



## **REQUEST FOR PRICE QUOTATION**

Federal Purchase: \$50,001 - \$119,100

**RFPQ No. NC-2026-04**

### **Summer Residential Academy (USC) – Hybrid Math, Social Emotional Learning, College Awareness & Leadership**

#### **Requesting Agency:**

Fresno County Superintendent of Schools (“**FCSS**”)

Contact Person: Eddie Rodriguez, Director

Department: Migrant Education Program

6011 N. Fresno St Suite 105

Fresno, CA 93710

Phone No.: (559) 497-3999 | Email: [erodriguez@fcoe.org](mailto:erodriguez@fcoe.org)

NOTICE IS HEREBY GIVEN that FCSS requests a price quotation for the goods/services set forth below. This Request for Price Quotation (“**RFPQ**”) is not an offer and does not bind FCSS to any contract or to procure any goods/services. FCSS reserves the right to cancel this RFPQ, change any dates stated below, and/or modify any provisions of this RFPQ.

1. **DESCRIPTION OF GOODS/SERVICES.** FCSS is requesting a price quotation for the following: Summer residential academy Hybrid Math, Social Emotional Learning (SEL), College Awareness, and Leadership Services. The selected respondent shall conduct and implement a hybrid summer program consisting of both virtual and residential components for up to twenty-five (25) eligible migrant students entering grade nine (9) through twelve (12). The residential portion of the program will take place at the University of Southern California, 3551 Trousdale Pkwy, Los Angeles, CA 90089. The program shall include a minimum of ten (10) hours of asynchronous instruction and a minimum of twenty (20) hours of synchronous instruction. The respondent will be responsible for securing all necessary facilities at the University of Southern California, including dormitories, classrooms, and campus resources. The selected respondent must also provide meals (breakfast, lunch, dinner, and snacks), daily as well as overnight supervision, and full lodging accommodation throughout the residential component. The selected respondent shall oversee the supervision and training of all staff involved in the program, including workshop facilitators, teachers, and support staff. The program must also include organized campus tours and coordinated use of university facilities during the residential experience. The selected respondent must have experience providing supplemental services to migrant students, possess a minimum of two (2) years of established experience, and maintain a current, positive working relationship with the University of Southern California, including its administration, faculty, and staff, as well as departments related to facilities, dining, and housing. Respondent shall provide all labor, materials, supplies, equipment, and transportation necessary to perform the services required of the respondent (except for the roundtrip transportation of students the USC campus for the residential component). Such provision and services to commence on June 7, 2026, and be completed by no later than June 30, 2026. The residential component shall be from June 7, 2026, through June 13, 2026. The services shall be performed at: the University of Southern California, 3551 Trousdale Pkwy, Los Angeles, CA 90089.

The curriculum developed for this program must align with FCSS's Service Delivery Plan by including the following components:

- A. Math: Provide migrant students with supplemental math services focusing on problem solving and modeling data.
- B. English Language Development (ELD): Support the development of academic language and content knowledge.
- C. Student Engagement: Offer activities that promote self-pride, cultural awareness, and life skills, including team building, conflict management, goal setting, problem solving, and college preparation.
- D. Social Emotional Learning (SEL): Offer migrant students the ability to develop healthy identities, manage emotions, achieve personal and collective goals, possess empathy and maintain healthy relationships, and make responsible decisions through various lessons and activities.
- E. Assessment: Administer pre and post assessments to measure academic growth.

The Fresno County Superintendent of Schools shall be responsible for the identification and recruitment of eligible migrant students for participation in the program. In addition, Fresno County Superintendent of Schools shall provide roundtrip transportation for all participating students to and from the University of Southern California.

2. SUBMISSION OF PRICE QUOTATIONS. All price quotations shall be on the Price Quotation Form that is attached and shall be submitted in accordance with the instructions contained herein **before 3:00 p.m. (“Submittal Deadline”), based on the clock designated by FCSS, on May 4, 2026** via email to the email listed above. Price quotations that are timely received will be considered by FCSS and written notice of FCSS’ selection will be issued to respondents who timely submitted quotations. FCSS reserves the right to request clarification and/or additional information from any or all respondents. A respondent may submit only one price quotation in response to this RFPQ.
3. SELECTION. The goods/services required by this RFPQ will be paid, in part or in whole, with federal funds and are subject to applicable federal and state laws, regulations, and requirements. FCSS will select the successful respondent based on the Method of Selection stated in the Quotation Evaluation Sheet. FCSS expects to select the successful respondent on or before May 8, 2026. Within 10 days of the selection, the selected respondent shall enter into a contract with FCSS, the form of which is attached subject to any changes as agreed upon by FCSS and the selected respondent. Following execution of the contract, FCSS shall issue a purchase order to the selected respondent for such procurement as FCSS may decide. If the selected respondent is unable or unwilling to provide the goods/services required by FCSS and execute the contract, FCSS, without any obligation or liability to the selected respondent, may select another respondent. FCSS shall not have any obligation to procure any goods/services or pay the selected respondent without an executed contract and one or more purchase order(s) issued by FCSS for procurement of goods and services or services only. FCSS’ selection of a respondent shall not constitute an exclusive contract or arrangement for the selected respondent to provide the proposed goods/services to FCSS, and FCSS may enter into contract(s) for or procure such goods/services from one or more third parties.
4. AWARD OF OVERFLOW CONTRACT. FCSS may, without any obligation, award a contract to the second respondent (or subsequent respondent if negotiations are terminated with the selected respondent in accordance with 3 above) to provide overflow goods or services to the extent the selected respondent is unable to meet all the demands of FCSS as part of the selected respondent’s contract.
5. QUESTIONS. Questions regarding this RFPQ and/or applicable requirements shall be submitted in writing to, and received by, the Contact Person listed above at the above email before 3:00 p.m. on April 27, 2026
6. FEDERAL REQUIREMENTS. The contractor to which FCSS awards the Contract shall comply with applicable federal law, including but not limited to, Equal Employment Opportunity, Davis-Bacon Bacon Act, Contract Work House and Safety Standards Act, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements (37 CFR Part 401), Clean Air and Federal Water Pollution Acts, Debarment and Suspension, Byrd Anti-Lobbying Amendment (31 U.S.C § 1352), Surveillance Equipment Restrictions (2 CFR Section 200.216). Buy American Provision (2 CFR Sections 220.16d, 200.322 & 210.21d), Procurement of Recovered Materials (2 CFR Section 200.323), Small and Minority Business Preferences (2 CFR Section 200.321), Federal Occupational Safety and Health Act (34 CFR 75.609), and Energy Conservation Compliance (34 CFR 75.616).  
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**PRICE QUOTATION FORM**

