

**AFFILIATION AGREEMENT
BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND
MT. DIABLO UNIFIED SCHOOL DISTRICT**

THIS AFFILIATION AGREEMENT (the “**Agreement**”) effective as of the date of the parties’ final signature below (the “**Effective Date**”), is entered into by and between The Regents of the University of California on behalf of its Nutritional Sciences & Toxicology Department at the University of California, Berkeley (“**SCHOOL**”), and Mt. Diablo Unified School District (“**AFFILIATE**”). “**Party**” hereinafter refers to each Party individually, or collectively as “**Parties**.”

Whereas, SCHOOL conducts a training program in Nutrition and Dietetics accredited by the Accreditation Council for Education in Nutrition and Dietetics (“**ACEND**”) which requires experience for participants (hereinafter “**TRAINEES**”) enrolled in these programs (each program shall be referred to as “**Program**”); and

Whereas, it is to the benefit of both SCHOOL and AFFILIATE that TRAINEES enrolled in the PROGRAM have the opportunity to gain education and training at AFFILIATE’s facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, the parties agree as follows:

I. RESPONSIBILITIES OF SCHOOL.

SCHOOL shall:

- A. Establish the educational goals and objectives of its Nutrition and Dietetics education programs in a manner consistent with the standards and requirements set forth by SCHOOL for program accreditation and while retaining ultimate responsibility for the education and assessment of TRAINEES.
- B. Designate a member of SCHOOL's faculty or staff to provide coordination of TRAINEES' educational activities and assignments while at AFFILIATE.
- C. Cooperate with AFFILIATE in coordinating and reviewing activity schedules of TRAINEES while at AFFILIATE.
- D. Provide the names of TRAINEES, their level of training, and their assignments to AFFILIATE sufficiently in advance of their rotation to allow for convenient planning of activity schedules.
- E. Develop and implement a mechanism for determining evaluation of the performance of TRAINEES to include, where appropriate, input from AFFILIATE.
- F. Maintain records and reports concerning the education of TRAINEES and of TRAINEES' time spent in the activities referred to in this Agreement, as may be required by SCHOOL.

- G. Require assigned TRAINEES to:
1. Comply with AFFILIATE's applicable Rules and Regulations, attached and made a part hereof as Appendix A.
 2. Participate, to the extent scheduled or otherwise requested by AFFILIATE and approved by SCHOOL, in activities and assignments that are of educational value and that are appropriate to the course and scope of SCHOOL'S Program.

II. RESPONSIBILITIES OF AFFILIATE.

AFFILIATE shall:

- A. Be responsible for the provision of client services. AFFILIATE agrees that it will not use TRAINEES as substitute AFFILIATE staff and will not expect TRAINEES to render client services except as identified for educational value as part of the Program. AFFILIATE's staff will be solely responsible for the provision of client services and for the direction and supervision of TRAINEE in the performance of any and all experiential activities.
- B. Provide education and training to TRAINEE.
- C. Maintain adequate staff and facilities at its locations listed below that meet the educational goals and objectives of the SCHOOL's Program in a manner consistent with the standards and requirements established by SCHOOL.
- D. Provide a supervised experiential learning program and, insofar as possible, provide orientation, laboratory facilities, administrative guides, and practical instruction to TRAINEES as necessary to complete assigned tasks. On any day when TRAINEES are in training at AFFILIATE, AFFILIATE shall provide access to office space, computer equipment, telecommunication devices, and any other equipment necessary to complete TRAINEES' assigned tasks, as well as permit the TRAINEES access to its cafeteria, dining rooms, or other common areas normally used by its professional staff.
- E. Designate, after consultation with SCHOOL, a primary person to coordinate TRAINEES' activity schedules and activities while at AFFILIATE. Provide SCHOOL with evaluative comments of the abilities and training experience of the TRAINEE.
- F. Comply with all applicable laws, regulations, State licensing requirements, applicable specialty, accrediting or professional organizations. AFFILIATE shall notify SCHOOL within five (5) days of receipt of notice that AFFILIATE is not in compliance with any such laws, regulations, or requirements, or violation of any state or federal regulations regarding compliance matters.
- G. To the extent AFFILIATE generates or maintains educational records related to the TRAINEE, AFFILIATE agrees to comply with the Family Educational Rights and Privacy Act (FERPA), to the same extent as such laws and regulations apply to the SCHOOL and shall limit access to only those employees or agents with a need to know. For the purposes of this Agreement, pursuant to FERPA, SCHOOL hereby designates AFFILIATE as a school official with a legitimate educational interest in the educational records of the participating TRAINEES to the extent that access to the SCHOOL's records is required by AFFILIATE to carry out the programs.

