

LIMITED USE FOR COMMUNITY COLLEGE LD SPECIALISTS
USE IN LD ELIGIBILITY MODEL

MDTP LICENSE AGREEMENT
2019-2022

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 College. 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:

College Name: _____

Street: _____

City, State, Zip: _____

CONTACT PERSON:

Name: _____

Title: _____

Dept./Div: _____

Phone: _____

Fax: _____

Email: _____

BILLING ADDRESS:

College Name: _____

Street: _____

City, State, Zip: _____

Reference: _____

Return 2 copies with original signatures to MDTP. A fully executed copy will be returned to licensee.

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

WHEREAS, Regents of the University of California and The California State University (CSU) 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 LICENSEE students for use in the California Community College Learning Disabilities Eligibility Model during the term of this Agreement. Any other use by LICENSEE is permitted only if LICENSEE has a valid annual license in effect at time of use.
- 1.2 MDTP shall provide LICENSEE on request one camera-ready copy of Tests for reproduction on paper stock, without changes, by LICENSEE solely for noncommercial internal purposes.
- 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.
- 2.4 All authorized copies of Tests made by LICENSEE shall be complete copies and shall include thereon the copyright notice printed on the cover page of Tests.
- 2.5 LICENSEE shall provide on request actual usage figures to MDTP twice each year.

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 three-year license fee will be the same amount as MDTP's "small college" annual fee in effect during the first year of the term of this agreement. The MDTP License Fee Schedule for Limited Use by LD Specialists in the LD Eligibility Model is indicated in Attachment B.
- 3.3 Purchase Orders and checks are to be payable to UC Regents and mailed or presented to Attn: MDTP, University of California, San Diego, 9500 Gilman Drive Mail Code 0319, La Jolla, CA, 92093-0319. Check must reference the invoice number or name of the College.
- 3.4 The limited use license 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.

Return 2 copies with original signatures to MDTP. A fully executed copy will be returned to licensee.

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.

6. TERM OF AGREEMENT

- 6.1 The term of this Agreement shall be from 1 July 2019 to 30 June 2022 unless terminated in accordance with Article 7.
- 6.2 This Agreement may be renewed on a three-year basis upon the mutual consent of both parties and the presentation of LICENSEE’s purchase order to MDTP. MDTP will provide LICENSEE with an updated annual fee structure/price list on an annual basis at least sixty (60) days prior to termination of this Agreement. The renewal fee shall be based on MDTP’s annual fee schedule at time of renewal. The three-year license renewal fee shall be the same amount as MDTP’s “small college” annual fee in effect during the first year of the renewal of this agreement.

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 nor 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: Attention: Kimberly Samaniego (MDTP)
University of California, San Diego
9500 Gilman Drive Mail Code 0319
La Jolla, CA 92093-0319

LICENSEE: _____

Return 2 copies with original signatures to MDTP. A fully executed copy will be returned to 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. However, the use of MDTP's, UC's, or CSU's name as associated with the copyright notice for the Tests as described in Article 2.4 shall not be restricted.

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.

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: _____

By: _____

(Signature)

Kimberly Samaniego

(Print Name)

Title: MDTP Director

Title: _____

Date: _____

Date: _____

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ATTACHMENT A

LIST OF MDTP LICENSED TESTS (TESTS)

<u>Licensed Tests</u>	<u>Test Code</u>
Algebra Readiness Test	AR50/86
Algebra Readiness Test	AR50/90
Elementary Algebra Diagnostic Test	EA50C86
Intermediate Algebra Diagnostic Test	IA45C86
Intermediate Algebra Diagnostic Test	IA45C91
Precalculus Diagnostic Test	PC40C86
Precalculus Diagnostic Test	PC60C86

All tests are on the California Community College Chancellor's Office List of Approved Assessment Instruments

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ATTACHMENT B

MDTP License Fee Schedule For Limited Use by LD Specialists in the LD Eligibility Model

For the period
1 July 2019 – 30 June 2022

\$400.00