Federal Purchase: \$50,001 - \$119,100

**RFPQ No. NC-2026-04**

**Respondent:**

Name of Respondent: \_\_\_\_\_

DBA name(s), if any: \_\_\_\_\_

Contact Name (Name, Title): \_\_\_\_\_

Street address (**no PO Box**): \_\_\_\_\_

State/City/Zip Code: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

1. PROPOSED GOODS/SERVICES AND BASE QUOTATION. The respondent listed above proposes to provide the following goods/services to the Fresno County Superintendent of Schools (**'FCSS'**) for the Proposed Price listed below (**must include all applicable taxes in each Proposed Price; attach separate page if additional space is needed**):

Description of Proposed Goods/Services	Proposed Price Per Student
Summer residential academy Hybrid Math, Social Emotional Learning (SEL), College Awareness, and Leadership Services at the University of Southern California	_____ x 25
<b>"Base Quotation" (sum of Proposed Price x 25):</b>	

2. RESPONDENT'S BACKGROUND.

3.1 Organizational structure of respondent (**check one and complete as applicable**):

Corporation    Partnership    Joint Venture    Sole Proprietor

Other (specify): \_\_\_\_\_

3.2 Respondent incorporated/formed on \_\_\_\_\_ (date) under the laws of the State of \_\_\_\_\_

3. RESPONSES TO EVALUATION FACTORS. In addition to completing and submitting this Price Quotation Form, each respondent shall prepare and submit to FCSS written responses to the evaluation factors set forth on the Quotation Evaluation Sheet. If a response to an evaluation factor is missing, 0 points will be assigned to that evaluation factor. **The responses to the evaluation factors shall be no more than five pages, which shall include within the five pages any attachments or exhibits.**

4. AGREEMENT FORM. The form of the contract is attached to this RFPQ. Any respondent that desires to make any changes to the contract form shall do so using track changes and submit the proposed contract to FCSS at the same time as the respondent submits its price quotation. After the Submittal Deadline, FCSS will not receive or consider from any respondent any exception, change, or reservation to the Agreement.

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**QUOTATION EVALUATION SHEET**  
 (Sheet to be completed by FCSS)

Name of Respondent: \_\_\_\_\_

**METHOD OF SELECTION:** FCSS will award the Contract to the responsible respondent possessing the ability to perform successfully under the terms and conditions of the Contract, taking into consideration whether the respondent is eligible based on the evaluation factors in Part 1 and the respondent’s rating on the evaluation factors in Part 2. The pricing for additive or deductive alternate, if any, shall not be considered in selecting the successful respondent. FCSS reserves the right to add any additive alternate or deduct any deductive alternate after the selected respondent is determined.

**PART 1 – ELIGIBILITY FACTORS**

No.	Evaluation Factor	Yes	No	N/A
1.1	If respondent is a corporation or other entity, is respondent duly formed and in good standing under applicable state laws (e.g., respondent’s status is not terminated, revoked or suspended)? <i>Respondent is ineligible if the answer is “no”; do not proceed.</i>			
1.2	If respondent is a corporation or other entity, is respondent registered with the California Secretary of State to do business in California (check California Secretary of State website)? <i>Respondent is ineligible if the answer is “no”; do not proceed.</i>			
1.3	Is respondent currently debarred, suspended, or otherwise ineligible to be awarded a contract paid for with federal funds (see federal System for Award Management (SAM))? <i>Respondent is ineligible if the answer is “yes”; do not proceed.</i>			
1.4	Has respondent provided assurance that it will be able to maintain during the term of the Contract commercial general liability insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate? <i>Respondent is ineligible if the answer is “no”; do not proceed.</i>  NOTE: Acceptable assurance includes a copy of a current Certificate of Insurance evidencing the required insurance and policy limits or a written statement from respondent’s insurance broker/agent that respondent will be able to obtain and maintain the required insurance and policy limits.			
1.5	Has respondent, if it has any employees, provided assurance that it will be able to maintain during the term of the Contract workers’ compensation insurance policy as required by Labor Code or is legally self-insured pursuant to Labor Code section 3700 et seq.? <i>Respondent is ineligible if the answer is “no”; do not proceed.</i>  NOTE: Acceptable assurance includes a copy of a current Certificate of Insurance evidencing the required insurance and policy limits or a written statement from respondent’s insurance broker/agent that respondent will be able to obtain and maintain the required insurance and policy limits. If respondent has no employee, it shall submit a written statement so stating.			

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**PART 2 – RATING FACTORS**

No.	Evaluation Factor	Rating
2.1	<p>During the last five years, has respondent or any of its owners, partners, or officers been debarred, disqualified, removed or otherwise ineligible to bid on, submit proposals for, or be awarded any contract by a government agency?</p> <p>Yes                    0 point  No                        5 points</p>	
2.2	<p>Is respondent currently, or during the last five years, the debtor in a bankruptcy case?</p> <p>Yes                    0 point  No                        5 points</p>	
2.3	<p>During the last five years, how many claims have been filed in court or arbitration against respondent on any contracts or transactions with any government agencies?</p> <p>0 claims                5 points  1-3 claims               3 points  4 or more claims      0 point</p>	
2.4	<p>During the last five years, what experience does respondent have in providing to California public educational agencies goods/services similar that are similar to those requested under this RFP?</p> <p>5 years or more experience    10 points  3-4 years of experience        8 points  1-2 years of experience        4 points  No experience                    0 point</p>	
2.5	<p>What is respondent's Base Quotation? (See Price Quotation Form completed by respondent)</p> <p>Lowest                    10 points  2<sup>nd</sup> Lowest                8 points  3<sup>rd</sup> Lowest                6 points  4<sup>th</sup> Lowest                4 points  5<sup>th</sup> or Higher              2 points</p>	
2.6	<p>Does the respondent have the qualifications and ability to successfully provide the goods/services requested by this RFPQ?</p> <p>NOTE: Qualification and ability include but are not limited to respondent's financial capability, staffing and capacity, and methods, sequence, and timeline for providing the goods/services required by this RFPQ.</p> <p>Meets qualification and has ability to successfully perform    10 points  Deficient in qualification and ability to successfully perform    4 points  Is not qualified and is not likely to successfully perform        0 point</p>	
2.7	<p>Does respondent accept the Agreement as attached to this RFPQ. (See Agreement form with respondent's proposed modifications, if any)</p> <p>Respondent proposes no changes to the Agreement            10 points  Respondent proposes minor changes to the Agreement        4 points  Respondent proposes substantial changes to the Agreement    0 point</p>	

