



Mt. Diablo Unified School District and Imagine Learning, Inc. Partnership Agreement

This partnership agreement outlines the details of recent purchases from Mt. Diablo Unified School District for the *Imagine Learning English* program. Exhibit 1 below displays the components of each order including School, PO#, PO Date, Charges, Purchase Details, and Renewal Date. The attached License Agreement (Exhibit 2) explains the terms and conditions of this partnership.

| Exhibit 1: Mt. Diablo Unified School District's purchases of Imagine Learning English | | | | | | | | |
|---|-------|----------|-------------|----------------|----------------|-------------------|----------|----------------------------------|
| School | PO # | PO Date | Charges | Implementation | Annual License | Perpetual License | Headsets | Renewal Date for Annual Licenses |
| Cambridge | 77026 | 08/10/10 | \$99,093.75 | X | 70 | 100 | 50 | 8/31/2011 |
| Cambridge | 78308 | 12/13/10 | \$1,908.00 | | | | 40 | |
| Fair Oaks | 76197 | 05/14/10 | \$25,950.88 | X | 125 | | 45 | 8/31/2011 |
| Meadow Homes | 77962 | 11/05/10 | \$26,110.75 | X | 120 | | 60 | 11/30/2011 |
| Meadow Homes | 78412 | 01/05/11 | \$5,899.50 | | 25 | | 60 | 1/31/2012 |
| Rio Vista | 76434 | 06/25/10 | \$27,694.88 | X | 135 | | 40 | 8/31/2011 |
| Rio Vista | 77505 | 09/30/10 | \$9,906.25 | | 75 | | | 9/30/2011 |
| Shore Acres | 76736 | 07/01/10 | \$50,855.88 | X | 275 | | 45 | 8/31/2011 |
| Ygnacio Valley | 76735 | 07/01/10 | \$42,607.50 | X | 210 | | 100 | 8/31/2011 |
| Total | | | 290,027.39 | | 1,035 | 100 | 440 | |

Items for Board Approval

- Shore Acres' Perpetual License Conversion.** Shore Acres Elementary desires to convert its 275 annual licenses to perpetual licenses as outlined in their School Improvement Grant application. *Imagine Learning English* perpetual licenses do not carry a subscription cost and include four years of technical support and updates. Additional details regarding perpetual licenses can be found under item 3 of the attached License Agreement.

Imagine Learning, Inc. will credit the cost of Shore Acres' subscription licenses towards the price of perpetual licenses. The total cost for Shore Acres' perpetual conversion is \$180,262.50 (please see attached quote QT3992).

- Potential Expansions.** Between now and June 30, 2011, Mt. Diablo Unified School District's schools may desire to purchase licenses for additional students. The total amount of expansions (excluding Shore Acres' conversion outlined in item 1) is not to exceed \$250,000.

Accepted and Agreed:

Mt. Diablo Unified School District

By: _____

Print Name: _____

Title: _____

Date: _____

Imagine Learning, Inc.

By: Curt B Hill

Print Name: Curtis B Hill

Title: Chief Financial Officer

Date: 1/27/11

**Mt. Diablo Unified School District – Partnership Agreement
Exhibit 2**



LICENSE AGREEMENT

This legally binding Software License Agreement (this “Agreement”) is made and entered into by and between Mount Diablo Unified School District (an individual or entity referred to hereinafter as either “MDUSD” or “you”), and Imagine Learning, Inc., a Utah corporation (referred to hereinafter as the “Company”), the owner/licensor of the subject Software that you are licensing from the Company directly. YOU ACKNOWLEDGE AND AGREE THAT YOUR ACT OF USING THE COMPANY’S SOFTWARE INSTALLED ON THE SERVER (a device referred to hereinafter as either “ILE Engine” or “Engine”) FURNISHED TO YOU BY OUR DISTRIBUTOR, OR INSTALLED ON ANY OTHER SERVER OR DELIVERY MECHANISM, CONCLUSIVELY CONFIRMS YOUR ACCEPTANCE OF THIS AGREEMENT (AND THE SOFTWARE) AND YOUR PROMISE TO HONOR ALL OBLIGATIONS OF THE END-USER HEREUNDER.

1. **Grant of License.** In connection with MDUSD’s purchase of the Software license, you are hereby granted a limited, nonexclusive license (the “License”) to use the Software for its intended educational purposes, solely in connection with the ILE Engine furnished to you by our distributor as part of the subject license (but specifically excluding any use of the Software to render similar services to others, or for any resale, sublicense or any other third party transaction). The term “Software,” for purposes of this Agreement, means the *Imagine Learning English* software package (including any future improvements or enhancements thereto) licensed by you from the Company or our distributor, along with the related documentation and any updates and bug fixes the Company may send you in the future. You are prohibited from making or attempting to make any copies of the Software.