- H. Permit inspection of its facilities by both SCHOOL and the appropriate accreditation agency charged with the responsibility for accreditation of SCHOOL.
- I. With respect to any services performed by TRAINEES under this Agreement, AFFILIATE agrees to inform SCHOOL as follows:
1. Immediately upon initiation of an investigation of a TRAINEE or SCHOOL faculty member or upon the occurrence of a substantive untoward event involving a TRAINEE.
 2. Within five days after receipt of service of a complaint, summons or notice of a claim naming or involving a TRAINEE; or
 3. Prior to making or accepting a settlement offer in any lawsuit or legal claim in which a TRAINEE has been named or in which a settlement is being proposed on their behalf.
- J. Cooperate with and assist SCHOOL in investigating facts which may serve as a basis for taking any disciplinary or academic action against a TRAINEE. SCHOOL may, but need not, consult with AFFILIATE concerning any proposed disciplinary action. AFFILIATE agrees to abide by SCHOOL's recommended disciplinary action against TRAINEE(S). Notwithstanding the foregoing, AFFILIATE shall have the right, for good cause and after consultation with SCHOOL, to prohibit further attendance by any TRAINEE at AFFILIATE's facilities; provided, however, that AFFILIATE will not take any action against TRAINEES in an arbitrary, discriminatory or capricious manner. The SCHOOL and AFFILIATE agree to share any investigative or other information in a manner that protects such disclosures from discovery to the extent possible under applicable federal and state peer review and joint defense laws.
- K. Prior to the beginning of the program, the AFFILIATE shall provide the SCHOOL with the following: for all Registered Dietitian ("RD") preceptors, copy of each RD preceptor's curriculum vitae, and a copy of the continuing education activities for each RD preceptor for the most recent 12 month period prior to the Program; for all non-RD preceptors, submit copies of relevant professional credentials and curriculum vitae for non RD preceptors.
- L. Provide TRAINEES with personal protective equipment (PPE) to use when on site during the term of this Agreement, in compliance with applicable public health orders and guidance.

III. ASSIGNMENT OF TRAINEES.

Commencing on the date of execution of this Agreement and subject to the provision of Section II hereof, SCHOOL shall assign TRAINEES for rotation at AFFILIATE's facilities as described in Section II.A of this Agreement.

IV. DISCRIMINATION - PROHIBITION.

The Parties agree not to discriminate in the selection or acceptance of any TRAINEE pursuant to this Agreement because of race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy, sexual orientation, mental or physical disability, medical condition (cancer-related

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or genetic characteristics), genetic information (including family history), ancestry, marital status, age, service in the uniformed services, ancestry, or marital status; or citizenship, within the limits imposed by law or SCHOOL policy.

V. TERM.

The term of this Agreement shall become effective upon final execution and shall continue in effect for a maximum of five (5) years, or until earlier terminated.

VI. TERMINATION.

- A. Termination Without Cause. Notwithstanding any other provision to the contrary, this Agreement may be terminated without cause at any time by either party upon sixty (60) days' prior written notice to the other party or upon completion of the TRAINEES' rotation, whichever is greater.
- B. Termination For Cause. In the event of a material breach of this Agreement, the aggrieved party may terminate this Agreement by giving thirty (30) days' prior written notice of termination to the breaching party.