2.8	<p>What percentage of respondent's employees who will be providing services under the Agreement have 5 or more years of prior experience working in migrant education for a local education agency?</p> <p>75% or more 50% or more 25% or more</p>	
		Total Rating:

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4856-4818-4982, v. 7



**CONTRACTOR-PROVIDED SERVICES AGREEMENT**

**(“Agreement”)**

Legal Doc./Contract No. of this signed Agreement (*Legal use only*): \_\_\_\_\_

**COVER**

Program/Event: **Summer Residential Academy (USC) - RFPQ No. NC- 2026-04**

<b>CONTRACTOR</b>	
<p>Full legal name of other party (“<b>Contractor</b>”)          Attn: Name of contact person, Title          Street address (<b>no PO box</b>)          City, State #####          Phone: (###) ###-####          Email: email</p>	<p>DBA (<i>leave blank if none</i>):</p>
<b>FCSS</b>	
<p>Fresno County Superintendent of Schools (“<b>FCSS</b>”)          Attn: Name of contact person, Title          Dept.: Name of department          Fresno County Office of Education          Street address          Fresno, CA 93###          Phone: (559) ###-####          Email: email@fcoe.org</p>	<p><b>ADDRESS FOR INVOICE TO FCSS:</b> All invoices to FCSS shall be addressed to the attention of Internal Business Services–Accounts Payable, Office of Fresno County Superintendent of Schools, 1111 Van Ness Ave, Fresno, CA 93721</p>
<b>CONTRACT TERM</b> (see § 3.1)	<b>TERMINATION DURING CONTRACT TERM</b> (see § 3.2)
<p>“<b>Effective Date</b>”: Month ##, 20##          “<b>Termination Date</b>”: Month ##, 20##</p>	<p>Ground for Termination (<i>mark one</i>): <input type="checkbox"/> With cause  <input type="checkbox"/> With or without cause</p> <p>“<b>Notice Period</b>”: At least <b>30 days</b> before the effective date of termination of this Agreement</p>
<b>CONTRACT AMOUNT, INVOICE, AND PAYMENT</b> (see Art. 2). Contractor shall invoice FCSS and FCSS shall pay Contractor the Contract Amount pursuant to the Payment Schedule stated below ( <i>mark one and complete as indicated</i> ):	
<p><u>  </u> <b>A. Fixed Installment:</b> \$_____ per month/quarter/year, the sum of all payments shall <i>equal</i> the “<b>Contract Amount</b>” of \$_____. Contractor shall submit each invoice to FCSS <u>  </u> <i>monthly/quarterly/yearly</i> by no later than the 15th day of the month immediately following the last day of the period for which Contractor requests payment.</p> <p><u>  </u> <b>B. Rate/Not-To-Exceed Contract Amount:</b> Services that Contractor performs in accordance with this Agreement, to be billed at \$_____ per hour in 15 minute increments <b>OR</b> pursuant to the rates set forth in <u>  </u> <i>Exhibit 1</i> and the sum of which shall <i>not exceed</i> the “<b>Contract Amount</b>” of \$_____. Contractor shall submit each invoice to FCSS <u>  </u> <i>monthly/quarterly/yearly</i> by no later than the 15th day of the month immediately following the last day of the period for which Contractor requests payment.</p> <p><u>  </u> <b>C. Entire Contract Amount/Completion Of All Services:</b> Entire “<b>Contract Amount</b>” of \$_____. Contractor shall submit the invoice to FCSS within 30 days of the date on which Contractor completed all Services in accordance with this Agreement.</p> <p><u>  </u> <b>D. Other/Specified Amount, Paid Periodically:</b> The “<b>Contract Amount</b>” of \$_____. Contractor shall submit each invoice to FCSS within 30 days of the date on which Contractor has completed, in accordance with this Agreement, the Services for which Contractor requests payment.</p> <p><b>Invoice and “Payment Schedule”:</b> Each invoice shall comply with Section 2.2 and must be received and approved by FCSS before Contractor may receive any payment under this Agreement. If <u>  </u> <i>A, B, or D</i> is marked above, FCSS shall pay Contractor within 30 days after Contractor has completed, in accordance with this Agreement, the Services required of Contractor for the period for which Contractor requests payment. If <u>  </u> <i>C</i> is marked above, FCSS shall pay Contractor within 30 days after Contractor has completed, in accordance with this Agreement, all Services required of Contractor.</p>	

PREVAILING WAGE (*mark if a portion or all of the Services are subject to the payment of prevailing wages*): A portion or all of the Services that Contractor will provide under this Agreement are subject to the payment, monitoring, and enforcement of prevailing wages. The Prevailing Wage Work Addendum (General/ Standard Services Agreement) is attached hereto and constitutes a part of this Agreement. NOTE: If prevailing wage work is marked here, FCSS' Facilities & Operations shall complete and attach the Prevailing Wage Work Addendum (General/Standard Services Agreement).

