service."

(Agreement, Article 5, section A.)

Our review of other sections of the Agreement do not reveal any language or consequence that would substantially vitiate this ownership right by the school district. As such, we believe the Agreement satisfied the first element of the AB 1584 test.

2. Student Access to Pupil Generated Content

We have interpreted this section to mean that a service provider (we will use this term in lieu of the more awkward "third party") will help facilitate the request of a school district to transfer student generated content to a separate account, rather than to respond directly to requests of individual students. This interpretation is particularly justified in this setting because the focus of ASM is the management of devices and content, rather than engaging in direct, content driven interactions with individual students. As such, we believe the following language complies with this section:

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"Apple shall provide you with the ability to access, retrieve or delete Your and Your End Users Personal Data in accordance with Your Privacy and/or data protection obligations, as applicable."

(Article 3, section L)

The language addressing "Schoolwork" is even more direct and since Schoolwork focuses on individual classrooms and students, and speaks more directly about student's rights to access and modify their content:

"Your End Users can access their shared files, using their Managed Apple ID. Annotations or changes made to these files will be visible by any End User in a class with whom You have shared a file."

In addition, Exhibit A of the Agreement, "Use of Information" states that an individual student (here a student) can manage their data, and even includes a form to request assistance with access correction or deletion of data. (Agreement, Article 4, section D, subsection (vi)(1); Exhibit A, "Access, Correction, and Deletion".) As a result, we conclude that Apple satisfies this section of AB 1584.)

3. Prohibition Against Unauthorized Use of Student Data

Article 3, sections (A) through (C), contain prohibitions against Apple's use of any information in the pupil record for any purpose other than those required or specifically permitted by the District or the Agreement, which is consistent with the requirements of Education Code section 49073.1 subsection (b)(3).

In meeting this standard Apple employs detailed and specific language in Exhibit A to the Agreement, defining: (1) the uses to which Apple may put student information; (2) the specific data involved in the particular use. Here is an example:

"In Schoolwork, Apple collects information about a Managed ID's usage of the app, such as the number of times an assignment is sent, or work is submitted together with device related information. We may also use non-personally identifiable information to report to you on the usage of Schoolwork in your school. The information collected will only be used by Apple to improve the quality and performance of Schoolwork."

In this way, Apple has moved away from generalized "legal boilerplate" regarding data usage and has attempted to provide a functional and transparent explanation of the data relationship it has

established with a school district. These extra steps allow ASM to easily meet the FERPA element of the test, which we will examine later in this letter. ¹

4. Student and Parent Ability to Access and Modify Documents

The Agreement employs language almost unique in its straightforward and plain description of the right of a student or the student's parents to access and delete student material. These rights are repeated throughout the Agreement. Here is one example:

"The parents or guardians of Managed Apple ID End Users in Primary/Secondary schools can contact the school administrator to access their child's personal information or request deletion. If a parent or guardian wishes to stop any further collection of their child's information, the parent or guardian can request that the administrator use the Service controls available to limit their child's access to certain features or delete the child's account entirely."

This quoted language, which is reflected in other sections throughout the Agreement satisfy this element of the AB 1584 test.

5. Data Privacy Security Measures

California Education Code section 49073.1, subsection (b)(5) requires a description of the actions Apple will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records. A large portion of the Agreement is devoted to a description of the security measures Apple undertakes to protect student data. Here is a partial list:

- a. Oversight of employees, contractors and subprocessors to ensure compliance with applicable privacy laws. (Article 3, section H.)
- b. Encryption of data, both at rest and in transit (Article 3, section F.)
- c. Regularly test, assess, and evaluate the effectiveness of technical and organizational measures for ensuring the security of the processing. (Article 3, section F.)
- d. Two factor authentication. (Article 4, section D, subsection (iii).)
- e. Adherence to International Organization for Standardization ("ISO") standards 27001 and 270018, authoritative international standards that addresses protection of Personally Identifiable Information and cyber security generally. Apple has maintained certifications for both

¹ In one passage, found in Exhibit A of the Agreement, the Agreement states that Apple can use certain non-personal data for any purpose. Apple has clarified that the use of any data will be used in a manner consistent with the purposes and terms of the agreement and applicable law.

standards. In order to maintain these standards Apple must comply with 46 pages of requirements. These include resources and training for company employees. (*See e.g.* page 1-6 of ISO 27001.)

The practices outlined in the Agreement, as well as those found in the incorporated ISO Standards 27001 and 270018, allows us to conclude that the Agreement satisfies the security requirements of AB 1584.

6. Data Breach Notification

In Article 3, section D, of the Agreement, Apple agrees to notify a school district, without undue delay, of an unauthorized access to student data. The Agreement further states that it will take reasonable steps to minimize the harm and to secure the data. The Agreement sets up a process whereby Apple will inform a designated representative of the school district about the data incident and assist the district, if requested, to notify affected individuals. Most school districts prefer technology companies to communicate in this manner, rather than contacting the affected students directly. This language satisfies this element of AB 1584.

7. Data Deletion

The Agreement provides two methods by which data can be removed or destroyed upon completion of services. First, a school district may delete the data at any time, including requesting deletion to be performed by ASM within 30 days. (Article 3, section L.) Upon termination of the Agreement, Apple will delete the material within a reasonable time, but no later than 180 days after the termination of services. (Article 3, section M.) We believe these provisions are reasonable and satisfies this element of the AB 1584 test.

8. FERPA Compliance

Subsection (b)(8) of Education Code section 49073.1 contemplates a "catch all" description of how a school district and the third-party will jointly ensure compliance with the provisions of FERPA. FERPA uses a somewhat different terminology to justify the "out sourcing" of Pupil Records to a third-party. Namely, the "School Official" exception found in 20 U.S.C. 1232g (b)(1)(A); 34 C.F.R. section 99.31(a)(1)(i)(A-B). One of the core requirements of the "School Official" exception is that the third-party vendor remains under the direct control of the assigning LEA. (34 C.F.R. 99.31 (a)(1)(i)(B)(1).)

In our view the School Official exception does not necessarily require a rigid set of contract provisions, but instead depicts in general terms a dynamic data partnership that persists over time and establishes a process that securely and flexibly manages this data partnership. The Agreement excels in this part of the AB 184 and FERPA test. There are many examples supporting this approach. Article 3, section A, establishes a process of ongoing instructions by the school district to Apple throughout the term of the Agreement. Article 4, section D, (vi) informs school districts that file sharing can be stopped by school districts at any time. The idea of school districts opting

"in" or "out" of certain types of data collection, are sprinkled though the Agreement, including at Article 4, section D, subsection (vi)(2).

Exhibit "A" to the Agreement can fairly be described a kind of a data manager's "User's Manual". The reader is referred to, in particular to the headings entitled "Managed Apple ID" and "Creating Your Student's Managed Apple ID." In this way, the Agreement can be seen as a school district document of data decision making. This approach, in our view matches the original intent of the School Official exception in FERPA, which is posited on a model of data management by a school district that is active and purposeful. We believe the Agreement satisfies this section of AB 1584.

9. Targeted Advertising

AB 1584 requires a prohibition from engaging in "Targeted Advertising." (Education Code § 49073.1 (b)(9).) Exhibit A of the Agreement contains broad language prohibiting Apple from engaging in any activity to support advertising:

"Apple will not use students' Personal Data to help create, develop, operate, deliver or improve advertising."

Apple's "Limit Ad Tracking" control is enabled for all Managed Apple IDs, and cannot be disabled. This ensures that advertising is never targeted to students with Managed Apple IDs using their information. School districts not using Managed Apple IDs may receive additional protections against targeted advertising by configuring their MDM with this preference. (MDM is an acronym for Mobile Device Manager, a third-party entity that helps manage ASM use.) Given the broad language of the clause cited and the setting protections described above, we believe that Apple complies with this element of the AB 1584 test.

