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| C:\Users\myang\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\CA8R82EP\FCSOS%20Logo%20Round%20JY%20COL.png | **MASTER PROGRAM PROVIDER AGREEMENT** **(“Master Contract”)** Legal Doc./Contract No. of this signed Master Contract ***(Legal use only)***:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**COVER** |

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| --- |
| CONTRACTOR |
| Full legal name of other party **(“Contractor”)**Attn: Name of contact person, Title Street address **(no PO box)**City, State ##### Phone: (###) ###−#### Email: email  | DBA ***(leave blank if none)***:  |
| FCSS |
| Fresno County Superintendent of Schools **(“FCSS”)**Attn: Helena Silva, Senior Director Dept.: Safe & Healthy Kids Fresno County Office of Education1111 Van Ness Avenue Fresno, CA 93721-2000 Phone: (559) 497-3780 Email: hsilva@fcoe.org  | **ADDRESS FOR INVOICE TO FCSS:** All invoices to FCSS shall be addressed to the attention of Internal Business Services−Accounts Payable, Fresno County Office of Education, 1111 Van Ness Ave, Fresno, CA 93721 |
| MASTER CONTRACT TERM (see § 3.1) | TERMINATION DURING MASTER CONTRACT TERM (see § 3.2) |
| **“Effective Date”**: August 1, 2018 **“Termination Date”:** July 31, 2021  | Grounds for Termination: See § 3.2.1 and 3.2.2Notice Period: See § 3.2 and 3.3 |
| SERVICES. Upon execution of a Site Contract or Tutoring Services Order by the Parties, Contractor shall perform all obligations required of Contractor under this Master Contract and provide all labor, materials, supplies, equipment, and transportation necessary to perform, as required by the Site Contract or Tutoring Services Order, one, several, or all of the following, collectively **“Services”**: |
| \_ Basic Services (see § 1.5.2.1)\_ Supplemental Services (see § 1.5.2.2)\_ Tutoring Services – Additive Alternate No. 1 (see § 1.5.3) |
| CONTRACT AMOUNT AND PAYMENT SCHEDULE |
| See Article 2 |
| REQUIRED DOCUMENTS (see § 1.5.1). Contractor shall provide to FCSS each document marked below: |
| 1. Written proof of insurance and additional insured coverage as required in Section 4.1 for: (A) commercial general liability; (B) workers compensation and employer’s liability; and (C) commercial automobile liability.
2. Fingerprinting and Criminal Background Check Certification **(“Fingerprinting Certification”)**, which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
3. Tuberculosis Certification **(“TB Certification”)**, which Contractor must obtain from and submit to FCSS before Contractor commences any Services.
4. 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 Master Contract, Contractor and FCSS, separately referred to as a **“Party”** and collectively as the **“Parties,”** have reviewed and understand and hereby enter into this Master Contract. Unless the context requires otherwise, any reference to a Party in this Master Contract includes its governing body and members thereof, officers, employees, and agents. Each person executing this Master Contract on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Master Contract.

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| CONTRACTOR  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name: Name Title: Title  | FCSSBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Jim A. Yovino, 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.**/ /** |

**GENERAL TERMS AND CONDITIONS**

This Master Contract consists of and includes the following:

 Cover

 General Terms and Conditions

 Article 1 Scope of Services and Obligations

 Article 2 Payment

 Article 3 Term and Termination of Master Contract; Suspension of Services

 Article 4 Insurance

 Article 5 Indemnity

 Article 6 Dispute Resolution

 Article 7 General Provisions

Forms

Form No. 1: Site Contract

Form No. 2: Tutoring Services Order

RFP Packet issued by FCSS, including any addenda thereto

RFP Response of Contractor

Documents that Contractor is required to provide under this Master Contract (collectively **“Required Documents”**), not attached