CONTRACTOR OBLIGATIONS. Unless specifically stated otherwise on this Cover, Contractor shall provide all labor, materials, supplies, equipment, and transportation necessary to perform all obligations required of Contractor as set forth elsewhere in this Agreement and the following **"Services"**:

A. *What Services will Contractor provide:* Contractor shall be responsible for the following:

1. Conduct a Hybrid Residential Math, Social Emotional Learning ("SEL"), College Awareness, and Leadership Program ("Program") at the University of Southern California, ("USC") between the following dates:
  - a. June 7, 2026 – June 30, 2026
2. Academy shall accommodate up to twenty-five (25) eligible migrant students entering grades 9<sup>th</sup> – 12<sup>th</sup>
  - a. Academy will include a virtual and residential component
    - i. Virtual component will include ten (10) hours of asynchronous instruction
    - ii. Residential component will include twenty (20) hours of synchronous instruction at USC
    - iii. Each participant will receive thirty (30) hours of Math, including SEL, College Awareness and Leadership
    - iv. Pre and Post assessments will be provided to measure academic growth in Mathematics
  - b. The residential portion of the Program will be administered at University of Southern California, 3551 Trousdale Pkwy, Los Angeles, CA 90089 on June 7, 2026 – June 13, 2026
3. Contractor shall develop, administer, coordinate, plan and implement all components of the Program
4. The curriculum developed for the Program shall meet the FCSS Service Delivery Plan focus area:
  - a. Mathematics ("Math")
    - i. Provide migrant students with supplemental services focusing on problem solving and motivating data.
  - b. English Language Development ("ELD")
    - i. Support the development of academic language and content knowledge
  - c. Student Engagement
    - i. Offer activities that promote self-pride, cultural awareness, and life skills, including team building, conflict management, goal setting, problem solving, and college preparation
  - d. Social Emotional Learning ("SEL")
    - i. Offer migrant students the ability to develop healthy identities, manage emotions, achieve personal and collective goals, possess empathy and maintain healthy relationships, and make responsible decisions through various lessons and activities.
    - ii. Participating students will learn skills to help them become effective leaders in school and in the community. These skills enable students to strive for higher goals in education and to gain the most from all available opportunities. Services will include pre-college advisement, leadership development, teambuilding and cultural enrichment

5. Contractor shall secure all credential teachers (“Teachers”) and Academic Instructional Tutor (“Tutor”) needed to conduct the Academy
6. Thirty (30) hours of Math instruction with integrated ELD will be provided for each student. Student Engagement and SEL components will be embedded within instruction during the Academy
7. Contractor shall provide all labor, mileage reimbursements, materials, supplies, supervision and equipment necessary to conduct the Academy
8. Contractor shall provide a campus tour, workshop facilitators and presentation, key-note speakers, secure dormitories accommodations for the residential component of the Academy
9. Contractor shall provide meals (breakfast, lunch, dinner and snacks) for each student throughout the duration of the Agreement.
10. Contractor shall be responsible for all services and logistics of the Program, including facilities, lectures, workshops, campus tours, and room use throughout the duration of the Agreement
  - a. Contractor shall provide day and nighttime, which include overnight supervision, of all students throughout the duration of the Agreement
11. Contractor shall be responsible for supervision and training of all staff participating in the workshops and working with (selected vendor) and FCSS Administrators on Policies and Procedures, Appropriate Dress Code, Understanding the Educational System, Confidentiality, Mandated Reporting, and Program Goals and Objectives
12. Contractor shall maintain a complete file of personnel at their office, including, but not limited to, documentation of fingerprints clearance, TB test, First Aid/CPR/AED Certification, Resume, Letter of Recommendation, and Complete Application. The file will be available to FCSS during regular business hours
13. Contractor shall certify that its employees, tutors and subcontractors who may come in contact with pupils, have not been convicted of a felony as defined in Education Code Section 45122.1
  - a. Contractor has in place an agreement with the Department of Justice for “subsequent arrest service” and shall immediately inform the FCSS, and remove from the premises where pupils may be present, any employee or subcontractor whom they discover has been subsequently charged with a felony defined in Education Code Section 45122.2 pending resolution of criminal charge
14. Contractor shall indemnify, hold harmless, and defend causes of action arising out of Contractor’s failure to comply with this section or arising out of Contractor’s removal of any employees based on subsequent arrest. This obligation shall survive the term in the Agreement

**B. When will Contractor provide the Services (mark one and complete as indicated):**

**Date Determined** – Contractor will perform the Services on (*state specific date(s)*): **June 7, 2026 – June 30, 2026** The Parties’ staff may mutually change any specified date if the new date is within the Contract Term and there is no change to the Contract Amount.

**Date to Be Determined** – The Parties’ staff will coordinate and schedule the particular date(s) on which Contractor shall perform the Services, which date(s) shall be within the Contract Term.

**C. Where will Contractor provide the Services (state full address):** **University of Southern California, 3551 Trousdale Pkwy, Los Angeles, CA 90089** The Parties’ staff may mutually change the location if there is no change to the Contract Amount.

**D. Full name of Contractor staff who must perform the Services (leave blank if none designated):**

SUBCONTRACTOR DESIGNATION (*mark if Contractor will use any subcontractor to perform any of the Services*): Contractor is subcontracting with one or more subcontractors to perform a portion of the Services. Contractor has listed each subcontractor on the Subcontractor Designation Form, which is attached and constitutes a part of this Agreement. NOTE: If subcontractor designation is marked here, the FCSS department listed above shall provide the Subcontractor Designation Form to Contractor for Contractor to complete and return to the department.

FCSS OBLIGATIONS. FCSS shall perform all obligations required of FCSS as set forth elsewhere in this Agreement and the following (*leave blank if no additional obligations*):

FCSS shall be responsible for the following: The identification and recruitment of eligible migrant students. Provide round trip transportation for eligible migrant students to and from University of Southern California, for services

RECITALS/OTHER TERMS AND CONDITIONS (*leave blank if none*):

REQUIRED DOCUMENTS (see § 1.4.1). Contractor shall provide to FCSS each document marked below and those required of Contractor elsewhere in this Agreement (collectively **“Required Document”**):