Conclusion

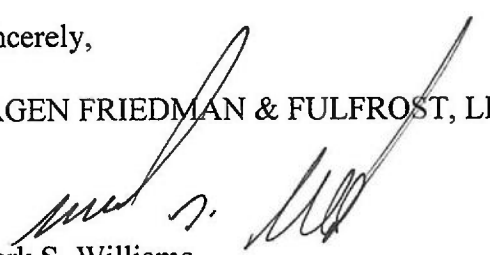
We have concluded that the Agreement satisfies both AB 1584 and FERPA. It does so using clear and direct language. We hope you have found our analysis to be helpful and useful.

We note that our conclusion that the Agreement is student privacy compliant is based on a review of the contract documents, certifications, and standards referenced in this letter. Our opinion does not encompass previous versions of these documents, nor will it apply to future Agreements in the event they are materially modified. To the extent these documents undergo future revisions, we will need to undertake a supplemental review.

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Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP



Mark S. Williams

attachments: Apple School Manager Agreement

618-1/4437005.5

WELCOME TO APPLE SCHOOL MANAGER

This Apple School Manager Agreement (“Agreement”) between Your Institution and Apple governs Your Institution’s use of Software, Services and Websites that make up Apple School Manager (collectively referred to as the “Service”). You agree that You have the full legal authority to bind Your Institution to these terms. By clicking “Agree” You are agreeing that You have read and understand these terms, and agree that these terms apply if You choose to access or use the Service or make it available to others. If You do not have the legal authority to bind Your Institution or do not agree to these terms, do not click “Agree.”

1. GENERAL

- A. Service.** Apple is the provider of the Service, which permits You, under the terms and conditions of this Agreement, to: (i) enroll Authorized Devices for the purpose of Mobile Device Management (MDM) within Your Institution; (ii) access relevant software tools to facilitate the Service; (iii) administer Your creation and distribution of Managed Apple IDs and their use by Your End Users; (iv) manage the transmission, storage, purchase and maintenance of relevant data and Content related to the Service; (v) manage Your creation and administration of courses using the Service; and (vi) enable the measurement of student progress through Apple School Manager and applications that have adopted the ClassKit framework. You agree to use the Service only in compliance with this Agreement and all applicable laws and regulations.
- B. Device and User Enrollment.** You may use the device enrollment features of the Service to enroll only Authorized Devices in the Service. If You elect to use the Service and enroll Authorized Devices as set forth in this Agreement, then Apple will provide You with a Service web portal and an Administrator account with which You will be able to create and manage the Managed Apple IDs for End Users and make the features of the Service available. Once You create the Managed Apple IDs for End Users, such accounts will be accessible via Institution-owned shared or individual devices, and any devices used by End Users to access their Managed Apple ID account. You are responsible for determining and selecting the Service features You wish to provide to Your End Users.

2. RIGHT TO USE

- A.** Unless stated otherwise in this Agreement, You have the non-exclusive, non-assignable, non-transferable, and limited right to access and use the Service during the Term solely for Your educational operations and subject to the terms of this Agreement. You may permit Your End Users to use the Service for the foregoing purpose, and You are responsible for Your End Users’ compliance with the terms of this Agreement.
- B.** You do not acquire any right or license to use the Service, or any of its features, beyond the scope and/or duration of the Service specified in this Agreement. Your right to access and use the Service will terminate upon the termination and/or expiration of this Agreement.
- C.** Except as otherwise expressly stated in this Agreement, You agree that Apple has no obligation to provide any Apple Software, programs, services or products as part of the Service.

3. DATA PRIVACY AND SECURITY

- A. Personal Data and Customer Instructions.** Under this Agreement, Apple, acting as a data processor on your behalf, may receive Personal Data if provided by You. By entering into this Agreement, You instruct Apple to process Your Personal Data, in accordance with applicable law: (i) to provide the Service; (ii) pursuant to Your instructions as given through your use of the Services (including the web portal and other functionality of the Service); (iii) as specified under this Agreement; and (iv) as further documented in any other written instructions given by You and acknowledged by Apple as constituting instructions under this Agreement.

Apple shall comply with the instructions described in this Section 3A unless prohibited by an applicable legal requirement from doing so, in which case Apple will inform You of that legal requirement before processing Personal Data (unless prohibited by that law from doing so on

important grounds of public interest).

- B. Compliance with law.** You agree that You are solely liable and responsible for ensuring Your compliance with all applicable laws, including privacy and data protection laws, regarding the use or collection of data and information through the Service. You are also responsible for all activity related to Personal Data, including but not limited to, monitoring such Personal Data and activity, and preventing and addressing inappropriate data and activity, including the removal of data and the termination of access of the individual making such data available. You are responsible for safeguarding and limiting access to End User data by Your personnel and for the actions of Your personnel who are permitted access to use the Service.
- C. Use of Personal Data.** In order to provide the Service, You instruct Apple to use Personal Data, provided by You and Your End Users to Apple through use of the Service, only as necessary to provide and improve the Service, and as set forth in Exhibit A, subject to the requirements set forth in this Section 3 and Exhibit A. Further, Apple shall:
- i. Use and handle such Personal Data consistent with the instructions and permissions from You set forth herein, as well as all applicable laws, regulations, accords or treaties.
 - ii. Notify Institution in the event Apple receives any requests to access Your or Your End Users' Personal Data in connection with the Service, and Apple will either reasonably (i) cooperate with Institution to handle such requests to the extent such requests involve Personal Data that Apple has access to or (ii) otherwise put in place a means for Institution to manage such requests directly. In the event Institution is subject to an investigation by a data protection regulator or similar authority regarding Personal Data, Apple shall provide Institution with assistance and support in responding to such investigation to the extent it involves Personal Data that Apple has access to in connection with the Service.
- D. Data Incidents.** Apple will (i) notify Institution, without undue delay and as required by law, if Apple becomes aware that Institution's Personal Data has been altered, deleted or lost as a result of any unauthorized access to the Service ("a Data Incident"); and (ii) take reasonable steps to minimize harm and secure the data. You are responsible for providing Apple with Institution's updated contact information for such notification purposes. Apple will also assist Institution to the extent it involves Personal Data that Apple has access to in connection with the Service, to ensure Institution complies with its obligations to provide notice of Data Incidents to supervisory authorities or data subjects as required under Articles 33 and 34 of the GDPR, if applicable, or any other equivalent obligations under applicable law.
- Apple will not access the contents of Your Personal Data in order to identify information subject to any specific legal requirements. Institution is responsible for complying with incident notification laws applicable to the Institution and fulfilling any third party obligations related to Data Incident(s).
- Apple's notification of, or response to, a Data Incident under this Section 3D will not be construed as an acknowledgment by Apple of any responsibility or liability with respect to a Data Incident.
- E. Your Audit/Inspection Rights.** To the extent that the GDPR applies to the processing of Your Personal Data, Apple will provide you with the information necessary to demonstrate compliance with Article 28 of that law. In the event that you have audit rights under other applicable laws, Apple will provide you with the information necessary to demonstrate compliance with your obligations under those laws. If you choose exercise Your audit rights under this Section 3E, Apple shall demonstrate compliance by providing you with a copy of Apple's ISO 27001 Certification and ISO 27018 Certification.
- F. Security Procedures.** Apple shall use industry-standard measures to safeguard Personal Data during the transfer, processing and storage of Personal Data. Encrypted Personal Data may be stored at Apple's geographic discretion. As part of these measures, Apple will also use commercially reasonable efforts to: (a) encrypt personal data at rest and in transit; (b) ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c)

restore the availability of Personal Data in a timely manner in the event of a physical or technical issue; and (d) regularly test, assess, and evaluate the effectiveness of technical and organizational measures for ensuring the security of the processing. Apple may update the security features from time to time as long as the updates do not result in the degradation of the overall security of the Service.

