

Data Sharing/Use Agreement
Between
Jefferson County Board of Education
And
Imagine Learning, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and ***Imagine Learning, Inc.***, a corporation organized under the laws of UT. ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of March 24, 2020 and will terminate when the services contract referenced in Paragraph B.1. below terminates, unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective March 24, 2020 Imagine Learning educational software and services.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and

Services Provider has a legitimate educational interest for access to such education records. The confidential data, including student and non-student information to be disclosed is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.

4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual-level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42

U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.

2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required,

Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data sign a nondisclosure statement, attached as **Attachment B**, and maintain copies of signed statements;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.
7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"),

Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
 - a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. Pursuant to KRS 365.734(2), Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
9. Services Provider shall report all known or suspected breaches of the data, in any format, to Dr. Kermit Belcher, Chief Information Officer. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement. Services Provider agrees to require all employees, contactors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.
11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates Sean Moe (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and

information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.

12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the data described in **Attachment A**.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, within seven (7) days of the termination the confidential information shall be returned or destroyed within seven (7) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within seven (7) days after the end of the term, Services Provider shall return or destroy all confidential information and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement, subject to Service Provider's right to cure under Section H.1.a. of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to seek preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to

such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Imagine Learning, Inc.
382 W. Park Circle, Suite 100
Provo, UT 84604

BY: J. B. Taylor

Name: J. Brent Taylor

Title: Vice President, Finance

Date: 3/12/20

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Dr. Martin Pollio

Title: Superintendent, JCPS

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

See Imagine Learning's Privacy Website. Specific Data Fields are often at the option of the Customer.

Attachment B

Imagine Learning, Inc. Employee Confidentiality & Trade Secrets Agreement

Rev. 04-19

Employee Name: _____
("Employee," "You" or "Your")

1. Introduction and Purpose. Imagine Learning, Inc., a Utah corporation ("Imagine Learning" or "Company"), is engaged in the highly competitive business of providing digital education tools in the K-12 market to its Customers (as defined in Attachment A). Imagine Learning will expend a great deal of time, money, and effort to develop Your skills and to assist You in performing Your duties for Imagine Learning.

In the course of Your employment, You may have access to proprietary, Confidential, and Trade Secret Information (as defined in Attachment A), all of which are Valuable Assets of Imagine Learning and are developed at great effort and expense. Furthermore, Imagine Learning has a valid interest in protecting its "Valuable Assets," including but not limited to: Confidential Information, Trade Secrets, the specialized training of Imagine Learning's employees, and the goodwill and business relationships Imagine Learning enjoys with its Customers, other employees, and the general public.

Any use of Imagine Learning's Valuable Assets, whether directly or indirectly against or in competition with Imagine Learning, could cause Imagine Learning irreparable harm. Imagine Learning therefore requires all employees to acknowledge that the covenants and restrictions contained in this Agreement are necessary to protect the Valuable Assets of Imagine Learning and to prevent irreparable harm to Imagine Learning's business. As an essential term and condition of Your employment with Imagine Learning, by signing below, You agree to be bound by the terms, conditions, covenants and restrictions set forth in this Agreement.

2. Definitions of Key Terms. Certain capitalized terms used in this Agreement, including Competing Business, Confidential Information, Customers, and Trade Secrets, have specific definitions and meanings as used in this Agreement or under applicable law. Please refer to Attachment A, "Definitions of Key Terms," for the definitions of capitalized terms. If You are uncertain about the meaning or definition of any other terms used in this Agreement, please discuss with the Human Resources department or Your private legal counsel.

3. Protection of Student Information. You understand and agree that, in the course of Your employment with the Company, You may have access to confidential Customer data, including names, grades, email addresses, and other personally identifiable information ("PII") protected by various international, federal, state, and local laws and regulations ("Applicable Laws"). **Strict adherence with Applicable Laws is critical to the success of Imagine Learning's business and is of utmost importance.** You agree to access such PII only if necessary to perform the work assigned to You by the Company. You will not access or store PII on any mobile electronic device, or on any device which is unencrypted or does not employ appropriate technical safeguards as authorized by the Company. All PII will be stored on the machines designated from time to time by Company and is never be saved to personal devices, machines, or accounts. You will not share, disclose, transmit, or otherwise transfer any PII to any person or party not authorized by the Company. You agree to participate in privacy and security training as required by the Company. You will strictly and diligently comply with all Applicable Laws, as well as all additional Imagine Learning policies and procedures (as the same may be updated from time to time) designed to protect student PII and ensure compliance with such laws.