- A. Insurance marked below and complying with Section 4.1, written proof of which Contractor shall provide to FCSS when Contractor delivers this Agreement signed by Contractor and before Contractor commences any Services, unless Contractor is a school district or other public entity in which case Contractor shall provide written proof to FCSS upon FCSS’ request (*mark each required*):
  - Commercial general liability with additional insured coverage (see Section 4.1.1).
  - Workers compensation and employer’s liability if Contractor has any employees.
  - Commercial auto liability with a combined single limit of not less than \$1,000,000 per accident if Contractor operates any vehicle to perform the Services and such Services do not include the transportation of students and/or other persons. If the Services required of Contractor includes the transportation of students and/or other persons, this insurance shall contain: (1) a combined single limit of not less than \$5,000,000 per accident and (2) a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools, the Fresno County Board of Education, and their officers, employees, agents, and volunteers as an additional insured.
  - Cyber liability. (If such coverage is not provided as part of the CGL policy and additional insured coverage.)
  - Professional liability. (Including cyber E&O, if applicable)
  - Sexual abuse and molestation. (If such coverage is not provided as part of the CGL policy and additional insured coverage.)
- B. Fingerprinting and Criminal Background Check Certification (**“Fingerprinting Certification”**), which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
- C. Fingerprinting and Criminal Background Check Addendum for Contractor Operating as Sole Proprietor (**“Sole Proprietor Fingerprinting Addendum”**), which Contractor must obtain from and submit to FCSS.
- D. Tuberculosis Certification (**“TB Certification”**), which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
- E. At FCSS’ request and as applicable, Taxpayer Identification Number Request, W-9 (*the form of which Contractor shall obtain from FCSS*) or Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (W-8); *and* Nonresident Withholding Allocation Worksheet (Form 587), Withholding Exemption Certificate (Form 590), or other Franchise Tax Board forms; *and* documents that FCSS requires to process payment to Contractor.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from this Agreement, Contractor and FCSS, separately referred to as a **“Party”** and collectively as the **“Parties,”** have reviewed and understand and hereby enter into this Agreement. Unless the context requires otherwise, any reference to a Party in this Agreement includes, as applicable, its governing

body and members thereof, officers, employees, and agents. Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement.

CONTRACTOR

FCSS

By: \_\_\_\_\_  
Print Name:  
Title:

By: \_\_\_\_\_  
Dr. Michele Cantwell-Copher, Superintendent  
or Authorized Designee

**NOTE – ELECTRONIC SIGNATURE:** While FCSS will accept digital signatures on contracts and amendments, they must be validated by a reliable Certificate Authority, and if a digital signature is used to execute any such document, the signature page thereof must be provided to FCSS in the electronic format it was signed in.

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## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following Articles:

Article 1	Scope of Services and Obligations
Article 2	Payment
Article 3	Term and Termination of Agreement; Suspension of Services
Article 4	Insurance
Article 5	Indemnity
Article 6	Dispute Resolution
Article 7	General Provisions

Terms with initial capital letter shall have the respective meanings set forth in this Agreement.

### ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 PURPOSE. By this Agreement, the Parties desire to set forth the terms and conditions upon which Contractor shall provide, and FCSS shall compensate Contractor for, performance of Contractor's obligations under this Agreement, and to set forth the Parties' rights and obligations relating to this Agreement.

SECTION 1.2 NON-EXCLUSIVE CONTRACT. Contractor understands and agrees that: (A) this Agreement does not constitute an exclusive contract for Contractor to provide the Services to FCSS, and FCSS has or may enter into contract(s) with one or more third parties to provide services to FCSS that are identical or similar to the Services; and (B) except as required by a Purchase Order issued in accordance with this Agreement, Contractor is not obligated to provide any Services to FCSS and FCSS is not obligated to accept or pay Contractor for any Services

SECTION 1.3 QUALIFICATION, SUPERVISION, AND CONTROL. Contractor represents and shall ensure that it and all persons whom it employs or retains to perform this Agreement have the necessary training, skill, and experience and are qualified to so perform, including having throughout the Contract Term all required licenses, permits, and/or certifications (collectively and separately "**License**"). Contractor shall provide FCSS with written proof of each License upon FCSS' request and notify FCSS in writing no later than 10 days after Contractor receives any notice that any such License has been revoked, suspended, placed on probation, or non-renewed. Unless stated otherwise in this Agreement or a Purchase Order in which case such provisions shall apply to the extent provided therein, Contractor is solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for Contractor to perform this Agreement; (B) the acts and omissions of Contractor's officers, employees, agents, and any other persons who Contractor retains to perform this Agreement; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and/or damage or loss to the property of Contractor's officers, employees, agents and any persons who Contractor retains to perform this Agreement, to any officers, employees, agents, students, or invitees of FCSS, or to any Third Party. Upon FCSS' request, Contractor shall dismiss any of Contractor's employees, suppliers, or materialmen whom FCSS determined are not skilled for the task assigned.

SECTION 1.4 WORK PRODUCTS AND RIGHTS THERETO. Unless stated otherwise on the Cover in which case such provisions shall apply to the extent provided therein, this Section shall survive the termination of this Agreement and apply to: (A) any Work that FCSS provides to Contractor pursuant to or relating to this Agreement ("**FCSS Work**"); and (B) any Work that is prepared for and/or provided to FCSS by or on behalf of Contractor pursuant to or relating to this Agreement ("**Contractor Work**"). The following applies to the FCSS Work: (A) the FCSS Work is FCSS' property and FCSS has all interests and rights thereto; (B) Contractor does not own and shall not claim any interest or right to or in the FCSS Work; (C) FCSS grants to Contractor a limited license during the Contract Term to use and reproduce only those portions of the FCSS Work necessary for Contractor to perform this Agreement; and (D) Contractor shall return any or all FCSS Work to FCSS upon FCSS' request. The following applies to the Contractor Work: (A) Contractor represents that the Contractor Work is Contractor's original work and does not contain any unlawful matter or infringe upon any Third Party's copyright, right, or interest; (B) the Contractor Work is an instrument of service and constitutes FCSS' sole property, and Contractor shall deliver to FCSS the Contractor Work within 30 days of the date of completion of the Services or the date of termination of this Agreement, whichever is earlier; and (C) FCSS shall have the right to, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the Contractor Work. "**Work**" means any data, document, display, drawing, report, material, invention, work, and discovery, including any copyright, right, and interest therein or thereto and whether written, recorded, or electronically stored, and shall include source codes and other codes and information if this Agreement requires Contractor to prepare, create, modify, update, or perform work relating to any website, webpage, and/or computer

software, program, or product. **“Third Party”** means a person who or an entity that is *not* any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of Contractor; (C) an employee, agent, or volunteer of FCSS or a member, officer, or agent of the Fresno County Board of Education; or (D) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party’s behalf.