- G. Security controls.** Apple will assist You to ensure Your compliance with Your obligations with regards to the security of Personal Data, including, if applicable, Your Institution's obligations, under Article 32 of the GDPR, by implementing the Security Procedures set forth in section 3F of this Agreement and by maintaining the ISO 27001 Certification and ISO 27018 Certification. Apple will make available for review by Institution the certificates issued in relation to the ISO 27001 Certification and ISO 27018 Certification following a request by You or Your Institution under this Section 3G.
- H. Security Compliance.** Apple will take appropriate steps to ensure compliance with security procedures by its employees, contractors and sub processors and Apple shall ensure that any persons authorized to process Personal Data comply with applicable laws regarding the confidentiality and security of Personal Data with regards to the Service.
- I. Data Impact Assessment and Prior Consultation.** Apple will assist Institution, at its sole discretion and to the extent it involves information Apple has access to in connection with the Service, to ensure Institution's compliance with any applicable obligations requiring Institution to conduct data protection impact assessments, or to consult with a supervisory authority prior to processing where such is required by law,
- J. Breach Notification and Cooperation.** You shall promptly notify Apple in the event that You learn or have reason to believe that any person, or entity, has breached Your security measures or has gained unauthorized access to: (1) Personal Data; (2) any restricted areas of the Service; or (3) Apple's confidential information (collectively, "Information Security Breach"). In the event of an Information Security Breach, You shall provide Apple with reasonable assistance and support to minimize the harm and secure the data.
- K. Data Transfer.** Apple will ensure that any Personal Data from the European Economic Area and Switzerland is transferred only to a third country that ensures an adequate level of protection or under appropriate safeguards or Binding Corporate Rules as provided for in Articles 46 and 47 of GDPR except when a derogation of Article 49 applies. Such a safeguard shall include the Model Contract Clauses/Swiss Transborder Data Flow Agreement incorporated as Exhibit B, if applicable. If You are required to enter into Model Contract Clauses in order to transfer data outside of the European Economic Area, You agree to do so.
- L. Access and Retrieval of Data.** Apple shall provide You with the ability to access, retrieve, or delete Your and Your End Users' Personal Data in accordance with Your privacy and/or data protection obligations, as applicable. Apple is not responsible for data You store or transfer outside of Apple's system (for example, student records located in your Student Information System).
Requests for deletion handled via Apple School Manager will be completed within 30 days.
- M. Destruction of Data.** Upon termination of this Agreement for any reason, Apple shall securely destroy Your and Your End Users' Personal Data that is stored by Apple in connection with the Service within a reasonable period of time, but in any case, no longer than 180 days.
- N. Third Party Requests.** In the event Apple receives a third party request for Your or Your End User's Content or Personal Data ("Third Party Request"), Apple will (i) notify You, to the extent permitted by law, of its receipt of the Third Party Request; and (ii) notify the requester to address such Third Party Request to You. Unless otherwise required by law or the Third Party Request, You will be responsible for responding to the Request.
- O. School Official Status Under FERPA (20 U.S.C. § 1232g).** If You are an educational agency, or organization, or acting on behalf of an educational agency, or organization, to which regulations under the U.S. Family Education Rights and Privacy Act (FERPA) apply, Apple acknowledges that for the purposes of this Agreement, Your Institution's Personal Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"). To

the extent that Apple receives FERPA Records while acting as a data processor in providing the Service, You agree that Apple will be functioning as a “school official” as defined in 34 C.F.R. § 99.31(a)(1)(i).

- Q. COPPA.** Apple will use and maintain Personal Data, provided by You and Your End Users to Apple in connection with the Service, in accordance with the Children’s Online Privacy Protection Act of 1998 (COPPA), insofar as it is applicable. This Section 3 and the attached Exhibit A constitute notice of how Apple will use and maintain such Personal Data when such data is provided by You and/or Your End Users to Apple in connection with the Service. You grant Apple permission to use and maintain such data Apple receives in connection with the Service, if provided by You and/or Your End Users, to Apple in connection with the Service for the purpose of providing and improving the Service and as set forth in Exhibit A.
- R. Access to Third Party Products and Services.** If You choose to access, use, download, install, or enable third party products or services that operate with the Service but are not a part of the Service, then the Service may allow such products to access Personal Data as required for the use of those additional services. You are not required to use such additional products in relation to the Service, and Your Administrator may restrict the use of such additional products in accordance with this Agreement. Prior to accessing or downloading third party products or services for use with a Managed Apple ID, You should review the terms, policies and practices of the third party products and services to understand what data they may collect from Your End Users, how the data may be used, shared and stored, and, if applicable, whether such practices are consistent with any consents You have obtained.

4. SERVICE

- A. Use Restrictions.** You will ensure Your and Your End Users’ use of the Service complies with this Agreement, and You will inform Your End Users of, and enforce, the restrictions below. You agree that neither You nor Your End Users will use the Service to upload, download, post, email, transmit, store or otherwise make available: (i) any Content or materials that are unlawful, harassing, threatening, harmful, defamatory, obscene, invasive of another’s privacy, hateful, racially or ethnically offensive or otherwise objectionable; (ii) any Content or materials that infringe any copyright or other intellectual property, or violate any trade secret, or contractual or other proprietary right; (iii) any unsolicited or unauthorized email message, advertising, promotional materials, junk mail, spam, or chain letters; and/or (iv) any Content or materials that contain viruses or any computer code, files or programs designed to harm, interfere with or limit the normal operation of the Service or any other computer software or hardware. You further agree that You will not, and will ensure that End Users do not: (a) use the Service to stalk, harass, threaten or harm another; (b) pretend to be anyone or any entity that You are not (Apple reserves the right to reject or block any Apple ID or email address that could be deemed to be an impersonation or misrepresentation of Your identity, or a misappropriation of another person’s name or identity); (c) forge any Transmission Control Protocol/Internet Protocol (TCP-IP) packet header or any part of the header information in an email or a news group posting, or otherwise put information in a header designed to mislead recipients as to the origin of any content transmitted through the Service (“spoofing”); (d) interfere with or disrupt the Service, any servers or networks connected to the Service, or any policies, requirements or regulations of networks connected to the Service; and/or (e) use the Service to otherwise violate applicable laws, ordinances or regulations. If Your or Your End User’s use of the Service or other behavior intentionally or unintentionally threatens Apple’s ability to provide You or others the Service, Apple shall be entitled to take necessary steps to protect the Service and Apple’s systems, which may include suspension of Your access to the Service.

If you are a covered entity, business associate or representative of a covered entity or business associate (as those terms are defined at 45 C.F.R § 160.103), You agree that you will not use any component, function or other facility of iCloud to create, receive, maintain or transmit any “protected health information” (as such term is defined at 45 C.F.R § 160.103) or use iCloud in any

manner that would make Apple (or any Apple Subsidiary) Your or any third party's business associate.