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

**ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.**

SECTION 1.1 RECITALS

* + 1. FCSS operates the Fresno Recreation, Enrichment, and Scholastic Help After School Partnership Program **(“After School Program”)**. Through the After School Program, qualified school sites within Fresno County may administer and implement educational and support services to their students after school and other designated periods.
		2. Funding for the After School Program is through two types of federal grants under the 21st Century Community Learning Centers: (1) base funding to be used for programs and activities before and after school on regular school days **(“Base Funding”)** and (2) supplemental funding to be used for programs and activities on Saturdays, intersessions, and summer **(“Supplemental Funding”)**.
		3. FCSS has entered into separate contracts with certain school districts **(“School Districts”)** within Fresno County to provide educational, support services, and/or administration services to school sites within such school districts (referred to separately **“School Site”** and collectively **“School Sites”**) for After School Programs for the School Sites.
		4. By this Master Contract, FCSS desires to retain Contractor to provide, and Contractor desires to provide, to FCSS and School Districts the Services set forth in this Master Contract and each completed and executed Site Contract or Tutoring Services Order. The Parties further desire by this Master Contract to set forth the terms and conditions upon which Contractor shall provide and FCSS shall compensate Contractor for such Services, and to set forth the Parties’ rights and obligations relating to such Services and this Master Contract and each Site Contract or Tutoring Services Order.

SECTION 1.2 CONTRACTOR QUALIFICATIONS.

1.2.1 Contractor represents and shall ensure that it and all persons whom it employs or retains to perform this Master Contract have, throughout the Master Contract Term, the necessary training, skill, and experience and are qualified to so perform, including having 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.

1.2.2Contractor shall ensure that all of Contractor’s employees in all Staff Positions are qualified and trained to provide Base Services and Supplemental Services and Tutor Staff Positions are qualified and trained to provide Tutoring Services, including but not limited to, being at least 18 years old and having education and experience of any combination equivalent to (A) high school diploma, general education degree **(“GED”)**, or State High School Proficiency certificate and an associate degree or a higher degree (successful completion of the Paraeducator Academic Assessment adopted by FCSS may be substituted for the associate degree) or (B) two years of study at an institute of higher education equivalent to 48 semester units.

1.2.3 **Except for the FCSS-Provided Training, as defined Section 1.6 below, FCSS shall not be obligated to pay Contractor for any costs incurred by Contractor for or related to any professional development or training for Contractor’s employees or any subcontractors (if such subcontractors are permitted pursuant to this Master Contract), which costs include but not limited to, fees, material costs, and time to attend any professional development or training and related costs for travel, lodging, and meals.**

SECTION 1.3 SITE CONTRACT – BASE SERVICES AND SUPPLEMENTAL SERVICES. The Parties, in coordination with each School District and School Site, shall complete and execute a Site Contract for each School Site for which Contractor shall provide Base Services or Supplemental Services, including any Field Trips. Each completed Site Contract shall be executed by the School Authorized Agent, Contractor, and FCSS’ authorized designee before Contractor commences any Base Services or Supplemental Services on a School Site. FCSS shall have no obligation to pay Contractor for any Staff Positions that are not set forth in a completed and executed Site Contract or that did not actually provide Base Services or Supplemental Services at a School Site. The form of the Site Contract shall be as set forth in the Site Contract form attached to this Master Contract, subject to any adjustments thereto as mutually agreed by the Parties.

SECTION 1.4 TUTORING SERVICES ORDER. During the Master Contract Term and upon FCSS’ request, Contractor shall provide Tutoring Services to FCSS in accordance with each completed and executed Tutoring Services Order. Each completed Tutoring Services Order shall be executed by Contractor and FCSS’ authorized designee before Contractor commences any Tutoring Services. FCSS shall have no obligation to pay Contractor for any Tutor Staff Positions that are not set forth in a completed and executed Tutoring Services Order and that did not actually provide any Tutoring Services. The form of the Tutoring Services Order shall be as set forth in the Tutoring Services Order form attached to this Master Contract, subject to any adjustments thereto as mutually agreed by the Parties.