#### SECTION 1.5 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

1.5.1 **GENERALLY.** Each Party shall comply with all laws and regulations (collectively **“Law”**) applicable to its performance of this Agreement, and all Law that it agrees to comply under this Agreement (referred to collectively and separately as **“Applicable Law”** and shall include amendments and Law that are in effect as of the Effective Date or become effective during the Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and an Applicable Law, the provision in this Agreement shall govern except where such provision is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein. Each Party shall comply with each grant (if any) that provides funding to pay for this Agreement and all Law and requirements applicable to such grant.

1.5.2 **FEDERAL GRANT FUNDS.** The provisions of this Subsection apply if this Agreement is paid, in part or in whole, with federal grant funds. Each Party shall comply with federal laws, regulations, and requirements applicable to such federal grant funds. Contractor represents that it is not debarred, suspended, or otherwise excluded or ineligible to be awarded this Agreement. Contractor shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Orders 12549 and 12689. Contractor shall also comply with: (A) applicable federal laws, regulations, and requirements, including but not be limited to, non-discrimination based on race, color, national origin, sex, disability, or age; (B) applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387); (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; (D) the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and FCSS’ Conflict of Interest Policies; (E) Conflict Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements (37 CFR Part 401); (F) Surveillance Equipment Restrictions (2 CFR Section 200.216); (G) Domestic Preferences (2 CFR Section 200.322); Procurement of Recovered Materials (2 CFR Section 200.323); (H) Small and Minority Business Preferences (2 CFR Section 200.321); (I) Federal Occupational Safety and Health Act (34 CFR 75.609); and (J) and Energy Conservation Compliance (34 CFR 75.616). Upon FCSS’ request, whether during or after the Contract Term, Contractor shall cooperate with and provide FCSS with documents and information relating to this Agreement that are necessary for FCSS to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of this Agreement.

#### SECTION 1.6 RECORDS AND INFORMATION.

1.6.1 **REQUIRED DOCUMENTS.** Contractor shall provide to FCSS each Required Document marked on the Cover, each of which is incorporated into and constitutes a part of this Agreement. If any Required Document becomes incorrect or inapplicable or expires during the Contract Term, Contractor shall promptly notify in writing and/or submit to FCSS the corrected, updated, or effective Required Document. If Contractor refuses to provide any Required Document or corrected, updated, or effective version thereof, FCSS shall have the right to withhold payment of any or all of the Contract Amount until such time that FCSS receives the Required Document from Contractor.

1.6.2 **CONFIDENTIAL MATERIAL.** If any documents and/or information (for example and not as a limitation, employee or student record) that are subject to nondisclosure or protection under federal and/or California laws (collectively and separately **“Confidential Material”**) are provided to or created by Contractor for or pursuant to this Agreement, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as this Agreement may permit; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to Contractor’s performance of this Agreement; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Subsection shall survive the termination of this Agreement. To the extent Contractor’s provision of the Services under this Agreement will require Contractor staff to view, handle, create, or receive Confidential Material consisting of student records of FCSS’s students or student services-recipients

(“**Pupil Records**”) that are subject to the Family Educational Rights and Privacy Act (“**FERPA**”), Contractor acknowledges and agrees, for the purposes of this Agreement, that Contractor is hereby designated as a “school official” with “legitimate educational interests” in the Pupil Records, as those terms are defined under FERPA and its implementing regulations. Contractor agrees to abide by the FERPA limitations and requirements imposed by 34 CFR 99.33(a) on school officials, including that Contractor will not disclose Pupil Records to any other party without the prior written consent of each pupil’s parent or eligible pupil.

1.6.3 **RECORD RETENTION, INSPECTION, AND AUDIT.** Contractor shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of Contractor under this Agreement for at least five years after the date on which this Agreement terminates and make them available, upon FCSS’ request, for review, audit, and/or copying by FCSS and/or any federal or state agencies. Upon FCSS’ written notice to Contractor that a longer retention period is necessary in order for FCSS to comply with records retention requirements under a court order or federal or state laws, Contractor shall continue to retain such books and records for the period stated in FCSS’ notice. If this Agreement involves the expenditure of \$10,000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor’s examination and audit at FCSS’ request or as part of an audit of FCSS. The provisions of this Subsection shall survive the termination of this Agreement.

## **ARTICLE 2 PAYMENT.**

**SECTION 2.1 CONTRACT AMOUNT.** As full consideration and compensation for Contractor’s performance of this Agreement, FCSS shall pay Contractor the Contract Amount in accordance with the Payment Schedule stated on the Cover. Except as stated in this Agreement or an amendment hereto, Contractor shall not be entitled to any other payment from FCSS; in the event Contractor has received any payment to which Contractor is not entitled to under this Agreement or an amendment, Contractor shall refund such payment to FCSS within 30 days of FCSS’ request.

**SECTION 2.2 INVOICE, ADDITIONAL INFORMATION, AND DECLARATION UNDER PENALTY OF PERJURY.** Before Contractor may receive any payment under this Agreement, Contractor shall submit an itemized invoice and other documents as set forth below to FCSS at FCSS’ address for invoice stated on the Cover. Each person submitting and/or signing an invoice on behalf of Contractor declares under penalty of perjury under California laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and know its content; (B) the invoice and supporting information are true, accurate, and complete, and reflect amounts due and services that Contractor has completed in accordance with this Agreement and the correct amount for those services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under this Agreement; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences. Upon receiving an invoice and if FCSS objects to it and/or requires additional information, FCSS shall notify Contractor and Contractor shall provide such information to FCSS within 10 days after Contractor receives FCSS’ notice. If Contractor fails or refuses to provide the additional information, FCSS shall have the right to withhold payment of any or all of the Contract Amount until such time that FCSS receives such information from Contractor.