4. Confidentiality & Trade Secrets. You agree to maintain in **strictest** confidence and not to use or disclose, either during Your employment or thereafter except as authorized by the Company, any Imagine Learning Confidential Information or Trade Secrets. Upon the request of the Company, and in any event upon termination of Your employment, You will return to the Company all Confidential Information and Trade Secret information, including but not limited to: notes, records or other documents and media pertaining to the businesses of the Company, its affiliates, clients, Customers, vendors and database users, as well as all copies of these materials. Misappropriation of a Trade Secret of the Company in breach of this Agreement may subject You to criminal liability under the Defend Trade Secrets Act of 2016 (the "DTSA"), entitle Imagine Learning to injunctive relief, and require You to pay compensatory

damages, double damages, and attorneys' fees. Notwithstanding any other provision of this Agreement, You are hereby notified in accordance with the DTSA that You will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a Trade Secret that is made (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, in each case solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. You are further notified that if You file a lawsuit for retaliation by Imagine Learning for reporting a suspected violation of law, You may disclose Imagine Learning's trade secrets to Your attorney and use the trade secret information in the court proceeding if You file any document containing the Trade Secret under seal and do not disclose the Trade Secret except pursuant to court order.

5. Work Made for Hire & Prior Inventions. You agree that all materials, inventions or ideas that You develop in the course of Your employment, including all copyrights, patents and other intellectual property rights, belong to Imagine Learning as "Work Made for Hire," as that phrase is used in United States copyrights laws, 17 U.S.C. §101 et seq. You hereby transfer and assign all the foregoing intellectual property rights to the Company, and You agree to sign any additional documents Imagine Learning may reasonably require to confirm or record Imagine Learning's ownership of those rights. If You created or developed any inventions, patents, trademarks, writings, or other creative works prior to Your employment with the Company (see definition of "Prior Inventions"), and You wish to exclude such Prior Inventions from the obligation contained in the previous paragraph, You must list and describe them on Attachment B, titled "Prior Inventions Retained." If, in the course of Your employment with Imagine Learning, a Prior Invention is incorporated into an Imagine Learning product, process, program, or machine, You agree to grant Imagine Learning an exclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use, and sell such Prior Invention as part of or in connection with such product, process, or machine.

6. Patent and Copyright Registrations. You agree to assist Imagine Learning, at Imagine Learning's expense, in securing Imagine Learning's rights in any inventions and any copyrights, patents, mask work rights, or other Intellectual Property rights relating thereto in any and all countries where they may be used or registered. This includes disclosing to Imagine Learning all pertinent information and data with respect to such inventions, the execution of all applications, assignments and all other document which Imagine Learning may need in order to apply for and obtain such rights. You further agree to assist or execute any such instrument or other document even after the termination of Your employment, or, if Imagine Learning is unable to secure Your signature You designate and appoint Imagine Learning to execute and file any such instrument or other documents to secure Imagine Learning's ownership of the Intellectual Property rights covered by this Agreement.

7. Non-Solicitation and Contact with Imagine Learning Customers. You acknowledge that in Your position with Imagine Learning, You will have access to extremely sensitive Imagine Learning Confidential Information and Trade Secrets, including information regarding its Customers, suppliers, product development, and business and marketing strategies. Imagine Learning has invested substantial time, money and other resources in the development of its products, services, and Customer relationships. Therefore, during the period of Your employment with Imagine Learning and for a period of one (1) year (or the maximum amount of time allowed by the laws applicable to Your jurisdiction) following termination of Your employment for any reason, You will not, without Imagine Learning's express written authorization or consent (a) directly or indirectly have any unapproved contact with any Imagine Learning Customer with whom You were in contact while employed by Imagine Learning, particularly those within the Restricted Territory; (b) directly or indirectly solicit or interfere with any employee of Imagine Learning or any of its affiliates, or (c) directly or indirectly recruit or assist in recruiting any Imagine Learning employee to work for another employer. You further agree that, if You are offered a position with another employer, You will disclose the restrictions and covenants in this Agreement, and that You will continue to protect Imagine Learning's Valuable Assets during the course of Your employment outside of Imagine Learning.

