

COVID-19 TESTING SERVICES AGREEMENT

This Covid-19 Testing Services Agreement (the "Agreement") is entered into as of April 8, 2021 (the "Effective Date"), between RAPID COVID LABS, LLC, a California Limited Liability Company ("RCL") and the Fullerton Joint Union High School District, (hereafter "CLIENT"). Collectively, RCL and CLIENT may be referred to as the "Parties."

RECITALS

WHEREAS, RCL has established a business to test for the Covid-19 virus through CLIA certified lab facilities, utilizing testing kits supplied and administered through RCL (the "RCL Services");

WHEREAS, CLIENT desires to test its student athletes, coaches and athletic department staff ("Athletic Participants") for Covid-19 for the promotion of public health and safety as required by the state of California;

WHEREAS, the Parties desire to enter into an agreement for the engagement of the RCL Services as related to and in furtherance of the purposes of RCL and CLIENT.

In consideration of the agreements, terms and conditions contained in this Agreement, and based on mutual consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

AGREEMENT

1. **CLIENT Performance Obligations.** In furtherance of its obligations under this Agreement, CLIENT agrees to: (a) obtain all necessary consents from its Athletic Participants prior to initiating any Covid-19 testing; (b) provide RCL with all athletic participant information needed for RCL to be able to provide testing results to the Athletic Participants; (c) provide adequate accommodations to enable RCL to perform the testing at CLIENT's work facilities; and (d) timely pay for the RCL Services in accord with Sections 5 and 6 below (collectively the "CLIENT Obligations".)

2. **RCL Performance Obligations.** In furtherance of its obligations under this Agreement, RCL agrees to do the following: (a) provide the CLIENT with the RCL Services as requested and in accord with applicable federal, state and local laws; (b) maintain applicable state and regulatory licenses necessary to perform the RCL Services; (c) maintain a certified lab facility to perform all testing for: (i) the saliva and nasal swab RT-PCR Molecular CoV-2 test (the "PCR Test"), and (ii) Rapid PCR Testing using the ABBOTT ID-NOW platform ("Rapid PCR Test"), in compliance with standard testing protocols and procedures; (d) obtain the appropriate consent of CLIENT's "Athletic Participants" to facilitate the COVID-19 testing; and (e) provide CLIENT and the Athletic Participants with access to review the test data results upon timely completion thereof, no later than 24 hours after sample collection (collectively the "RCL Obligations".)

3. **CLIENT Warranties and Covenants.** In addition to any other warranties and covenants provided by CLIENT hereunder, CLIENT hereby warrants and covenants to RCL as follows: (a) CLIENT has obtained the appropriate consents of its Athletic Participants to facilitate Covid-19 testing; (b) CLIENT is in compliance, and will continue to comply with all local, state and federal laws and regulations applicable to the performance of the CLIENT Obligations as specified in this Agreement; (c) all of its Athletic Participants carry current private health insurance policies with coverage for the RCL Services;

and (d) that CLIENT will assist in obtaining any insurance information not promptly supplied by an Athletic Participant.

4. RCL Warranties and Covenants. In addition to any other warranties and covenants provided by RCL hereunder, RCL hereby warrants and covenants to RCL as follows: (a) RCL owns or has the legal rights to provide and furnish the RCL Obligations pursuant to the terms of this Agreement; (b) RCL is in compliance, and will continue to comply, with all local, state and federal laws and regulations applicable to the performance of the RCL Obligations as specified in this Agreement.

5. Insurance Reimbursement and Other Compensation. RCL hereby agrees to be paid for the RCL Services with respect to each Athletic Participant by submitting the laboratory and collection fees for reimbursement to the applicable insurance companies. In consideration for this and the RCL Obligations identified in Section 2 above, CLIENT agrees to (i) take all steps necessary to permit and facilitate RCL's billing and collection of fees for its services from third party sources, including but not limited to private insurance carriers ("Insurance Carriers"), and (ii) with respect to any cash payment testing ordered by CLIENT, including but not limited to Rapid PCR Testing, pay RCL the sum of \$125.00 for each RT-PCR Saliva Test, and \$125.00 for each Rapid PCR Test. RCL will invoice CLIENT from time to time, upon completion of weekly testing services. Invoices shall be payable within thirty (30) calendar days of receipt of by CLIENT ("Payment Terms"). For such cash payment testing ordered by CLIENT, CLIENT is solely responsible for payment of the fees to RCL and RCL's payment is not dependent upon billing of such services to a third-party provider or insurance carrier. The fees set forth herein represent fair payment for RCL's testing services to CLIENT and such fees were negotiated at arms-length by the Parties. The Parties represent that no fees are paid and/or shared in violation of any law, rule or regulation involving patient brokering, fee splitting, self-referrals or kickbacks for health care services. RCL hereby discloses that it estimates the CMS reimbursement to be \$100.00 for lab costs and \$23.00 for collections costs.