**SECTION 2.3 PAYMENT SCHEDULE, DEDUCTION, AND RELEASE.** The Payment Schedule, as stated on the Cover, shall apply to FCSS’ payment of the Contract Amount to Contractor. FCSS may deduct from each payment, if applicable, withholdings required by applicable laws, including but not limited to, those for non-California or foreign residents. Contractor’s acceptance of any payment under this Agreement shall constitute, effective on the date of acceptance, a release of all claims and liabilities that Contractor has or may have against FCSS for any additional payment for the Services, and/or matters, for which the payment was made. However, FCSS’ payment shall not relieve Contractor of Contractor’s obligations under this Agreement or for deficient or defective Services that FCSS discovers after the payment is made.

## **ARTICLE 3 TERM AND TERMINATION OF AGREEMENT; AND SUSPENSION OF SERVICES.**

**SECTION 3.1 CONTRACT TERM.** This Agreement is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date and any written extension thereto (“**Contract Term**”) and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party.

**SECTION 3.2 TERMINATION DURING CONTRACT TERM.**

- 3.2.1 GROUND FOR TERMINATION. During the Contract Term, this Agreement may only be terminated pursuant to one or more of the following:
- 3.2.1.1 CAUSE/WITHOUT CAUSE. A Party may terminate this Agreement as marked on the Cover: (A) *With or Without Cause* – A Party, with or without cause, may terminate this Agreement by giving the other Party written notice for the Notice Period; or (B) *With Cause* – A Party may terminate this Agreement only upon the other Party’s material breach of one or more provisions of this Agreement and after the non-breaching Party has given the breaching Party written notice for the Notice Period.
- 3.2.1.2 CONTRACTOR INSOLVENCY. This Agreement shall terminate effective the day immediately preceding the day on which: (A) there is a filing by or against Contractor to have Contractor adjudged bankrupt or there is a petition for reorganization or arrangement of Contractor under any law relating to bankruptcy; (B) Contractor applies for, consents to, or has an order, judgment, or decree entered by a court for approval of a petition for or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor’s assets; (C) Contractor is unable to, fails to, or admits in writing its inability generally to pay its debts or obligations as they become due; and/or (D) Contractor makes a general assignment for the benefit of creditors. Contractor shall provide FCSS with written notice within 15 days of the occurrence of any of the aforementioned events.
- 3.2.1.3 OTHER GROUNDS. FCSS may terminate this Agreement effective on the date stated in FCSS’ written notice of termination to Contractor pursuant to any of the following: (A) Contractor is required to but fails to provide to FCSS and/or comply with the Fingerprinting Certification or the Sole Proprietor Fingerprinting Addendum; (B) Contractor is required to but fails to provide to FCSS and/or comply with the TB Certification; (C) FCSS and/or any entity from which FCSS receives or is to receive funds to pay for this Agreement reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make future payments under this Agreement; (D) a government or issuing agency revokes, suspends, places on probation, or non-renews any License that Contractor must hold to perform this Agreement; (E) Contractor assigns, transfers, or subcontracts any or all of Contractor’s obligations and/or rights under this Agreement in breach of Section 7.3; (F) Contractor fails to maintain and provide written proof of insurance as required by Article 4; (G) Contractor is required to provide particular staff as named on the Cover to perform this Agreement but such staff is not able, not willing, or not available to perform this Agreement; (H) Contractor’s legal rights to exist or conduct business in California has been revoked or terminated by the State of California, another agency, or a court; and/or (I) Contractor’s legal rights to exist or conduct business in California has been suspended or rendered inactive by the State of California, another agency, or a court and such suspension lasts more than 30 consecutive days.
- 3.2.2 RIGHTS AND OBLIGATIONS UPON TERMINATION. Upon termination of this Agreement during the Contract Term, the following shall apply and survive the termination of this Agreement: (A) FCSS shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, this Agreement before the effective date of termination; (B) Contractor shall submit an invoice within 30 days of the effective date of termination; (C) Sections 2.2 and 2.3 shall apply to Contractor’s invoice and FCSS’ payment under this Subsection; and (D) upon FCSS’ payment, if any has been invoiced by Contractor and is due to Contractor, FCSS is not obligated to make any further payment to Contractor, whether pursuant to contract, law, or equity.

SECTION 3.3 SUSPENSION OF SERVICES. Despite any contrary provision in this Agreement, FCSS shall have the right to suspend, delay, or interrupt any or all Services at any time during the Contract Term by providing written notice to Contractor at least 15 days before the date on which the suspension, delay, or interruption is to begin, and stating the beginning and ending dates thereof (“**Suspension Period**”). Unless the Parties agree otherwise in writing, the following shall apply upon FCSS’ exercise of the rights under this Section: (A) Contractor shall suspend, delay, or interrupt such Services as stated in FCSS’ notice but shall continue to perform all other Services; (B) Contractor shall not be entitled to any compensation for Services that Contractor would have been required to perform under this Agreement but did not perform during the Suspension Period, and the Contract Amount shall be adjusted to deduct the amount of such compensation and such adjustment shall be set forth in an amendment executed by the Parties; (C) Contractor shall not be entitled to any damage, loss, or cost arising out of, resulting from, or relating to FCSS’ exercise of its right under this Section or the Suspension Period; (D)

Contractor shall resume performance of the suspended Services on the next business day following the last day of the Suspension Period; and (E) the Contract Term shall remain the same.

SECTION 3.4 FORCE MAJEURE. A Party is not liable for failing to perform or delaying performance of this Agreement due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as epidemics or pandemics (nationally, statewide, or locally declared) tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively "**Force Majeure**"), provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse FCSS' payment to Contractor of any portion of the Contract Amount that is due to Contractor where Contractor has performed, in accordance with this Agreement, the Services for which payment is requested, and submitted an invoice and supporting information as required on the Cover and Section 2.2. Contractor shall not receive any payment for Services that Contractor did not perform during the period in which the Force Majeure occurred.

#### ARTICLE 4 INSURANCE.

SECTION 4.1 REQUIRED INSURANCE. Contractor, at its cost unless stated otherwise on the Cover, shall maintain in effect insurance as marked on the Cover and complying, at a minimum, with the applicable requirements stated below. If Contractor is a California public agency, the required coverage may be through self-insurance. FCSS, in its sole discretion, may waive in writing any requirement in this Article; however, FCSS' failure to insist or request that Contractor comply with such requirements shall not constitute a waiver on FCSS' part. FCSS reserves the right to reject any insurance and/or to require that Contractor obtain insurance through an insurer satisfactory to FCSS.