8. Special Non-Solicitation Restrictions for Sales and Management Roles. The provisions of this paragraph apply to the following roles (the "Sales and Management Roles"): any role (regardless of

specific title) involving a sales or marketing position, senior management (director or above), product development, or customer experience. If Your employment by Imagine Learning at any point includes a Sales and Management Role, You (a) covenant to particularly protect Imagine Learning's Valuable Assets, (b) covenant to not solicit any past, present, or potential Imagine Learning Customers regardless of their geographical location (to the maximum extent allowed by law), and (c) covenant to strictly avoid providing any benefit to any Competing Business which benefit you would not have been able to provide without the use of Imagine Learning's Valuable Assets. You further agree that, if You are offered a position with another employer, You will disclose the restrictions and covenants in this Agreement, and that You will continue to protect Imagine Learning's Valuable Assets during the course of Your employment outside of Imagine Learning.

9. Relief, Remedies, and Enforcement. You acknowledge and agree that the covenants and restrictions contained in this Agreement, including the geographic and temporal restrictions, are reasonably designed to protect Imagine Learning's legitimate business interests, including Imagine Learning goodwill and Customer relationships, Confidential Information and Trade Secrets, and the specialized skills and knowledge gained by You and Imagine Learning's other employees during their employment. You further acknowledge and agree to the following: a) That a breach of any provision of this Agreement by You will cause serious and irreparable injury to Imagine Learning that will be difficult to quantify, and that may not be adequately compensated by monetary damages alone. b) Thus, in the event of a breach or threatened or intended breach of this Agreement by You, Imagine Learning shall be entitled to injunctive relief, both temporary and final, enjoining and restraining such breach or threatened or intended breach. c) Imagine Learning shall also be entitled to an award of all costs and attorneys' fees incurred because of Your breach of any provisions of this Agreement. Nothing in this Agreement shall be construed to prohibit Imagine Learning from pursuing any and all other legal or equitable remedies available to it for breach of any of the provisions of this Agreement, including the disgorgement of any profits, commissions, or fees realized by You, any subsequent employers, any business owned or operated by You, or any of Your agents, heirs, or assigns,

10. Severability and Enforceability. You agree that each provision of this Agreement shall be treated as a separate and independent clause, and the enforceability of any one clause shall in no way impair the enforceability of any of the other clauses. Moreover, if any provision in this Agreement is determined by an appropriate court to be invalid or unenforceable as written, the provision shall be modified as necessary to be valid or enforceable in order to achieve the intent of the parties to the fullest extent possible. In any such event, all other provisions of this Agreement shall be deemed valid and enforceable to the fullest possible extent.

11. Jurisdiction, Forum Selection, and Choice of Law. This Agreement shall be construed and interpreted under and by the laws of the State of Utah, without regard to any conflict of laws provision that would dictate the application of another jurisdiction's laws. The parties agree that any and all actions, disputes or proceedings that arise under this agreement will be adjudicated exclusively in the State and/or Federal Courts located in Provo, Utah, and each Party consents to the personal jurisdiction and venue of those courts. **FURTHERMORE, BOTH YOU AND IMAGINE LEARNING HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY.**

12. At-Will Employment. You understand and agree that Your employment is considered "At Will," and You agree that (a) neither this Agreement nor any other document or agreement will create any obligation by Imagine Learning to continue Your employment, and (b) that Your employment may be terminated at any time and for any reason (or no reason) by either You or by Imagine Learning. By signing below, You acknowledge that You have read and fully understood the terms of this Agreement, have had the opportunity to consult with outside legal professionals, and that You agree to be bound by the terms herein.