2. **Term and Termination.** The term of this License, upon payment in full of all fees and charges itemized on the purchase order, is subscription or perpetual as determined by your type of purchase if you honor all terms and conditions hereof. However, the Company may terminate the License at any time if the MDUSD breaches any term or condition hereof and, upon receiving written notice of such breach from the Company, fails to cure the same to the Company’s reasonable satisfaction within thirty (30) days after your receipt of said notice. MDUSD agrees that the Company will invoice for any licenses activated above the number of licenses issued through the original purchase order. Payment in full is due within sixty (60) days and if not received by the Company, the Software and ILE Engine are subject to removal by the Company. Upon termination of the License, MDUSD shall return to the Company or its distributor the ILE Engine along with the original and all copies of the Software, in written and electronic formats, and shall certify in writing that all originals and all copies and parts thereof have been returned (or otherwise destroyed to the Company’s satisfaction). Thereafter,

MDUSD shall continue to honor all provisions set forth herein for the protection of the Company's Software, intellectual property, confidential information and reputation.

3. Perpetual Licenses. Perpetual licenses are licensed by MDUSD in perpetuity, which permits MDUSD to retain the licenses without end. Imagine Learning also grants the option to MDUSD to receive "dot release" updates and patches through the initial four years of any perpetual license. This does not include other new versions or new products Imagine Learning creates or releases.

MDUSD sites will retain perpetual licenses of the latest release of *Imagine Learning English* after the initial four years. At that time, MDUSD will also receive the latest version of *Imagine Learning English* on DVD so that it can be installed on new hardware if needed. MDUSD sites have the right to upgrade to the newest version of *Imagine Learning English* at any time beyond that point by paying an upgrade fee.

With the purchase of perpetual licenses, MDUSD takes ownership of the Imagine engine for the school site. Through the initial four years of a perpetual license, MDUSD sites will have the right to receive technical support from Imagine Learning. After the initial four years, MDUSD can pay for support on a case by case basis or yearly rate. In the event that Imagine Learning is acquired by another organization, the acquiring organization will continue the obligation to provide support as long as payment for such support is current.

MDUSD has the option to pay for additional services beyond the initial four years of perpetual licenses. The current prices for these services are as follows:

- a. Annual Support and Service \$2,000 per site
Includes support calls and on-site visits related to *Imagine Learning English*
- b. On-site Technical Support \$1,500 per day
If MDUSD chooses not to purchase an Annual Support and Service Agreement after the initial four years, MDUSD has the right to pay per service call. This option is the cost for one day of on-site technical support.
- c. Technical Support Call \$100 per call
If MDUSD chooses not to purchase an Annual Support and Service Agreement after the initial four years, MDUSD has the right to pay per service call.
- d. Upgrade Cost
After the initial four years of perpetual licenses, MDUSD may upgrade to the current release of *Imagine Learning English* by paying 10 percent of the perpetual license cost per student for every six-month release.

In the event Imagine Learning, Inc. goes out of existence or ceases to do business, MDUSD shall have the right to access the source code of *Imagine Learning English* for the sole purpose of their on-going usage of the program and only within the rights previously defined as their license.

4. Limitations; Transfers. You agree not to modify, adapt or translate the Software, and you further agree not to, nor attempt to, replicate, reverse engineer, decompile, disassemble or otherwise discover or misappropriate the source code of the Software, nor copy nor distribute the same. You may not disclose to any third party all or any part of the Software or any confidential or proprietary information

or trade secrets relating thereto (i.e., information not in the public domain) without the Company's prior written consent; provided, however, that you may make such disclosures to your own employees who have a "need to know" for your licensed use of the Software, but all such employees must be informed of their duty to honor all provisions of paragraphs 1, 2, 3, 4 and 8 hereof. You may not resell, rent, lease, sublicense, distribute or loan all or any part of the Software to any third party. The Software is licensed as a single unit, and its component programs may not be separated for any other use. The Company may enter your premises upon reasonable notice during regular business hours and conduct periodic audits to verify that you are honoring all terms and conditions of this limited license.

5. Ownership. Title, all ownership rights, and all intellectual property rights in and to the Software and the ILE Engine shall remain exclusively with the Company. The Software is protected by United States patent law and copyright law, international patent and copyright treaties, and local trade secret laws, as well as other intellectual property laws, regulations and treaties. No title to or ownership of the Software has been transferred to you, and this License shall not be construed as a sale of any rights in the Software, but merely a limited, non-exclusive license. You agree not to remove or alter any patent, copyright, trademark, or other proprietary notices on any copy of the Software. The Company and its authorized distributors reserve all rights not expressly granted to you herein.