5.1 In the event an Athletic Participant does not have current private insurance, or the applicable Insurance Carrier(s) fails to reimburse RCL for lab costs in an amount equal to or greater than \$65.00 ("Lab Cost Reimbursement"), and RCL is also unsuccessful in obtaining reimbursement in such amount under the CARES Act for any test authorized hereunder, following due diligence and best efforts by RCL to so collect, CLIENT shall pay the sum of \$65.00 less any Lab Cost Reimbursement for each such test administered under the Payment Terms set forth above. Notwithstanding the foregoing, such payments shall not exceed an aggregate of \$50,000.00 with respect to any calendar week during which such tests were administered. The terms and conditions of this Section 5.1 are subject to a mutually agreed adjustment by the parties on or after May 20, 2021.

6. COVID Program Management Fee. CLIENT shall pay RCL a fee for managing its Covid Testing Program in the sum of \$25.00 for each test that is not a cash payment test hereunder, which shall be paid under the Payment Terms set forth above.

7. Nondisclosure, Regulation Compliance and Records Retention. The Parties agree not to disclose any of the terms and conditions of this Agreement to any third parties without the prior written approval of the other party, except that: (i) either party may disclose such terms and conditions without such approval as may be required by law or governmental rule or regulation, or to establish either party's rights under this Agreement, provided that if one party seeks to disclose information under this clause (ii), that party will limit the disclosure to the extent required, will allow the other party to review the information disclosed, and will apply, where available, for appropriate confidentiality protection, protective orders, or other like protection. Any review under this Section will not be construed to make the reviewing party responsible for the content of any disclosure. The Parties also agree to comply with the applicable provisions of the Health Information Technology for Economic and Clinical Health Act of 2009 and the

Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. section 1320d through d-8, otherwise known as "HIPAA." RCL and CLIENT agree to keep and maintain all medical and financial records for the services set forth hereunder as may be required by law.

8. Indemnification by CLIENT. In addition to any other available remedies, CLIENT hereby indemnifies and agrees to hold RCL, its officers, directors, shareholders, Athletic Participants, agents, CLIENTs, and their respective successors and assigns harmless from and against any third-party claim, liability, damage, cost, or expense (including without limitation court costs and reasonable attorneys' and expert witness fees and related expenses), incurred by any of such indemnified parties arising out of or in connection with: (i) any action or inaction that would, if proven, constitute a breach of any warranty or covenant of CLIENT set forth in this Agreement; or (ii) failure to competently perform the CLIENT Obligations herein.

9. Indemnification by RCL. In addition to any other available remedies, RCL hereby indemnifies and agrees to hold CLIENT, its officers, directors, shareholders, Athletic Participants, agents, CLIENTs, and their respective successors and assigns harmless from and against any third-party claim, liability, damage, cost, or expense (including without limitation court costs and reasonable attorneys' and expert witness fees and related expenses), incurred by any of such indemnified parties arising out of or in connection with: (i) any action or inaction that would, if proven, constitute a breach of any warranty or covenant of RCL set forth in this Agreement.

10. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue until terminated under this Section 10. This Agreement may be terminated upon thirty (30) days written notice by either party to the other party.

11. Miscellaneous.

10.1 Notices. Except as otherwise specified in this Agreement, all notices hereunder by either party shall be given in writing by personal delivery (including by a reputable courier service), or by sending such notice by facsimile machine to the addresses set forth on the signature page of this Agreement. Such notices shall be deemed to have been given and delivered upon receipt if by personal delivery, and when transmitted if by facsimile machine so long as a facsimile document is electronically generated by the transmitting machine confirming that the transmission was received. Any party, by written notice to the other as above described, may alter the address for receipt by it of written notices hereunder.

10.2 Assignment. Neither party shall assign any of its rights or obligations hereunder, in whole or in part, without the prior written approval of the other party, provided that either party may, with notice to the other party, assign all (but not part) of its rights and obligations hereunder to any entity which acquires all or substantially all of the assigning party's assets or stock pursuant to any merger, stock or asset transfer, consolidation, or other business combination, or to any entity that hold a controlling equity interest in the assigning party. Any attempt by any party to assign or transfer any of its rights or obligations under this Agreement in violation of this Subsection shall be considered void and shall be deemed a material breach of this Agreement.

10.3 Independent Contractors. CLIENT and RCL are acting hereunder as independent contractors and under no circumstances shall any of the Athletic Participants of one party be deemed the Athletic Participants of the other party for any purpose. Nothing in this Agreement shall be deemed to constitute, create, or in any way be interpreted as a partnership, joint venture, franchise, or other formal business organization involving CLIENT and RCL, nor shall anything in this Agreement be deemed to constitute one party the athletic participant or agent of the other party. Neither CLIENT nor RCL shall

have any authority under this Agreement to bind, obligate, or otherwise commit the other party to any agreement or transaction for any purpose whatsoever.