Employee Signature ____
Printed Name
Date

ATTACHMENT A DEFINITIONS OF KEY TERMS

"Competing Business" means any person, company, or any other entity, regardless of form, that is directly engaged in whole or in relevant part in providing digital education tools to schools, school districts, and other education providers in the K through 12th grade market.

"Confidential Information" means (i) competitively sensitive information, (ii) of importance to Imagine Learning, (iii) that is kept in confidence by Imagine Learning, (iv) that becomes known to You through Your employment with Imagine Learning, and (v) that is not a trade secret under the Utah Uniform Trade Secrets Act or other applicable law, as trade secrets are and shall remain separately protected and enforceable pursuant to applicable law. Confidential Information includes, but is not limited to, information about Imagine Learning's operations, services, research and development of Imagine Learning's operations or services, names and other listings of current or prospective Customers, proposals to any current or prospective Customers, the terms of any arrangements or agreements with any Customers, including payment and pricing information, the implementation of Customer-specific projects, the composition or description of future services that will or may be offered by Imagine Learning, marketing strategies, financial and sales information, and technical expertise and know-how developed by Imagine Learning, including the unique manner in which Imagine Learning conducts its business. Confidential Information also includes information disclosed to Imagine Learning by any third party (including, but not limited to, current or prospective Customers) that Imagine Learning is required to treat as confidential. Confidential Information excludes Your general skills and knowledge, and nothing herein is intended to prohibit You from disclosing or using any and all such information You learned working for Imagine Learning. Confidential Information also excludes information that is already known to another party prior to such disclosure, and is not obtained or derived from Employee; or that is known or becomes known or generally available in the public domain other than through Your act or default; or is obtained from a third party lawfully in possession of the information, which is not subject to any non-disclosure or non-use obligations owed to the disclosing party or any third party.

"Customers" means those individuals, companies, or other entities for whom Imagine Learning has provided or does provide products or services in connection with the Business of Imagine Learning or whom Imagine Learning has provided written proposals concerning the Business of Imagine Learning in the one (1) year period preceding the voluntary or involuntary termination of Employee's employment with Imagine Learning for any reason and with or without cause.

"Invention" means inventions, developments, concepts, improvements, designs, discoveries, inventive ideas, algorithms, computer software code, protocols, formulas, mask works, compositions, trademarks, service marks, or trade secrets, whether or not reduced to practice, patentable, or registrable under patent, copyright, trademark, or similar laws, which You invent. As used in this agreement, Inventions applies (i) anything invented, either solely or jointly, during Your normal working hours or other Company time when You are reasonably expected to be devoting Your attention to Imagine Learning business; (ii) inventions that relate to the Imagine Learning Business or to Imagine Learning's actual or demonstrably anticipated research or development, regardless of whether the Invention was Invented during Employee's normal working hours; (iii) any conception, development, or reduction to practice of the Invention is substantially aided by Employee's use of Imagine Learning's equipment, supplies, facilities, or confidential information, or contains any of Imagine Learning's Trade Secrets or Confidential Information.

"Prior Inventions" means all Inventions or Creative works that were made by Employee prior to his or her employment with Imagine Learning, which belong to Employee and which relate to Imagine Learning's current or proposed business, products, or research and development, and are not presently assigned to Imagine Learning under this Agreement. You must list all of Your Prior inventions on Attachment B to this Agreement.

"Restricted Territory" means the geographic territory in which Employee worked, represented Imagine Learning, or had Business Contact with Imagine Learning's Customers in the one (1) year period (or maximum amount of time allowed by law) preceding the voluntary or involuntary termination of Employee's employment with Imagine Learning for any reason and with or without cause.

"Trade Secret(s)" means information defined as a trade secret by the Utah Uniform Trade Secrets Act or other applicable law.

ATTACHMENT B PRIOR INVENTIONS RETAINED

Please list all prior inventions or creative works developed or created by You prior to Your employment with Imagine Learning (See "Prior Inventions" definition in Attachment A). You shall retain ownership of all Prior Inventions, regardless of whether You have obtained copyright, patent, or other registered intellectual property rights. (If none, state "None" in the first box.)

ITEM**DESCRIPTION**