SECTION 1.5 SCOPE OF SERVICES. The term **“Services”** shall refer to and include one, several, or all of the following: General Services, Base Services, Supplemental Services, and/or Tutoring Services.

1.5.1 GENERAL SERVICES. Contractor shall provide the following **“General Services”** as part of each Site Contract or Tutoring Services Order executed by the Parties pursuant to this Master Contract:

1.5.1.1 EMPLOYEE RECRUITMENT, HIRING, AND SUPERVISION. Contractor shall be responsible for recruiting, screening, interviewing, and hiring employees necessary for Contractor to perform the Services. Contractor shall also be responsible for replacing any Contractor Staff who is no longer employed by Contractor, and for handling absences of any Contractor Staff. In addition, Contractor shall receive and process the hour logs and payroll of the Contractor Staff

1.5.1.2 SUPERVISION AND COORDINATION OF SERVICES. Unless stated otherwise in a Site Contract or Tutoring Services 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 Master Contract and each Site Contract or Tutoring Services Order; (B) the acts and omissions of Contractor’s officers, employees, agents, and any other persons who Contractor retains to perform this Master Contract and each Site Contract or Tutoring Services Order; 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 Master Contract and each Site Contract or Tutoring Services Order, to any officers, employees, agents, students, or invitees of FCSS, or to any Third Party.

1.5.1.3 SUBSTITUTES. If a Staff Position is absent from his/her work at a School Site during any part of a Program Day, Contractor shall provide a substitute Staff Position or provide FCSS written notice that no substitute Staff Position is available and will not be provided. The substitute Staff Position shall meet all of the qualifications set forth in this Master Contract. Contractor shall not charge FCSS for any Staff Position that is not at the School Site providing Base Services or Supplemental Services.

1.5.2 BASE/SUPPLEMENTATL SERVICES. Upon execution of a Site Contract by the Parties and except as specifically provided below, Contractor shall perform all obligations required of Contractor under this Master Contract and provide all labor, materials, supplies, equipment, and transportation necessary to perform, as required by the Site Contract, one or both of the following, collectively **“Base/Supplemental Services”**:

1.5.2.1 BASE SERVICES. For each After School Program at a School Site that is funded with Base Funding, Contractor shall provide the General Services set forth in Section 1.5.1 above, comply with the terms and conditions that apply to the use of the Base Funding, and provide services **(“Base Services”)** that comply, at a minimum, with the following requirements:

1.5.2.1(A) EDUCATION AND LITERACY COMPONENT. Contractor shall provide a program at each School Site that includes an educational and literacy component to provide tutoring and/or homework assistance in one or more of the following areas: language arts, mathematics, history, social science, computer training, and/or science. This component must support the School Site's core curriculum, state standards, and be developed in collaboration with School Site staff and FCSS.

1.5.2.1(B) EDUCATIONAL ENRICHMENT COMPONENT. Contractor shall provide a program at each School Site that includes an enrichment component, which may include, but need not be limited to fine arts, recreation, physical fitness, career/technical education, and prevention activities. Such activities might involve the arts, music, sports, recreation, career preparation activities, teen pregnancy, substance abuse prevention services, gang awareness activities, conflict resolution training, community service-learning, and other youth development activities based on student needs and interests.

1.5.2.1(C) SNACKS/MEALS.Contractor shall serve a daily nutritious snack and/ or meal provided by the School District to students participating in the After School Program at each School Site.

1.5.2.1(D) CONTRACTOR STAFF/STUDENT RATIO.Contractor shall maintain a student to Staff Position ratio of not more than 20 students to 1 Staff Position. Contractor shall maintain records regarding the number, types, and time of Staff Positions working each Program Day at a School Site and provide such records to FCSS upon FCSS’ request.