- B. Administration of Accounts.** You agree that You shall be solely responsible for management of Your Administrator account(s) and all Your Managed Apple IDs, including but not limited to: (i) the security and safeguarding of the user name and password associated with each account; (ii) the provision and/or removal of access by any of Your personnel or End Users to such account and any Content provided and/or stored in the Service; and (iii) the provision of appropriate documentation and guidelines to End Users about using the Managed Apple ID accounts.
- C. End User Consent.** Administrators will have the ability to monitor, access or disclose user data associated with Managed Apple ID accounts through the Service web portal and/or Administrator tools. You represent and warrant that, prior to deploying the Service to Institution and any End Users, You will provide sufficient notice and disclosure of the terms of this Agreement, and obtain and maintain all necessary rights and consents, either from each End User, or where necessary, each End User's parent or legal guardian, to allow Apple to: (1) provide and improve the Service in accordance with this Agreement; and (2) access and receive End User data that may arise as part of the provision of the Service.
- D. Managed Apple IDs; Features and Services.** A Managed Apple ID is the account user name and password You create and provide to each of Your End Users to access the Service. Apple will provide You with the tools to create Managed Apple IDs for Your End Users. When You create Managed Apple IDs for Your End Users, all features and functionality of the Service that You select to be available are enabled for all of Your Institution's Managed Apple IDs. YOU ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ALL RISKS AND COSTS ASSOCIATED WITH YOUR SELECTION OF EACH FEATURE AND FUNCTIONALITY ENABLED IN THE SERVICE AS BEING APPROPRIATE FOR INSTITUTION AND/OR YOUR END USERS.
 - i. Requirements for Use of Managed Apple ID**
 - 1. Devices and Accounts.** Use of Managed Apple IDs as part of the Service may require compatible devices, Internet access, certain software, and periodic updates. The latest version of the required software may be necessary for certain transactions or features. Apple reserves the right to limit the number of Managed Apple IDs that may be created and the number of devices associated with a Service account.
 - 2. Your rights to the Managed Apple IDs.** Unless otherwise required by law or this Agreement, You agree that each Managed Apple ID is non-transferable between individual End Users, and between Institutions.
 - ii. Find My iPhone.** Find my iPhone is automatically disabled for all Managed Apple IDs. However, if an Authorized Device is lost or stolen, Institution can use the MDM solution to put the device in Lost Mode so that the device will be locked, the user will be logged out, and a report will be automatically transmitted to the MDM Server. Institution can also erase the device remotely and enable Activation Lock to help ensure that the device cannot be reactivated without the proper Managed Apple ID and password. Apple shall bear no responsibility for Your failure to protect Authorized Devices with a passcode, Your failure to enable Lost Mode, and/or Your failure to receive or respond to notices and communications. Apple shall also bear no responsibility for returning lost or stolen devices to You or for any resulting loss of data. Apple is not responsible for any replacement of devices that have the Activation Lock feature enabled, or any warranty claims on such devices. You may remove the Activation Lock feature and disable Lost Mode through MDM.
 - iii. Account Authentication.** Two-factor authentication requiring two types of information for authentication purposes, such as a password and a generated security code, is automatically enabled for the Managed Apple IDs of Your Administrators, teachers and staff. Institution agrees to provide Apple with at least one mobile telephone number for Institution to receive autodialed or prerecorded calls and text messages from Apple for authentication and account related purposes, which may be subject to standard message and data rates. Apple may place such calls or texts to: (i) help keep Your Service account secure when signing in; (ii) help

You access Your Account if You forget Your password; or (iii) as otherwise necessary to maintain Your Service account or enforce this Agreement and relevant policies. Managed Apple IDs distributed to Your End Users will also require two-factor authentication, such as identification of an Authorized Device and an authentication code generated in the Service web portal or a telephone number. In all instances, You are responsible for: (a) distributing the Managed Apple IDs You create to identified End Users; (b) approving access to the Service by such users; (c) controlling against unauthorized access; and (d) maintaining the confidentiality and security of usernames, passwords and account information.

- iv. **Backup.** Authorized Devices that are not shared devices will periodically create automatic backups that are transmitted to the Service when the user is logged in with their Managed Apple ID and the device is screen-locked, connected to a power source, and connected to the Internet via a Wi-Fi network. You may disable backup in the MDM Enrollment Settings. Backup is limited to device settings, device characteristics, photos, videos, documents, messages (iMessage, SMS and MMS, if enabled), ringtones, app data (including Health app data), location settings (such as location-based reminders that You have set up), and Home screen and app organization. Content that You purchase, download or provide access to Your End Users from the iTunes Store, App Store or iBooks Store, and Content purchased from or provided by any third parties, will not be backed up. Such Content may be eligible for re-download from those services, subject to account requirements, availability, and any applicable terms and conditions. Content synced from Your End Users' computers will not be backed up. If You enable iCloud Photo Library, the photo libraries of Your End Users will be backed up separately from their automatic iCloud backup. The Content stored in an End User's contacts, calendars, bookmarks, and documents is accessible via iCloud on the web or on any of the End User's Authorized Devices. When iCloud Backup is enabled, devices managed or controlled by Your Institution will not back up to iTunes automatically during a sync, but You may enable End Users to manually initiate a backup to iTunes. It is solely Your responsibility to maintain appropriate alternative backup of Your and Your End Users' information and data.
- v. **iCloud Photo Library.** When You enable iCloud Photo Library in connection with any Managed Apple ID, the photos, videos and metadata in the Photos App on the Authorized Devices ("Device Photo Library") will be automatically sent to iCloud, stored as the End User's Photo Library in iCloud, and then pushed to all of the End User's other iCloud Photo Library-enabled devices and computers. If the End User later makes changes (including deletions) to the Device Photo Library on any of these devices or computers, such changes will automatically be sent to and reflected in the End User's iCloud Photo Library. These changes will also be pushed from iCloud to, and reflected in, the Device Photo Library on all of the End User's iCloud Photo Library-enabled devices and computers. The resolution of content in the Photo Library on Authorized Devices or computers may vary depending upon the amount of available storage and the storage management option selected for the End User's iCloud-Photo-Library-enabled device. If You do not wish to use iCloud Photo Library, You may disable it for Your Managed Apple ID and/or on Your Authorized Devices.
- vi. **Schoolwork.** If you make Schoolwork available to Your End Users, teachers and students at Your Institution can manage their school work and assignments using a Managed Apple ID.
 1. **iCloud File Sharing.** When you share a file using Schoolwork in connection with a Managed Apple ID, Apple automatically organizes any files shared into class folders for students and teachers in the iCloud Drive. Your End Users' can access their shared files using their Managed Apple ID. Annotations or changes made to these files will be visible by any End User in a class with whom You have shared a file. You can stop sharing files at any time. Files created by Your End Users using Managed Apple IDs are stored until you delete them. However, any file previously copied to another device or computer will not be deleted.
 2. **Student Progress.** When You opt-in to the student progress feature in the Apple School Manager web portal, student progress will be recorded and reported to the

ClassKit framework. Only activities assigned by Your teachers using Schoolwork will initiate the recording and reporting of student progress information. Your student End Users will be able to view their own student progress information in Schoolwork and in Settings on their device. Your teacher End Users will be able to view the student progress information of all students in their class for activities they assign. Student data created through Your use of Schoolwork or ClassKit will be treated in accordance with Section 3 and Exhibit A of this Agreement. If You opt-out a Managed Apple ID from the student progress feature, all Personal Data associated with that Managed Apple ID will be deleted in accordance with Section 3.