VII. INSURANCE.

- A. AFFILIATE shall procure and maintain insurance or self-insurance to insure its activities in connection with this Agreement with minimum coverages as follows:
1. Professional Medical and Hospital Liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and a general aggregate of three million dollars (\$3,000,000).
 - a. If such insurance is written on a claims-made form, it shall continue for five years following termination of this Agreement.
 - b. The insurance shall coincide with the Effective Date of this Agreement.
 - c. In the event that a claims-made policy is canceled or non-renewed, then the AFFILIATE shall obtain extended reporting (tail) coverage for the remainder of the five (5)-year period.
 2. General Liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and a general aggregate of two million dollars (\$2,000,000).
 - a. If such insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement.
 - b. The insurance shall coincide with the Effective Date of this Agreement.

3. Workers' Compensation Self-Insurance Program covering AFFILIATE's full liability as required by law under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.
4. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the parties against other insurable risks relating to performance.

It should be expressly understood, however, that the coverages required under this Section VII.A (1) and (2) shall not in any way limit the liability of AFFILIATE. AFFILIATE, upon the execution of this Agreement, shall furnish SCHOOL with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days' advance written notice to SCHOOL of any modification, change or cancellation of any of the above insurance coverages.

- B. SCHOOL shall procure and maintain insurance or self-insurance to insure its activities in connection with this Agreement with minimum coverages as follows:
 1. General liability insurance in amounts of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate to insure it, its officers, directors, employees, faculty, or agents.
 2. Professional liability/Errors and Omissions insurance in an amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate to insure its officers, directors, employees, faculty or agents. In the event SCHOOL does not provide professional liability insurance for its TRAINEES, SCHOOL shall require TRAINEES to purchase such professional liability insurance prior to their rotation at AFFILIATE.

The coverage required shall not in any way limit the liability of SCHOOL. SCHOOL's liability exposure is limited in proportion to and to the extent of the negligent acts or omissions of SCHOOL, its officers, and/or employees. SCHOOL is self-insured and no certificate of insurance shall issue.

No aspect of this Agreement shall inure or operate to the benefit of any third party.

VIII. INDEMNIFICATION.

AFFILIATE shall defend, indemnify and hold SCHOOL, its officers, employees, agents, and TRAINEES harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement or the training activities of TRAINEE but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of AFFILIATE, its officers, employees, or agents.

SCHOOL shall defend, indemnify and hold AFFILIATE, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement or the training activities of

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TRAINEE but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of SCHOOL, its officers, employees, or agents.

None of these insurance and/or indemnification provisions shall inure to the benefit of any third party.

IX. COOPERATION IN DISPOSITION OF CLAIMS.

The Parties agree to cooperate with each other in the timely investigation and disposition of audits, peer review matters, substantive adverse events, disciplinary actions and third-party liability claims arising out of any services provided under this Agreement or in the operation of the Program. The parties shall notify one another as soon as possible of any adverse event which may result in liability to the other party. It is the intention of the parties to fully cooperate in the disposition of all such audits, actions or claims. Such cooperation may include, but is not limited to, sharing records, timely notice, joint investigation, defense, disposition of claims of third parties arising from services performed under this Agreement, and making witnesses available. SCHOOL shall be responsible for discipline of TRAINEES in accordance with SCHOOL'S applicable policies and procedures.

To the extent allowed by law, the Parties shall have reasonable and timely access to the documents of the other party relating to any claim or investigation related to services provided pursuant to this Agreement; provided, however, that nothing shall require either AFFILIATE or SCHOOL to disclose any documents, records or communications which are privileged under the Attorney-Client Privilege or under the Attorney Work-Product Privilege.

X. AFFILIATE RECORDS.

Any and all of AFFILIATE's records created at AFFILIATE's facilities as a result of performance under this Agreement shall be and shall remain the property of AFFILIATE. Both during and after the term of this Agreement, SCHOOL shall be permitted to inspect and/or duplicate, at SCHOOL's expense, any such records which are: (1) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action or substantive adverse event; and/or (3) for educational or research purposes. Such inspection and/or duplication shall be permitted and conducted in accordance with applicable federal, state and local laws.