1.5.2.1(E) SITE LEAD. Contractor shall maintain at least one lead Staff Position **(“Site Lead”)** to coordinate program and activities at the School Site and provide general supervision of the After School Program at the School Site, unless the Site Lead is provided by the School Site. A School Site’s election to provide a Site Lead shall not relieve or release Contractor from performance of any of Contractor’s obligations under this Master Contract and the applicable Site Contract.

1.5.2.1(F) STUDENT ATTENDANCE/DATA SUBMISSION. Contractor shall track and submit attendance/data for each student at a school Site as required by FCSS. Contractor shall provide FCSS original and/or copies of all student attendance sheets and any other documents/information related to student attendance upon request by FCSS.

1.5.2.1(G) PROGRAM CALENDAR. Before the commencement of an After School Program at a School Site, Contractor shall provide FCSS with a calendar evidencing, at a minimum, the Program Days and Program Hours for the School Site.

1.5.2.1(H) MANAGEMENT AND SUPPORT SERVICES. Contractor shall provide support services to each School Site as requested by the School Site or FCSS, and overall management and supervision of the Base Services provided to the School Site.

1.5.2.1(I) STUDENT RECRUITMENT AND SUPPORT SERVICES. Contractor shall provide each School Site, as requested by School Site or FCSS, with support services to recruit students to participate in the After School Program at the School Site.

1.5.2.1(J) FIELD TRIPS. From time to time during the Site Contract Term of a Site Contract, a School Site and FCSS may elect to have students participate in or attend programs, activities, or events related to the After School Program at a location other than the School Site **(“Field Trip”)**. Contractor shall coordinate and cooperate with FCSS and the School Site and provide Staff Positions to accompany and supervise students who are participating in the Field Trip, and provide them with programs and activities that meet the requirements of Section 1.5.2.1(A) through 1.5.2.1(F). A Field Trip may occur on a Program Day or on a day other than a Program Day. FCSS or the School District shall provide transportation necessary for any Field Trips.

1.5.2.1(K) PROGRAM DAYS AND HOURS – REGULAR AND EARLY RELEASE PROGRAM DAYS.Contractor shall operate the After School Program at each School Site in accordance with the following: (A) a minimum of 15 hours per week, (B) commencing immediately upon the conclusion of the regular school day at the School Site and continuing until 6:00 p.m.; and (C) not operating for less than one and one half hours per Program Day. Contractor shall provide the Base Services in accordance with the applicable Site Contract.

1.5.2.2 SUPPLEMENTAL SERVICES. For each After School Program at a School Site that is funded with Supplemental Funding, Contractor shall provide the General Services set forth in Section 1.5.1 above, comply with the terms and conditions that apply to the use of the Supplemental Funding, and provide services **(“Supplemental Services”)** that comply, at a minimum, with the requirements in Section 1.5.2.1(A) through 1.5.2.1(J) and the Site Contract that applies to the School Site. The term Supplemental Services shall be substituted in every place where the term Base Services appear in Section 1.5.2.1(A) through 1.5.2.1(J).

1.5.3 TUTORING SERVICES – ADDITIVE ALTERNATE NO. 1. The provisions of this Section 1.5.3 apply only if Contractor proposed in its Proposal Form (RFP Document D-1) to provide and FCSS has added, as marked on the Cover, Tutoring Services. Any Tutor Staff Position that provides Tutoring Services shall be knowledgeable in the subject matter(s) for which Tutoring Services are to be provided.

1.5.3.1 TUTORING SERVICES AND TUTORING SERVICES ORDER. Upon execution of a Tutoring Services Order by the Parties requiring Contractor to provide Tutoring Services, Contractor shall provide, during the Order Term and at FCSS’ request, services that include one or more of the following (separately and collectively referred to as **“Tutoring Services”)**:

1.5.3.1(A) Academic assistance and support to one or more students designated by FCSS in one or more subject matters.

1.5.3.1(B) Tutoring services to assist FCSS in demonstrating student progress towards proficiency in English Language Arts, English Language Development, and mathematics.