10.4 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed to be modified to the extent necessary for the provision to be legally enforceable to the fullest extent permitted by applicable law. Any court of competent jurisdiction may enforce or modify any provision of this Agreement in order that the provision will be enforced by the court to the fullest extent permitted by applicable law.

10.5 No Waiver. No consent or waiver, express or implied, by any party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder.

10.6 Dispute Resolution. If a dispute should arise between the Parties hereto, all disputes SHALL be resolved in accordance with the dispute resolution terms set forth below, which shall apply to any and all types of disputes which may arise between RCL and CLIENT.

a. *Mandatory Mediation*: The Parties hereby promise and agree that they shall mediate any dispute or claim arising between them before resorting to arbitration, as provided herein. Mediation shall be initiated by a written demand by either Party and shall be conducted before an agreed-upon mediator with Judicate West in Santa Ana, California. Mediation fees shall be divided equally among the involved Parties. If mediation is unsuccessful, the Parties shall arbitrate their dispute, as set forth below.

b. *Mandatory Binding Arbitration*: If any dispute between the Parties arises under or relates to this Agreement or otherwise relates to any transaction between the Parties hereto, including any tort or contractual claims, and if the Parties are unable to resolve their dispute by mediation, then their dispute shall be decided by neutral, binding arbitration and not by a court proceeding. Each Party hereto accordingly irrevocably waives such Party's rights to trial by jury in any legal action or proceeding arising out of this Agreement or the transactions relating to the subject matter hereof. Arbitration shall be initiated by a written demand by either Party and shall be conducted before Judicate West in Santa Ana, California, under the rules of Judicate West, or such other arbitration rules to which the Parties may agree, before a single arbitrator. The Parties shall have the right to conduct discovery pursuant to the California Civil Code, Code of Civil Procedure, and other applicable law. This Agreement shall be governed under the laws of the State of California. Judgment upon the arbitral award may be entered in any court of competent jurisdiction.

10.7 Prevailing Party. In any controversy, claim or dispute arising out of, or relating to, this Agreement or the method and manner of performance thereof or the breach thereof, the prevailing party shall be entitled to recover from the other party, in addition to any other relief, all of its reasonable costs and expense (including without limitation court costs and reasonable attorneys' and expert witness fees and related expenses) incurred in connection with such controversy, claim, or dispute. If neither party wholly prevails, the party that receives substantially the relief sought, whether by injunction, dismissal, summary judgment, judgment, or otherwise, shall be awarded all of its reasonable costs and expenses described above incurred in connection with such controversy, claim, or dispute.

10.8 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of laws principles. Each party hereby

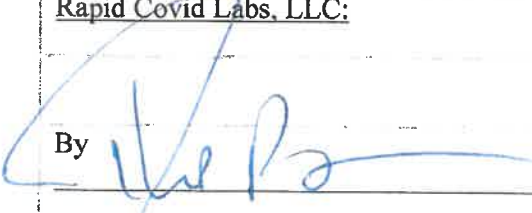
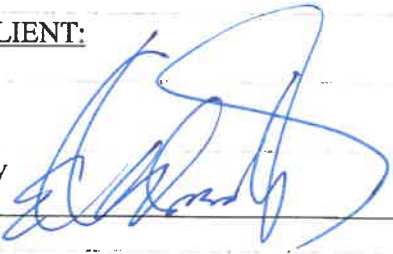
submits to personal jurisdiction of the State and Federal courts of Orange County located in the State of California with respect to any claim or proceeding relating to this Agreement.

10.9 Entire Agreement. This Agreement, together with all applicable Schedules and other attachments to this Agreement (which are incorporated herein by this reference), (i) contains the entire agreement and understanding between the Parties with respect to the subject matter hereof; and (ii) supersedes all prior agreements, negotiations, representations, and proposals, written and oral, relating to the subject matter. This Agreement may be supplemented and/or amended only by a writing signed by both CLIENT and RCL.

10.10 Binding Effect. This Agreement shall be binding upon each party hereto and the heirs, successors, and assigns of the parties hereto. Each party represents and warrants to the other party that: (i) this Agreement is a legal, valid, and binding obligation of such party enforceable against such party in accordance with its terms; and (ii) the execution, delivery, and performance of this Agreement by such party do not require any authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body.

10.11 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be considered an original, but all of which, taken together, shall constitute this Agreement; provided, however, that this Agreement shall be of no force or effect until executed by all parties hereto. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

EXECUTED as of the Effective Date set forth above.

<u>Rapid Covid Labs, LLC:</u>	<u>CLIENT:</u>
By 	By 
<u>Philip Dodge</u>	<u>Edgar Manalo</u>
<u>Print Name</u>	<u>Print Name</u>
<u>Chief Executive Officer</u>	<u>Director of Purchasing, Contracts, Warehouse, & Food Services</u>
<u>Title</u>	
<u>RCL's Address for Notices:</u> 4100 Birch Street, Suite 300 Newport Beach, CA 92660	<u>CLIENT's Address for Notices:</u> 1051 West Bastanchury Road, Fullerton, CA 92833