

2011-2012

**MDTP LICENSE AGREEMENT**

The CALIFORNIA MATHEMATICS DIAGNOSTIC TESTING PROJECT (hereinafter, MDTP), grants \_\_\_\_\_ (hereinafter, LICENSEE) and LICENSEE accepts a non-transferable, non-exclusive license to use the MTDP Licensed Tests designated in this Agreement. This license applies exclusively to the specified school or schools (hereinafter, SCHOOL). All terms and conditions of this Agreement are agreed to and applied and are binding upon MDTP and LICENSEE upon execution of this Agreement.

**SITE ADDRESS OF SPECIFIED SCHOOL (Use Attachment C for more than one school.):**

SCHOOL \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

**CONTACT PERSON:**

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Dept./Div. \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_  
Email \_\_\_\_\_

**BILLING ADDRESS:**

Institution Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Billing Reference \_\_\_\_\_

Return two signed copies to MDTP. One will be signed by MDTP and returned to the contact person.

THIS AGREEMENT is made and entered by and between MDTP and LICENSEE.

WHEREAS, Regents of the University of California and Trustees of The California State University jointly created the Mathematics Diagnostic Testing Project (MDTP) in 1978 in support of the State of California educational system's matriculation programs in mathematics;

WHEREAS MDTP has developed mathematics diagnostic testing and scoring materials and services;

WHEREAS LICENSEE wishes to use the MDTP materials and services in connection with the assessment of its students;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1. GRANT OF RIGHTS**

- 1.1 To the extent MDTP has the legal right to do so and subject to the limitations set forth in this Agreement, MDTP grants to LICENSEE a nontransferable license in copyright to administer the MDTP Licensed Tests (Tests) listed in Attachment A to any and all SCHOOL students during the term of this Agreement.
- 1.2 MDTP shall authorize the sale of printed copies of Tests to LICENSEE at those costs indicated in Attachment B.
- 1.3 MDTP reserves the right to include additional Tests under the terms of this Agreement at its sole discretion.

**2. DUTIES OF LICENSEE**

- 2.1 LICENSEE shall use Tests in accordance with the design and instructions of MDTP.
- 2.2 The use of Tests by LICENSEE for any purposes beyond those granted in this Agreement requires the written permission of MDTP.
- 2.3 LICENSEE represents to MDTP that it currently has in place, and will continuously maintain during the term of this Agreement, internal protection measures sufficient to protect the confidentiality and secrecy of Tests.

**3. CONSIDERATION AND PAYMENT**

- 3.1 LICENSEE shall pay an annual license fee to MDTP upon presentation of an invoice from the University of California, San Diego ("UCSD") on behalf of MDTP. The invoice is payable upon receipt.
- 3.2 The annual fee will be determined by SCHOOL's Fall student enrollment that precedes the term of this Agreement, in accordance with Attachment B.
- 3.3 The check is to be payable to UC Regents and mailed or presented to UCSD, Central Cashier, 9500 Gilman Drive, La Jolla, CA 92093-0009. The check must reference the invoice number.
- 3.4 The annual fee will not be prorated.

**4. TITLE**

All title, interest, rights, and copyright to Tests and all portions thereof, and any material associated therewith, shall at all times remain with the Regents of the University of California and the Trustees of The California State University. LICENSEE shall have no right, title, or interest therein or thereto except as expressly set forth under this Agreement.

**5. LIMITED WARRANTY**

MDTP WARRANTS THAT MDTP HAS LEGAL RIGHT TO GRANT LICENSEE THE LICENSE AS SET FORTH HEREIN. TESTS IS A RESEARCH PRODUCT AND IS BEING PROVIDED TO LICENSEE "AS IS", WITHOUT ANY ACCOMPANYING SERVICES FROM MDTP. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE, MDTP MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE TESTS WILL NOT INFRINGE ANY COPYRIGHT, PATENT, TRADEMARK OR OTHER RIGHTS.

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**6. TERM OF AGREEMENT**

- 6.1 The term of this Agreement shall be from 1 July 2011 to 30 June 2012 unless terminated in accordance with Article 7.
- 6.2 This Agreement may be renewed on a year-to-year basis upon the mutual consent of both parties and the presentation of LICENSEE’s purchase order to MDTP. LICENSEE will be mailed an updated annual fee structure/price list on an annual basis at least sixty (60) days prior to termination of this Agreement. The annual renewal fee shall be based on both the latest Fall student enrollment and the annual fee schedule at time of renewal.