- vii. **Third Party Apps.** If You make available any third party Apps for Your End Users to sign into with their Managed Apple IDs, You agree to allow such Apps to store data in the accounts associated with Your End Users' Managed Apple IDs, and for Apple to collect, store, and process such data on behalf of the relevant third-party App developer in association with Your and/or Your End Users' use of the Service and such Apps. Third party Apps may have the capability to share such data with another App downloaded from the same App developer. You are responsible for ensuring that You and Your End Users are in compliance with any storage limits for each Managed Apple ID based on the third party Apps You make available to Your End Users to download.
- E. Server Token Usage.** You agree to use the Server Token provided by Apple only for the purpose of registering Your MDM Server within the Service, uploading MDM Enrollment Settings, and receiving Managed Apple ID roster data. You shall ensure that Your End Users use the information sent or received using Your Server Token only with Authorized Devices. You agree not to provide or transfer Your Server Token to any other entity or share it with any other entity, excluding Your Third Party Service Providers. You agree to take appropriate measures to safeguard the security and privacy of such Server Token and to revoke it if it has been compromised or You have reason to believe it has been compromised. Apple reserves the right to revoke or disable Server Tokens at any time in its sole discretion. Further, You understand and agree that regenerating the Server Token will affect Your ability to use the Service until a new Server Token has been added to the MDM Server.
- F. Storage Capacity; Limitations on Usage.** Exceeding any applicable or reasonable usage limitations, such as limitations on bandwidth or storage capacity (e.g., backup), is prohibited and may prevent You from using some of the features and functionality of the Service, accessing Content or using some, or all, of the Managed Apple IDs. In the event that Apple limits bandwidth or storage capacity available to You, it shall use commercially reasonable efforts to notify You via the Service or otherwise within ten (10) business days of doing so.
- G. Submission of Content.** You are solely responsible for any Content You or Your End Users upload, download, post, email, transmit, store or otherwise make available through the use of the Service. You shall ensure that Your End Users have obtained all necessary third party permissions or licenses related to any such Content. You understand that by using the Service You may encounter Content that You or Your End Users find offensive, indecent, or objectionable, and that You may expose others to content that they may find objectionable. You understand and agree that Your use of the Service and any Content is solely at Your own risk.
- H. Removal of Content.** You acknowledge that Apple is not responsible or liable for any Content provided by You or Your End Users. Apple has the right, but not an obligation, to determine whether Content is appropriate and in compliance with this Agreement, and may move and/or remove Content that violates the law or this Agreement at any time, without prior notice and in its sole discretion. In the event that Apple removes any Content, it shall use commercially reasonable efforts to notify You.
- I. Bundled Service.** All features and functionalities of the Service are provided as part of a bundle and may not be separated from the bundle and used as standalone applications. Apple Software provided with a particular Apple-branded hardware product may not run on other models of Apple-branded hardware.
- J. Links and Other Third Party Materials.** Certain Content, components or features of the Service

may include materials from third parties and/or hyperlinks to other web sites, resources or content. You acknowledge and agree that Apple is not responsible for the availability of such third party sites or resources, and shall not be liable or responsible for any content, advertising, products or materials on or available from such sites or resources used by You or Your End Users.

K. iTunes; Purchasing Apps and Books.

- i. **Acquisition of Content.** Acquisition of Content from the iTunes Store, App Store or iBooks Store using Managed Apple IDs is automatically disabled. You may choose to enable Your Administrators or teachers and staff to access such Content by granting them purchasing authority and allowing them to access the Volume Purchase Program to purchase Apps and Books for use on the Service. Your use of the iTunes Store, App Store, and/or iBooks Store is subject to sections G and H of the iTunes terms and conditions (<http://www.apple.com/legal/internet-services/itunes/us/terms.html>), as applicable. You agree that You have the authority to and will accept such applicable terms on behalf of Your Authorized End Users.
- ii. **iTunes U Course Manager.** You are responsible for the use of the Course Manager feature by Your Institution's teachers and staff to create and administer courses as a part of the Service. You agree to obtain all necessary permissions on behalf of Your End Users for Content created or submitted through the Course Manager onto the Service.
- iii. **Volume Purchase Program.** Purchases You choose to transact through Apple's Volume Purchase Program (VPP) are subject to the VPP terms, and delivered to End Users or assigned to a device through the App Stores and/or the iBooks Store.

L. Updates and Maintenance; Changes to Service.

- i. **Updates and Maintenance.** Apple may, from time to time, update the software used by the Service. These updates could include bug fixes, feature enhancements or improvements, or entirely new versions of the Software. In some cases, such updates may be required to continue Your use of the Service or to access all features of the Service. Apple is not responsible for performance or security issues resulting from Your failure to support such updates. Apple shall, from time to time, be required to perform maintenance on the Service. While Apple is not obligated to notify You of any maintenance, Apple will use commercially reasonable efforts to notify You in advance of any scheduled maintenance.
- ii. **Changes to Service.** Apple shall have the right to revise or update the functionality and look of the Service from time to time in its sole discretion. You agree that Apple shall not be liable to You or any third party for any modification, suspension or termination of the Service. The Service, or any feature or part thereof, may not be available in all languages or in all countries, and Apple makes no representations that the Service, or any feature or part thereof, is appropriate or available for any use in any particular location.

M. Other Agreements. You acknowledge and agree that the terms and conditions of any sales, service or other agreement You may have with Apple are separate and apart from the terms and conditions of this Agreement. The terms and conditions of this Agreement govern the use of the Service and such terms are not diminished or otherwise affected by any other agreement You may have with Apple.

N. Professional Services. Any professional services relevant to the Service, such as consulting or development services that require any deliverables from Apple are subject to fees and a separate agreement between Apple and Institution.

O. Electronic Delivery. The Service and any Apple Software provided hereunder (unless such software is preinstalled on any Authorized Devices) will be delivered electronically.

P. Fees and Taxes. Your Institution will pay all taxes and duties payable, if any, based on its use of the Service, unless exempt by applicable law. You will provide Apple with proof of Your Institution's tax-exempt status, if any, upon Apple's request.

5. OWNERSHIP AND RESTRICTIONS; COPYRIGHT NOTICE

A. You retain all of Your ownership and intellectual property rights in Your Content and any pre-existing software applications owned by You as used or accessed in the Service. Apple and/or its licensors retain all ownership and intellectual property rights in: (1) the Service and derivative

works thereof, including, but not limited to, the graphics, the user interface, the scripts and the software used to implement the Service (the “Software”); (2) any Apple Software provided to You as part of and/or in connection with the Service, including any and all intellectual property rights that exist therein, whether registered or not, and wherever in the world they may exist; and (3) anything developed or provided by or on behalf of Apple under this Agreement. No ownership of any technology or any intellectual property rights therein shall be transferred by this Agreement. If while using the Service You encounter Content You find inappropriate, or otherwise believe to be a violation of this Agreement, You may report it through: (<http://www.apple.com/support/business-education/contact/>). You further agree that:

- i. The Service (including the Apple Software, or any other part thereof) contains proprietary and confidential information that is protected by applicable intellectual property and other laws, including but not limited to copyright.
- ii. You will not, and will not cause or allow others to, use or make available to any third party such proprietary information or materials in any way whatsoever except for use of the Service in compliance with this Agreement.
- iii. No portion of the Service may be reproduced in any form or by any means, except as expressly permitted in these terms.
- iv. You may not, and may not cause or allow others to, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Service.
- v. Apple, the Apple logo, iCloud, the iCloud logo, iTunes, the iTunes logo, and other Apple trademarks, service marks, graphics, and logos used in connection with the Service are trademarks or registered trademarks of Apple Inc. in the United States and/or other countries. A list of Apple's trademarks can be found here: (<http://www.apple.com/legal/trademark/appletmlist.html>). Other trademarks, service marks, graphics, and logos used in connection with the Service may be the trademarks of their respective owners. You are granted no right or license in any of the aforesaid trademarks, and further agree that You shall not remove, obscure, or alter any proprietary notices (including trademark and copyright notices) that may be affixed to or contained within the Service.
- vi. During the Term of this Agreement, You grant Apple the right to use Your marks, solely in connection with Apple’s exercise of its rights and performance of its obligations under this Agreement.
- vii. As part of the Service, You may gain access to Third Party Content. The third party owner or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are governed by and subject to the terms specified by such third party owner or provider.
- viii. You may not license, sell, rent, lease, assign, distribute, host or permit timesharing or service bureau use, or otherwise commercially exploit or make available the Service and/or any components thereof, to any third party, except as permitted under the terms of this Agreement.

You agree and acknowledge that if You violate the terms of the foregoing sentence, Apple shall bear no responsibility or liability for any damages or claims resulting from or in connection with Your actions, including but not limited to data privacy breaches.

- B.** By submitting or posting materials or Content using the Service: (i) You are representing that You are the owner of such material and/or have all necessary rights, licenses, and permission to distribute it; and (ii) You grant Apple a worldwide, royalty-free, non-exclusive, transferable license to use, distribute, reproduce, modify, publish, translate, perform and publicly display such Content on the Service solely for the purpose of Apple’s performance of the Service, without any compensation or obligation to You. You understand that in order to provide the Service and make Your Content available thereon, Apple may transmit Your Content across various public networks, in various media, and alter Your Content to comply with technical requirements of connecting networks, devices or equipment. You agree that Apple has the right, but not the obligation, to take

any such actions under the license granted herein.