XI. EMPLOYMENT DISCLAIMER.

The TRAINEES participating in the program will not be considered employees or agents of AFFILIATE or SCHOOL for any purpose. Trainees will not be entitled to receive any compensation from AFFILIATE or SCHOOL or any benefits of employment from AFFILIATE or SCHOOL, including but not limited to, health care or workers' compensation benefits, vacation, sick time, or any other benefit of employment, direct or indirect. AFFILIATE will not be required to purchase any form of insurance for the benefit or protection of any TRAINEE.

XII. INTERRUPTION OF SERVICE.

If any Party fails to timely perform its obligations under this Agreement because of natural disasters, labor disputes, strikes, actions of governmental authority, acts of terrorism or war, whether actual or threatened, judicial orders, epidemics, quarantine, public health or travel restrictions or other causes

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beyond the reasonable control of the Party obligated to perform, then that Party's performance will be excused for the duration of such force majeure event. In the event of force majeure, the Parties may agree to alternative methods of performance that mitigate the effect of force majeure, subject to mutual agreement as to the terms thereof.

XIII. ASSIGNMENT.

Neither Party shall assign their rights, duties, or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party.

XIV. SEVERABILITY.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of the Agreement, and the remaining provisions shall remain in full force and effect unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this Agreement.

XV. WAIVER.

Waiver by either Party of any breach of any provision of this Agreement or warranty of representation herein set forth shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.

XVI. EXHIBITS.

Any and all exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

XVII. MODIFICATIONS AND AMENDMENTS.

This Agreement may be amended or modified at any time by mutual written consent of the authorized representatives of both Parties. The Parties agree to amend this Agreement to the extent amendment is required by an applicable regulatory authority and the amendment does not materially affect the provisions of this Agreement.

XVIII. ENTIRE AGREEMENT.

This Agreement contains all the terms and conditions agreed upon by the Parties regarding the subject matter of this Agreement and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

XIX. NOTICES.

All notices required under this Agreement shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

TO SCHOOL: Mikelle McCoin (Dietetics Program Director)
Nutritional Sciences and Toxicology
223 Morgan Hall
Berkeley, CA 94720

TO AFFILIATE: Dominic Machi
Director of Food & Nutrition Services
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

XX. GOVERNING LAW.

This Agreement shall be governed in all respects by the laws of the State of California.

XXI. RELATIONSHIP.

This Agreement does not constitute and shall not be construed to constitute (a) a partnership or joint venture between SCHOOL and AFFILIATE. AFFILIATE shall have no right to obligate or bind SCHOOL in any manner whatsoever, and nothing contained in this Agreement shall give or is intended to give any rights of any kind to third persons. The parties understand that neither party hereto is an agent, employee or servant of the other party.

XXII. REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

[signature page follows]

IN WITNESS WHEREOF, the duly authorized Parties have executed this Agreement as of the Effective Date.

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Name: Michèle Huff

Title: Director, BCBP

Date: _____

ADDENDUM

This COVID-19 Addendum ("**COVID-19 Addendum**") is a part of the Affiliation Agreement of even date by and between The Regents of the University of California ("**SCHOOL**") and Mt. Diablo Unified School District ("**AFFILIATE**"). "**Party**" hereinafter refers to each Party individually, or collectively as "**Parties**."

A. **Addition of Conditions Affecting Performance Clause.** The following language is added to Section XII, INTERRUPTION OF SERVICE, of the Agreement:

Each Party recognizes, understands and acknowledges that the Parties' performance of the terms of this Agreement may be affected by the COVID-19 pandemic and its international, national, local and institutional legal, regulatory, policy and practical restrictions, limitations, implications and eventualities (collectively, the "**COVID-19 Considerations**"), and that cancellation or postponement may be required. Neither party will have liability to the other for delays or inability to perform their obligations to the extent caused by the COVID-19 pandemic or compliance with the COVID-19 Considerations. The Parties agree that they may need to address such restrictions, limitations, implications and eventualities, and may settle on alternative methods of performance, subject to mutual agreement as to the terms thereof.