**7. TERMINATION**

- 7.1 LICENSEE may terminate this Agreement at any time by providing sixty (60) days prior written notice to MDTP. Such termination shall be effective ninety days from the date of delivery of such notice, and all LICENSEE ’s rights under this Agreement shall cease as of that date.
- 7.2 MDTP may terminate this Agreement by a written notice of termination if LICENSEE is in material breach of the terms contained herein by providing written notice to LICENSEE of the breach of contract, and provided the breach of contract has not been cured in all material respects within 60 days after LICENSEE 's receipt of such notice. Such termination shall not relieve LICENSEE of its obligation to pay any fees due or owing at the time of such termination and shall not impair any accrued right of MDTP.
- 7.3 If this Agreement is terminated as result of a bankruptcy action, MDTP shall be considered a secured creditor under this Agreement and neither this Agreement or Tests shall be transferred to a third party.
- 7.4 In the event of termination of this Agreement, LICENSEE shall cease to exercise all rights to Tests and shall promptly destroy all remaining copies of Tests.

**8. NOTICE**

Any notice required to be given to either party shall be deemed to have been given and to be effective on the date of delivery, if delivered in person, or five (5) days after mailing, if mailed by first-class certified mail, postage paid, to the respective addresses given below, or to such other address as it shall designate by written notice given to the other party.

MDTP: Bruce Arnold  
 University of California, San Diego  
 Mathematics Diagnostic Testing Project  
 9500 Gilman Drive – 0112  
 La Jolla, CA 92093-0112

LICENSEE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**9. USE OF NAMES**

Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise any trademark, trade name, service mark or the name of "University of California" or "The MDTP of the University of California" or "The California State University" or any abbreviation thereof.

**10. RELATIONSHIP**

This Agreement shall not be construed as creating a partnership, joint venture, agency relationship, or granting a franchise under either federal or state laws.

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**11. GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND, TO THE EXTENT APPLICABLE, THE UNITED STATES OF AMERICA, WITHOUT RESPECT TO THEIR RESPECTIVE CONFLICTS OF LAWS PROVISIONS.

**12. MODIFICATIONS**

No amendment or modification of this Agreement shall be binding on the parties unless made in a writing executed by duly authorized representatives of the parties.

**13. WAIVER**

The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a subsequent failure to perform any term or condition of this Agreement. None of the terms, covenants, and conditions of this Agreement can be waived except by the written consent of the party to whom compliance is otherwise owed.

**14. SEVERABILITY**

The provisions of this Agreement are severable. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

**15. AUTHORITY**

LICENSEE represents that the individual who executes this Agreement on behalf of LICENSEE is authorized to do so. MDTP represents that the individual who executes this Agreement on behalf of MDTP is duly authorized to do so.

**16. ENTIRE AGREEMENT**

This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings; either oral or written, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MDTP

LICENSEE

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Donna M Ames

\_\_\_\_\_  
(Print Name)

Title: MDTP Administrative Coordinator

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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# ATTACHMENT A

## LIST OF MDTP LICENSED TESTS (TESTS)

<b>Licensed Tests</b>	<b>Test Code</b>
Prealgebra Readiness Test	PR40A04
Algebra Readiness Test-2010	AR45A10
Algebra Readiness Test-2000	AR45A00
Algebra Readiness Test	AR50/90 2 <sup>nd</sup> printing
Algebra Readiness Test-Calculator Required	AR50X92 2 <sup>nd</sup> printing
Elementary Algebra Diagnostic Test	EA50A90
Geometry Readiness Test	GR45A06
Geometry Readiness Test-Calculator Required	GR45X94
Second Year Algebra Readiness Test	SR45A06
Second Year Algebra Readiness Test-Calculator Required	SR45X94
Mathematical Analysis Readiness Test	MR45A08
Mathematical Analysis Readiness Test-Calculator Required	MR45X94
Calculus Readiness Test	CR40A97
Calculus Readiness Test	CR55A97
Calculus Readiness Test-Calculator Required	CR40X96
Calculus Readiness Test-Calculator Required	CR55X96
Beginning Calculus Test	BC30X97
Or other tests as noted below:	

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# **ATTACHMENT B**

## **MDTP Material Fee Schedule**

For the period 1 July 2011–30 June 2012

\$2.00 Per Test Booklet.

Orders should be submitted to:

Donna M Ames

UCSD-MDTP

9500 Gilman Dr-0112

La Jolla, CA 92093-0112

## **MDTP License Fee Schedule**

### **Fee per School**

For the period 1 July 2011–30 June 2012

Small School	\$400*	Latest Fall Enrollment, unduplicated head count, including part-time and full-time students, less than 5,000; requires verification using form below
Large School	\$800*	Latest Fall Enrollment, unduplicated head count, including part-time and full-time students, equal to or greater than 5,000

## **SMALL SCHOOL FALL ENROLLMENT VERIFICATION FORM**

I hereby verify the Fall enrollment at the census date for the most recently completed Fall term is less than 5,000 students (including full-time and part-time unduplicated student head count). Each student enrolled in at least one credit course is counted as one student.

Name of person verifying enrollment:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Telephone (area code + number)

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