1.5.3.1(C) Participate in classroom instruction, work with identified students to address academic gaps, and identify students who may need support in order to re-engage students.

1.5.3.1(D) Participate in the extended day program to provide re-teaching or assistance with materials that were presented earlier in class.

1.5.3.1(E) Work with students in dual enrollment courses to address skills gap within English, math, and science.

1.5.3.2 SCHEDULING TUTORING SERVICES. Upon FCSS’ request pursuant to an executed Tutoring Services Order and subject to availability of Tutor Staff Position, Contractor shall provide the requested Tutor Staff Position to provide Tutoring Services. FCSS shall provide notice to Contractor at least two business days before the date on which Tutoring Services are required. If Contractor does not have the required Tutor Staff Position at the time requested by FCSS, Contractor may suggest an alternate Tutor Staff Position or FCSS may retain, at FCSS’ own expense and discretion, tutor services from another company or entity. Such retention and use of another company or entity shall not constitute or be deemed a breach of any provision of this Master Contract or the applicable Tutoring Services Order.

1.5.3.3 CANCELLATION OF TUTORING SERVICES. FCSS may cancel any scheduled Tutoring Services by notifying Contractor in writing by no later than two working days before the first day of the scheduled Tutoring Services. Upon such notice and cancellation, FCSS shall not be obligated to pay Contractor for the scheduled Tutoring Services. A cancellation of a scheduled Tutoring Services shall not cancel any other scheduled Tutoring Services and does not terminate the applicable Tutoring Services Order.

1.5.4 NO ADDITIONAL SERVICES. Except for the Services set forth in this Master Contract, Contractor shall not provide and is not entitled to any payment from FCSS under this Master Contract for any other services that Contractor may provide to FCSS, any School District, or any School Site.

1.5.5 NON-EXCLUSIVE SERVICES. Contractor acknowledges and agrees that this Master Contract does not constitute an exclusive contract for Contractor, and FCSS has contracted or may contract with one or more third parties, to provide to FCSS services that may be identical or similar to the Services required under this Master Contract.

SECTION 1.6 FCSS-PROVIDED TRAINING TO CONTRACTOR’S STAFF POSITIONS.

1.6.1 During the Master Contract Term and at FCSS’ discretion, FCSS may make available professional development and training **(“FCSS-Provided Training”)** to one or more of Contractor’s Staff Positions that are working at the School Sites to provide Base Services or Supplemental Services. FCSS shall notify Contractor of the FCSS-Provided Training and indicate any terms or conditions relating to the FCSS-Provided Training.

1.6.2 During all times that the Staff Positions are attending the FCSS-Provided Training, including travel to and from the FCSS-Provided Training, the Staff Positions shall remain the employees of Contractor.

1.6.3 Except as specifically provided in a completed and executed Site Contract, FCSS shall not be obligated to pay for any salary or other compensation, or costs incurred by Contractor or any Staff Positions relating to the FCSS-Provided Training.

SECTION 1.7 WORK PRODUCTS AND RIGHTS THERETO.

1.7.1 GENERALLY. Unless stated otherwise in a Site Contract or Tutoring Services Order in which case such provisions shall apply to the extent provided therein, this Section shall survive the termination of this Master Contract and the applicable Site Contract or Tutoring Services Order and apply to: (A) any Work that FCSS provides to Contractor pursuant to or relating this Master Contract and the applicable Site Contract or Tutoring Services Order **(“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 Master Contract or a Site Contract or Tutoring Services Order **(“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.

1.7.2 FCSS 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 applicable Site Contract Term or Order Term to use and reproduce only those portions of the FCSS Work necessary for Contractor to perform this Master Contract and the applicable Site Contract or Tutoring Services Order; and (D) Contractor shall return any or all FCSS Work to FCSS upon FCSS’ request.