6. Limited Warranty and Remedy. The Software is provided by the Company and accepted by MDUSD "as is." The Company warrants only that the Software and the ILE Engine will perform substantially in accordance with the Company's accompanying explanatory materials for the duration of MDUSD's subscription period. The Company's sole and exclusive liability, and your exclusive remedy, for any breach of this sole warranty or this Agreement, shall be limited to, at the Company's option, either the replacement or the repair of the Software or the ILE Engine, as the case may be. Any replacement Software or ILE Engine will be warranted similarly. The Company is not liable for any performance delays or for nonperformance due to causes beyond its reasonable control or caused by you or any third party(s). The Company does not warrant the Software, the ILE Engine, or headsets against damage, loss, or theft. This Limited Warranty is in addition to any and all other warranties that may be passed through to MDUSD by the Company from third party software vendors (e.g., Microsoft). This limited warranty is void if any failure of the Software results from any accident, abuse, misapplication, or modification of the Software by you or any third party. Headsets are purchased by the Company and resold to MDUSD as a service to MDUSD and become the property and responsibility of MDUSD. Headsets come with a limited warranty from the manufacturer for a period of one year of normal use. THE ABOVE-STATED LIMITED WARRANTY AND REMEDY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, AND THE COMPANY AND ITS DISTRIBUTORS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, HOWEVER, AND IN SUCH STATES SOME OR ALL OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

7. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY OR ITS DISTRIBUTORS BE LIABLE FOR ANY DAMAGES, WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, INCLUDING WITHOUT

LIMITATION DAMAGES FOR LOSS OF BUSINESS INFORMATION OR OTHER BUSINESS INTERRUPTION, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE COMPANY OR ITS DISTRIBUTORS OR THEIR REPRESENTATIVE(S) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL THE COMPANY'S OR ITS DISTRIBUTORS' LIABILITY OR EXPOSURE TO MDUSD OR MDUSD'S ASSIGNEE UNDER THIS AGREEMENT EVER EXCEED MDUSD'S PURCHASE PRICE FOR THE SOFTWARE LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES IN CERTAIN TRANSACTIONS, HOWEVER, AND IN SUCH STATES SOME OR ALL OF THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY. THE COMPANY SHALL NOT BE LIABLE FOR ANY CONTAMINATION OR LOSS OF DATA OR ANY ADVERSE IMPACT, FINANCIAL, TECHNICAL OR OTHERWISE, DUE TO YOUR OR ANY THIRD PARTY'S MISUSE OR MISAPPROPRIATION OF THE SOFTWARE OR ANY ACT NOT LICENSED OR APPROVED BY THE EXPRESS TERMS OF THIS AGREEMENT.

8. U.S. Government Restricted Rights. The Software is provided with RESTRICTED RIGHTS, and any use, duplication or disclosure of the Software by the United States Government is subject to those restrictions set forth in subparagraph (c)(1)(ii) of "Rights in Technical Data and Commercial Computer Software – Restricted Rights," at 48 CFR 52.227-19, and any amendments thereto, as applicable. You agree that neither all nor any part of the Software will be shipped, transferred or exported in any form into any country outside the U.S.A. or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations.

9. General Provisions. This Agreement is the final expression of the parties' agreement and is intended to be a complete and exclusive statement of the terms and conditions thereof, including any exhibits attached hereto. Any waiver of any performance required hereunder of either party shall be valid only in the instance for which it is given, not for any future instances or other provisions hereof, and only if waived in writing by the party otherwise benefiting from such performance. Access to usage, performance, and efficacy data of all types from all Company software shall be granted at all times to the Company and may be used for reports, evaluations, and publications without restriction as long as the public reports, evaluations, and publications contain no individual student identification information. MDUSD will not engage in, allow, assist, or permit any report, evaluation or publication of usage, performance, or efficacy data related to or derived from the Company's software without prior express written permission. Other than the Company's income taxes, MDUSD shall be solely responsible for all taxes, assessments, fees, duties, etc. that may be charged by any governmental authority by virtue of this Agreement and/or your use of the Software. The Company's licensors who have contributed software or code to the Software (e.g., Microsoft) are direct and intended third party beneficiaries of this Agreement and may enforce it directly against you, but without any liability to you for damages of any kind that may arise out of this Agreement. Any action for breach of this Agreement must be commenced by the non-breaching party within one (1) year from the later of the date the cause of action arises or the date the cause of action is discovered or in the exercise of reasonable diligence by you should have been discovered. This Agreement and all matters relating hereto shall be governed by the laws of the State of Utah and the United States of America. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Both parties agree to resolve any controversy or dispute relating to this Agreement (other than equitable relief permitted under paragraph 6) by binding arbitration conducted in accordance with the commercial arbitration rules and

procedures of the International Chamber of Commerce in Salt Lake City, Utah. In any suit, arbitration or appeal regarding this Agreement, the prevailing party's attorneys' fees and costs shall be reimbursed in full by the non-prevailing party. In the event that any provision of this Agreement is found by arbitration or a court of competent jurisdiction to be contrary to any applicable law, such law shall be deemed controlling and this Agreement shall be regarded as modified accordingly, giving maximum permissible effect to the parties' intentions expressed herein, and the remainder of this Agreement shall continue in full force and affect. The individuals executing this Agreement are fully authorized to do so by their respective companies' bylaws and/or board resolutions. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors-in-interest and permitted assigns.