- C. You will be responsible for following Apple's guidelines and templates related to the design of any area of the Service, if such customization or design is permitted by Apple, including but not limited to, the area dedicated to iTunes U. In the event You or any of Your End Users do not comply with such guidelines and templates, Apple may instruct You to make necessary changes within a reasonable period of time.
- D. **Copyright Notice – DMCA.** If You believe that any Content in which You claim copyright has been infringed by anyone using the Service, please contact Apple's Copyright Agent as described in Apple's Copyright Policy at (<https://www.apple.com/legal/contact/>). Apple may, in its sole discretion, suspend and/or terminate accounts of End Users that are found to be infringers.

6. EULAS; DIAGNOSTICS AND USAGE DATA

- A. **EULA Terms and Conditions.** In order to use the Service, You and/or Your End Users will need to accept the End User License Agreement terms and conditions (EULA) for any Apple Software needed to use the Service and for any other Apple Software that You choose to use with the Service. In order to use the Service, Your authorized representative must accept the EULAs for the Apple Software on the relevant web portal prior to deploying Authorized Devices running such Apple Software to End Users. If the EULAs for the Apple Software have changed, Your authorized representative will need to return to the relevant web portal and accept such EULAs in order to continue using the Service. You acknowledge that You will not be able to use the Service, or any parts or features thereof, including associating additional Authorized Devices with Your MDM Server, until such EULAs have been accepted. You are responsible for ensuring that such EULAs are provided to Your End Users, and that each End User is aware of and complies with the terms and conditions of the EULAs for the Apple Software, and You agree to be responsible for obtaining any required consents for Your End Users' use of the Apple Software. You agree to monitor and be fully responsible for all Your End Users' use of the Apple Software provided under this Agreement. You acknowledge that the requirements and restrictions in this Agreement apply to Your use of Apple Software for the purposes of the Service regardless of whether such terms are included in the relevant EULA(s).
- B. **Analytics Data.** If any Analytics collection is enabled, You agree, and shall ensure that the applicable End Users agree, that Apple and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to, unique system or hardware identifiers, and information about Your devices, system and application software, and peripherals. This information is gathered periodically to provide and improve the Service, to facilitate the provision of software updates, product support and other features related to the Service, and to verify compliance with the terms of this Agreement (collectively, "Analytics"). You may change Your preferences for Analytics collection at any time by updating Your MDM settings, or on a device-by-device basis, in Settings. Apple may use such Analytics information for the purposes described above, as long as it is collected in a form that does not personally identify Your End Users.

7. TERM; TERMINATION; SUSPENSION; EFFECTS OF TERMINATION

- A. **Term.** This Agreement shall commence on the date You first accept this Agreement, and shall continue until terminated in accordance with this Agreement (the "Term").
- B. **Termination by Apple.** Apple may terminate this Agreement at any time and for any reason or no reason, provided Apple gives You thirty (30) days written notice. Further, Apple may at any time and without prior notice, immediately terminate or suspend all or a portion of Managed Apple IDs and/or access to the Service upon the occurrence of any of the following: (a) violations of this Agreement, including but not limited to, Section 4A. ("Use Restrictions"), or any other policies or guidelines that are referenced herein and/or posted on the Service;; (b) a request and/or order from law enforcement, a judicial body, or other government agency; (c) where provision of the Service to You is or may become unlawful; (d) unexpected technical or security issues or problems; (e) Your participation in fraudulent or illegal activities; or (f) failure to pay fees, if any,

owed by You in relation to the Service if you fail to cure such failure within thirty (30) days of being notified in writing of the requirement to do so. Apple may terminate or suspend the Service in its sole discretion, and Apple will not be responsible to You or any third party for any damages that may result or arise out of such termination or suspension.

- C. Termination by You.** You may stop using the Service at any time. If You delete any Managed Apple IDs, You and the applicable End User(s) will not have access to the Service. This action may not be reversible.
- D. Effects of Termination.** If this Agreement terminates or expires, then the rights granted to one party by the other will cease immediately, subject to Section 11L (Survival of Terms) of this Agreement.

8. INDEMNIFICATION

To the extent permitted by applicable law, You agree to indemnify, hold harmless, and upon Apple's request, defend Apple, its directors, officers, employees, shareholders, contractors and agents (each an "Apple Indemnified Party") from any and all claims, liabilities, actions, damages, demands, settlements, expenses, fees, costs, and losses of any type, including without limitation attorneys' fees and court costs (collectively, "Losses"), incurred by an Apple Indemnified Party and arising from or related to: (a) any Content You and/or Your End Users submit, post, transmit, or otherwise make available through the Service; (b) Your and/or Your End Users' actual or alleged breach of, or failure to adhere to, any certification, covenant, obligation, representation or warranty in this Agreement; or (c) Your and/or Your End Users' violation of any rights of another, or any laws, rules and regulations. You acknowledge that the Service is not intended for use in situations in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service or Apple Software, or the failure of the Service or Apple Software, could lead to death, personal injury, or severe physical or environmental damage, and to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use by You or Your End Users. This obligation shall survive the termination or expiration of this Agreement and/or Your use of the Service.

In no event may You enter into any agreement with a third party that affects Apple's rights or binds Apple in any way, without the prior written consent of Apple, and You may not publicize any such agreement without Apple's prior written consent.

9. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE, APPLE SOFTWARE, AND ANY ASSOCIATED CONTENT, FEATURE, FUNCTIONALITY, OR MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. APPLE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (COLLECTIVELY, "APPLE" FOR THE PURPOSES OF SECTIONS 9 AND 10 HEREIN) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, APPLE MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS; (II) YOUR USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED, SECURE, OR FREE FROM ERRORS, LOSS, CORRUPTION, ATTACK, VIRUSES, OR HACKING; (III) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF THE SERVICE WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN THE SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICE WILL BE CORRECTED.

YOU AGREE THAT FROM TIME TO TIME APPLE MAY REMOVE THE SERVICE FOR INDEFINITE PERIODS OF TIME, OR CANCEL THE SERVICE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE

OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE, COMPUTER, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. YOU FURTHER ACKNOWLEDGE THAT THE SERVICE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

10. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR ANY DIRECT, PERSONAL INJURY, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, LOSS OF GOODWILL, FAILURE TO TRANSMIT OR RECEIVE ANY DATA (INCLUDING WITHOUT LIMITATION, COURSE INSTRUCTIONS, ASSIGNMENTS AND MATERIALS), COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, ANY OTHER TANGIBLE OR INTANGIBLE DAMAGES OR LOSSES (EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RELATED TO OR RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SERVICE, APPLE SOFTWARE, ANY FEATURES, FUNCTIONALITY, CONTENT, MATERIALS, OR THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SERVICE; (II) ANY CHANGES MADE TO THE SERVICE OR ANY TEMPORARY OR PERMANENT CESSATION OF THE SERVICE OR ANY PART THEREOF; (III) THE UNAUTHORIZED ACCESS TO OR ALTERATION OF THE SERVICE, YOUR TRANSMISSIONS OR DATA; (IV) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE AND/OR SEND OR RECEIVE YOUR TRANSMISSIONS OR DATA ON OR THROUGH THE SERVICE; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (VI) ANY OTHER MATTER RELATING TO THE SERVICE.