- 4.1.1 *Commercial General Liability*, in effect during the Contract Term, coverage for property damage, bodily injury, and personal and advertising injury with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This insurance shall contain a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools and the Fresno County Board of Education and their officers, employees, agents, and volunteers as an additional insured.
- 4.1.2 *Workers Compensation* in accordance with California laws and *Employer's Liability Insurance* with a limit of not less than \$1,000,000 per accident, both of which shall be in effect during the Contract Term.
- 4.1.3 *Commercial Automobile Liability*, in effect during the Contract Term, with limits per accident not less than the amount stated on the Cover and providing coverage, at a minimum, for non-owned and hired autos and, if there are any autos owned by Contractor, then also covering owned autos.
- 4.1.4 *Professional Liability*, in effect during the Contract Term and three years thereafter, with limits of not less than \$1,000,000 per claim and \$2,000,000 general aggregate, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of this Agreement.
- 4.1.5 *Cyber Liability (also termed Information Security and Privacy Insurance)*, in effect during the Contract Term and three years thereafter, with limits of not less than \$3,000,000 per claim and \$5,000,000 general aggregate, at a minimum, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of this Agreement.
- 4.1.6 *Sexual abuse and molestation*, in effect during the Contract Term and three years thereafter, with limits of not less than \$3,000,000 per claim, and \$5,000,000 general aggregate, at a minimum, written on a claims-made basis, should such coverage not otherwise be included in the Commercial General Liability coverage required by this Agreement. The obligation to maintain this insurance shall survive the termination of this Agreement.

SECTION 4.2 PROOF AND NOTICE; DEDUCTIBLE OR SELF-INSURED RETENTION. Contractor shall provide to FCSS: (A) as required on the Cover and from time to time as FCSS may request, written proof satisfactory to FCSS of the existence of the insurance required of Contractor, including any required endorsement; (B) upon FCSS' request, a copy of the insurance policy and/or other evidence of insurance satisfactory to FCSS; (C) no later than 15 days before the date on which a required insurance expires, written proof of renewal of the insurance, including any required endorsement; and (D) written notice within two business days of the occurrence of any of the following: (1) any required insurance is cancelled or non-renewed, (2) notice from the insurer that the insurer intends to or will cancel or non-renew the insurance, and/or limit, restrict, or reduce Contractor's insurance coverage such that the insurance does not comply with the requirements in Section 4.1, or (3) any required insurance's policy limits have been reduced below those required in Section 4.1. Contractor shall disclose any deductible or self-insured retention for any of the required insurance. FCSS reserves the right to require that

such deductible or self-insured retention be eliminated or reduced, that Contractor obtain a bond or other security guaranteeing payment of losses and costs within the limits of the deductible or self-insured retention, or that Contractor provide other assurances satisfactory to FCSS. Contractor's obligation to provide written proof of the insurance required under Section 4.1 shall survive the termination of this Agreement.

## **ARTICLE 5 INDEMNITY.**

The indemnity provision of the FCSS Fingerprinting Certification, the FCSS Sole Proprietor Fingerprinting Addendum, and/or the FCSS TB Certification, to the extent such document(s) is/are applicable as indicated on the Cover, shall govern the indemnification rights and obligations of the Parties to the extent provided therein. In all other respects relating to this Contract, each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to this Contract shall be reciprocal and only in proportion to the Indemnitor's liability, to the fullest extent permitted by California laws for any loss sustained by the Indemnitee or to a third party. If no final judicial determination exists to allocate responsibility for such loss(es), the Parties will work cooperatively and in good faith on a reasonable and proper apportionment of liability between the Parties. A Party that intends to seek or that does seek indemnity and/or hold harmless obligations for any loss from the other Party shall notify the other Party in writing of such intentions and within a reasonable time after the prospective Indemnitee knows or becomes aware of any claim that may or will result in a loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed. A Party's obligations under this provision are not limited to or by any insurance that it maintains or by the lack of insurance, but apply to the full extent permitted by California laws and shall survive the termination of this Contract. Should any dispute between the Parties result in litigation, each Party shall be responsible for its own attorneys' fees and costs of litigation.

## **ARTICLE 6 DISPUTE RESOLUTION.**

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During any dispute, FCSS' decision, for the time being, shall prevail and Contractor shall perform this Agreement as FCSS directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under this Agreement, FCSS shall pay Contractor the amount that is undisputed and due to Contractor; if a disputed amount is determined in a Final Determination to be due to Contractor, FCSS shall pay such amount to Contractor within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, FCSS shall pay Contractor in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

## **ARTICLE 7 GENERAL PROVISIONS.**

**SECTION 7.1 ENTIRE AGREEMENT, CONFLICT, EXECUTION, AMENDMENT, AND WAIVER.** This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. This Agreement consists of, and any conflict or inconsistency in this Agreement shall be resolved by giving precedence as follows: Cover, General Terms and Conditions, exhibit or attachment stated in this Agreement as being a part of this Agreement, and the Required Documents. The Parties may execute this Agreement and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.

**SECTION 7.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION.** If there is uncertainty of any language in this Agreement, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California's choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Fresno County, California, provided that FCSS does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this

Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

SECTION 7.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, TRANSFER, AND SUBCONTRACT. Contractor is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of FCSS. Contractor represents that it is a business service provider and the Services are provided as a bona-fide business-to-business contracting relationship consistent with Labor Code section 2776. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. Contractor and its officers, employees, agents, and any other person performing services for or on behalf of Contractor shall not have any right or claim against FCSS for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or other employee benefits. Contractor shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without FCSS' prior written consent. Unless stated on the Cover, Contractor shall not subcontract with any subcontractor to perform some or all of the Services required of Contractor.

SECTION 7.4 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail *and* transmitted by e-mail; and, ***if to FCSS, a copy of any notice and demand by email to: Legal Services at [legalservices@fcoe.org](mailto:legalservices@fcoe.org)***. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

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