11. MISCELLANEOUS

- A. Relationship of the Parties.** This Agreement will not be construed as creating any agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. Except as otherwise expressly provided in this Agreement, this Agreement is not for the benefit of any third parties.
- B. Waiver; Assignment.** No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing and signed by a duly authorized representative of Apple, and no single waiver will constitute a continuing or subsequent waiver. This Agreement may not be assigned by You in whole or in part. Any assignment shall be null and void.
- C. Verification.** To the extent permitted by applicable law, Apple may verify Your use of the Service (via remote software tools or otherwise) to assess compliance with the terms of this Agreement. You agree to cooperate with Apple in this verification process and provide reasonable assistance and access to relevant information. Any such verification shall not unreasonably interfere with Your normal business operations, and You agree that Apple shall not be responsible for any cost or expense You incur in cooperating with the verification process.
- D. Export Control.** Use of the Service and Software, including transferring, posting, or uploading data, software or other Content via the Service, may be subject to the export and import laws of the United States and other countries. You agree to comply with all applicable export and import laws and regulations. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software or Service, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the

Software or Service for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You further agree not to upload to your Account any data or software that is: (a) subject to International Traffic in Arms Regulations; or (b) that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software and source code, without first obtaining that authorization. This assurance and commitment shall survive termination of this Agreement.

- E. Compliance with Laws.** Institution shall, and shall ensure that all Institution employees, contractors and agents shall, comply with all laws, rules and regulations applicable to the use of the Service, including but not limited to, those enacted to combat bribery and corruption, including the United States Foreign Corrupt Practices Act, the UK Bribery Act, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials, and any corresponding laws of all countries where business will be conducted or services performed pursuant to this Agreement.
- F. Federal Government End Users.** The Service, Apple Software, and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items, and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.
- G. Attorneys’ Fees.** To the extent not prohibited by applicable law, if any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement (excluding any mediation required under this Agreement), the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys’ fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, “prevailing party” includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.
- H. Governing Law.** If Your Institution is a U.S. public and accredited educational institution, then this Agreement will be governed and construed in accordance with the laws of the state in which Your Institution is domiciled, except that body of law concerning conflicts of law. You and Apple hereby consent to the personal jurisdiction and exclusive venue of the federal courts within the Northern District of California for any litigation or other dispute resolution between You and Apple, unless such consent is expressly prohibited by the laws of the state in which Your educational institution is domiciled.

For all other institutions domiciled in the United States or subject to United States law under this Agreement, this Agreement will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. The parties further submit to and waive any objections to the personal jurisdiction of and venue in any of the following forums: U.S. District Court for the Northern District of California, California Superior Court for Santa Clara County, or any other forum in Santa Clara County, for any litigation arising out of this Agreement.

If Your Institution is located outside of the United States, the governing law and forum shall be the law and courts of the country of domicile of the Apple entity providing the Service to You as defined in Section 11N below.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

- I. Publicity.** Unless otherwise agreed in a written agreement between You and Apple, You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship with Apple without Apple's express prior written approval, which may be withheld at Apple's discretion.
- J. Notice.** Except as otherwise provided in this Agreement, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by U.S. Postal Service, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to: Legal Department, Apple School Manager, Apple Inc., One Apple Park Way, MS 169-5MAL, Cupertino, California 95014 U.S.A., with a courtesy copy sent via e-mail through: (<http://www.apple.com/support/business-education/contact>). Either party may change its address for notice by notifying the other party in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements.
- K. Force Majeure.** Neither party shall be responsible for failure or delay of performance that is caused by an act of war, hostility, terrorism, civil disobedience, fire, earthquake, act of God, natural disaster, accident, pandemic, labor unrest, government limitations (including the denial or cancelation of any export/import or other license), or other event outside the reasonable control of the obligated party; provided that within five (5) business days of discovery of the force majeure event, such party provides the other with a written notice. Both parties will use reasonable efforts to mitigate the effects of a force majeure event. In the event of such force majeure event, the time for performance or cure will be extended for a period equal to the duration of the force majeure event, but in no event more than thirty (30) days. This Section does not excuse either party's obligation to institute and comply with reasonable disaster recovery procedures.
- L. Survival of Terms.** All terms and provisions of this Agreement, including any and all addenda and amendments hereto, which by their nature are intended to survive any termination or expiration of this Agreement, shall so survive.
- M. Complete Understanding; Severability; Changes to the Agreement.** This Agreement constitutes the entire agreement between You and Apple regarding Your use of the Service, governs Your use of the Service and completely replaces any prior agreements between You and Apple in relation to the Service. You may also be subject to additional terms and conditions that may apply when You use affiliate services, third-party content, or third-party software. Unless specified otherwise in this Agreement as related to the Service, nothing in this Agreement supersedes the EULAs for the Apple Software. This Agreement may be modified only to the extent expressly permitted by this Agreement (for example, by Apple upon notice to You). In the event that You refuse to accept such changes, Apple will have the right to terminate this Agreement and Your account. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Apple to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Any translation of this Agreement is done for local requirements and in the event of a conflict between the English and any non-English version, the English version of this Agreement shall govern.
- N. Definitions.** In this Agreement, unless expressly stated otherwise:

"Administrator" means an employee or contractor (or service provider) of Institution who is an authorized representative acting on behalf of Institution for the purposes of account management, including but not limited to, administering servers, uploading MDM provisioning settings and adding devices to Institution accounts, creating and managing Managed Apple IDs, and other tasks relevant to administering the Service, in compliance with the terms of this Agreement.

"Apple" as used herein means*:

- Apple Canada Inc., located at 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada for users in Canada or its territories and possessions;
- iTunes K.K., located at Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Tokyo for users in Japan;
- Apple Pty Limited, located at Level 2, 20 Martin Place, Sydney NSW 2000, Australia, for users in Australia, New Zealand, including island possessions, territories, and affiliated jurisdictions;
- Apple Distribution International, located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland, for users in the European Economic Area and Switzerland; and
- Apple Inc., located at One Apple Park Way, Cupertino, California, 95014, United States, for all other users.

“Apple Personnel” means Apple’s employees, agents and/or contractors.

“Apple Software” means iOS, macOS, iTunes, iTunes U, Schoolwork, and tvOS , and any successor versions thereof.

“Authorized Devices” means Apple-branded hardware that are owned or controlled by You (or which Your End Users personally own (e.g. “BYOD devices)), that have been designated for use only by End Users and that meet the applicable technical specifications and requirements for use in the Service. Notwithstanding the foregoing, BYOD devices are not permitted to be enrolled in supervised device management by You as part of the Service and may not be added to Your Account.

"Content" means any information that may be generated or encountered through use of the Service, such as data files, device characteristics, written text, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials including Personal Data.

“End User(s)” means those Institution employees, contractors (or Third Party Service Providers), Administrators, and/or students, as applicable, authorized by or on behalf of Institution to use the Service in accordance with this Agreement.

“End User License Agreement” or “EULA” means the software license agreement terms and conditions for the Apple Software.

“European Data Protection Legislation” means, as applicable: (a) the GDPR; and/or (b) the Federal Data Protection Act of 19 June 1992 (Switzerland), as amended or replaced.

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC.

“ISO 27001 Certification” means an ISO/IEC 27001:2013 certification or a comparable certification that covers the Services.

“ISO 27018 Certification” means an ISO/IEC 27018:2014 certification or a comparable certification that covers the Services.

“MDM Enrollment Settings” means settings for an Apple-branded product that can be configured and managed as part of the Service, including, but not limited to, the initial enrollment flow for a device, and settings to supervise a device, make configuration mandatory, or lock an MDM profile.

“MDM Server(s)” means computers owned or controlled by You (or a Service Provider acting on Your behalf) that have been designated to communicate with the Service.

“Personal Data” means data that can be reasonably used to identify an individual that is under the control of the Institution under this Agreement. Personal Data may relate to students, teachers and employees of Your Institution, and includes account details, name and surname. Personal Data may also include student progress data if the collection of student progress data created during the course of educational activities is enabled by an Institution in Apple School Manager, and any other information created directly by a student’s use of the Services or as expressly set forth under applicable law.

“Server Token” means the combination of Your public key, Managed Apple ID and a token provided by Apple that permits Your MDM Server(s) to be registered with the Service.

“Service” means the Apple School Manager service (and any components, functionality and features thereof) for an Institution’s management of Authorized Devices, Content, and Authorized End Users’ access and use through Apple’s web portal and other Apple websites and services, such as iCloud, as made available by Apple to Institution pursuant to this Agreement.

“Third Party Content” means all data files, device characteristics, written text, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials, in any format, that are obtained or derived from third party sources other than Apple and made available to You through, within, or in conjunction with Your use of the Service.

“Third Party Service Provider” means a third party who provides a service to You in accordance with the terms of this Agreement.

“You”, “Your” and “Institution” means the institution entering into this Agreement. For avoidance of doubt, the Institution is responsible for compliance with this Agreement by its employees, contractors, Third Party Service Providers, and agents who are authorized to exercise rights under this Agreement on its behalf.

“Your Content” means all data files, device characteristics, written text, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials, (including Personal Data as defined above), in any format, provided by You or on behalf of Your End Users, which Content resides in, or runs on or through, the Service.

Rev. 05/18/2018

EXHIBIT A

Managed Apple IDs for Students

Disclosure on Collection and Use of Information

Managed Apple ID

With the Managed Apple ID an Institution creates, students will be able to take advantage of the Apple services that are available with a Managed Apple ID for educational purposes including ClassKit enabled apps, iCloud, iTunes U and Schoolwork. In addition, students can use a limited number of Apple services that You choose to make available for educational purposes. For example, such optional services can include:

- Making and receiving FaceTime video and voice calls
- Creating and sharing photos, documents, videos, audio messages, and messages using Camera, Photos, iPhoto, iCloud Photo Sharing, Messages, Mail, iWork and other Apple apps
- Enrolling and participating in iTunes U courses
- Interacting with the Classroom App, an app offered by Apple which allows teachers and

Administrators to guide students through lessons and view their device screens

- Saving contacts, calendar events, notes, reminders, photos, documents and backups to iCloud
- Accessing and searching the internet and internet resources through Safari and Spotlight
- Recording and viewing student progress data if the student progress feature is enabled in Apple School Manager

School Manager

- Using Schoolwork to receive web links, documents, or activities within an application

Creating Your Students' Managed Apple ID

You acknowledge that You are responsible for obtaining all necessary rights and consents from each student, and/or, where necessary, each student's parent or legal guardian, to create Managed Apple IDs, to allow Apple to provide the Service using the Managed Apple IDs, and to use and maintain student data provided by You or Your End Users to Apple through the Service.

Apple may take additional steps to verify that the person granting permission for the creation of Managed Apple IDs for Your students is an official from Your school with authority to provide consent for the relevant students.

Apple will not knowingly collect, use, or disclose any Personal Data from Your students without appropriate consent. Where local law places requirements on You for verifiable consent and/or requires You to inform students and/or parents of such collection, use or disclosure, it will be Your responsibility to comply with those requirements. Your students will be able to use their Managed Apple IDs to access those Apple features and services You choose to make available to Your End Users for educational purposes.

Collection of Information

In addition to the information outlines above that Apple may collect if You enable one or more of the optional services set forth above, the following information is needed to create a Managed Apple ID for use by a student: student's name, grade level, class, and student ID. At Your option, You may also provide Your student's email address. In order to protect the security of Your students' accounts and preserve Your ability to easily reset students' passwords online, You should keep this information confidential.

In Schoolwork, Apple collects information about a Managed Apple ID's usage of the app, such as the number of times an assignment is sent or work is submitted together with device related information. We may also use non-personally identifiable information to report to you on the usage of Schoolwork in your school. The information collected will only be used by Apple to improve the quality and performance of Schoolwork.

In order to provide and improve the Service for educational purposes, Apple may collect other information that in some cases has been defined under COPPA, GDPR or other applicable laws as Personal Data, such as device identifiers, cookies, IP addresses, granular geographic locations, and time zones, together with other identifying information where Apple devices are being used.

Use of Information

Apple's Privacy Policy is available at <http://www.apple.com/privacy/>, and, to the extent consistent with this Disclosure and Section 3 of this Agreement, is incorporated herein by reference. **If there is a conflict between Apple's Privacy Policy and this Disclosure and Section 3 of this Agreement, the terms of this Disclosure and Section 3 of this Agreement shall take precedence** as relevant to the Service available via a Managed Apple ID.

Apple may use students' Personal Data provided to Apple by You or Your End Users in connection with the Service in order to provide and improve the Service for educational purposes. Apple may use device identifiers, cookies, or IP addresses to conduct analytics in a non-personally identifiable form to improve our relevant products, content, and services, and for security and account management purposes. Apple

will not use students' Personal Data to help create, develop, operate, deliver or improve advertising.

In addition, Apple may use, transfer, and disclose non-personal data (data that does not, on its own, permit direct association with Your students' identities) for any purpose. Aggregated data is considered non-personal data. Where You have enabled Analytics data collection on a device, Apple will receive non-personally-identifiable information such as crash data and statistics about how the device uses apps.

Limit Ad Tracking will be enabled by default for all devices associated with Your Managed Apple IDs created through the Service to ensure they do not receive targeted advertising. However, non-targeted advertising may still be received on those devices, as determined by any third party apps that You may download.

Disclosure to Third Parties

Managed Apple IDs

Subject to the restrictions You set, Your students may also share information with Your other students and instructors through use of the following: Apple School Manager, ClassKit enabled apps, iWork, iCloud Photo Sharing, the Classroom App, the Schoolwork App, and shared calendars and reminders.

Additionally, if Your student uses his or her Managed Apple ID to sign in on a device that is owned by a third party (such as a friend's iPod or a parent's iPad), information associated with that student's Managed Apple ID account may be visible or accessible to others using the device unless and until the student signs out.

Service Providers

Apple may provide Personal Data to service providers who provide services to Apple in connection with Apple's operation of the Service, such as information processing, fulfilling customer orders, delivering products to You or Your students, managing and enhancing customer data, and providing customer service ("Sub-processors"). You authorize the use of Apple Inc. as Sub-processor and any other Sub-processors that Apple may use, provided such Sub-processors are bound by contract to treat such data in no less a protective way than Apple has undertaken to treat such data under this Agreement, and will not use such data for any purpose beyond that specified herein. A list of such Sub-processors will be available upon request. Where a Sub-processor fails to fulfill its data protection obligations under this Agreement, Apple shall remain fully liable to You for the performance of that Sub-processor's obligations.

Others

Apple may also disclose Personal Data about You or Your students if Apple determines that disclosure is reasonably necessary to enforce Apple's terms and conditions or protect Apple's operations or users. Additionally, in the event of a reorganization, merger, or sale Apple may transfer any and all Personal Data You provide to the relevant party.

Access, Correction, and Deletion

Apple provides You with the ability to access, correct, or delete data associated with Your students' Managed Apple IDs. You can delete data associated with Your Managed Apple IDs through the administrator web portal in Apple School Manager. Please contact us here: www.apple.com/privacy/contact/.

Parent/Guardian Review and Deletion of Information

The parents or guardians of Managed Apple ID End Users in Primary/Secondary (K-12) schools can contact the school administrator to access their child's personal information or request deletion. If a parent or guardian wishes to stop any further collection of their child's information, the parent or

guardian can request that the administrator use the Service controls available to limit their child's access to certain features, or delete the child's account entirely.

PLEASE NOTE: THIS DISCLOSURE DOES NOT APPLY TO THE DATA COLLECTION PRACTICES OF ANY THIRD PARTY APPS. PRIOR TO PURCHASE OR DOWNLOAD OF THIRD PARTY APPS AVAILABLE TO A STUDENT WITH A MANAGED APPLE ID, YOU SHOULD REVIEW THE TERMS, POLICIES, AND PRACTICES OF SUCH THIRD PARTY APPS.