1.7.3 CONTRACTOR WORK. The following applies to the Contractor Work: (A) the Contractor Work is Contractor’s property and Contractor has all interests and rights thereto; (B) except as stated in this Section 1.7.3, FCSS does not own and shall not claim any interest or right to or in the Contractor Work; and (C) Contractor grants to FCSS a limited license during the applicable Site Contract Term or Order Term to use and reproduce the Contractor Work.

SECTION 1.8 RECORDS AND INFORMATION.

1.8.1 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 Master Contract. If any Required Document becomes incorrect or inapplicable or expires during the Master 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, of effective version thereof, FCSS shall have the right to withhold payment of any or all of the Site Contract Amounts or Order Amounts due to Contractor until such time that FCSS receives the Required Document from Contractor.

1.8.2 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 Master Contract, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as this Master Contract 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 Master Contract and each Site Contract or Tutoring Services Order; 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. Contractor is being provided with access to and/or possession of the Confidential Material to perform the Services as a “school official,” as that term is defined by the Family Educational Rights and Privacy Act **(“FERPA”)**. FCSS asserts that Contractor qualifies as a school official under FERPA because Contractor: (A) is providing services to FCSS for which FCSS may otherwise use its employees; (B) will remain under the direct control of FCSS with respect to the use and maintenance of the Confidential Material; and (C) will comply with Confidential Material use and disclosure requirements. The provisions of this Section 1.8.2 shall survive the termination of this Master Contract and the applicable Site Contract or Tutoring Services Order.

1.8.3 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 Master Contract and each applicable Site Contract or Tutoring Services Order for at least five years after the date on which this Master Contract 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. This Master Contract involves the expenditure of $10,000 or more in funds from the State of California and 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 Section 1.8.3 shall survive the termination of this Master Contract and each applicable Site Contract or Tutoring Services Order.

SECTION 1.9 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

1.9.1 GENERALLY. Each Party shall comply with all laws and regulations (collectively **“Law”**) applicable to its performance of this Master Contract and each applicable Site Contract or Tutoring Services Order, and all Law that it agrees to comply under this Master Contract (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 Master Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Master Contract and an Applicable Law, the provision in this Master Contract 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. Applicable Law, as used in this Section 1.91.1, shall include the policies, regulations, and procedures of the School Site on which Contractor is providing Base Services or Supplemental Services to the extent they relate to the use of facilities, ground spaces, and personal properties of the School Site, safety, and emergency procedures.

1.9.2 FEDERAL GRANT FUNDS. The Services to be provided pursuant to this Master Contract and each applicable Site Contract or Tutoring Services Order are paid, in part or in whole, with federal grant funds under 21st Century Community Learning Centers. 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 Master Contract. 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); and (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Upon FCSS’ request, whether during or after the Master Contract Term, Contractor shall cooperate with and provide FCSS with documents and information relating to this Master Contract and each applicable Site Contract or Tutoring Services Order that are necessary for FCSS to comply with applicable federal laws, regulations, and requirements. The provisions of this Section 1.9.2 shall survive the termination of this Master Contract and each applicable Site Contract or Tutoring Services Order.

**ARTICLE 2 PAYMENT.**

SECTION 2.1 BASE SERVICES AND SUPPLEMENTAL SERVICES.As full consideration and compensation for Contractor’s performance of its obligations under this Master Contract and Basic Services or Supplemental Services required under a Site Contract, FCSS shall pay Contractor in accordance with the Staff Position Hourly Rates set forth in the Staff Positions and Staff Position Hourly Rates Schedule (RFP Document D-2), to be billed in 15-minute increments for the time during which a Staff Position performs Base Services or Supplemental Services in accordance with this Master Contract and the applicable Site Contract. The total amount FCSS shall pay to Contractor for Base Services or Supplemental Services at each School Site shall not exceed the Site Contract Amount stated in the applicable Site Contract. Contractor shall refund to FCSS any amount that is in excess of the Site Contract Amount within 30 days of receiving a written demand from FCSS.

SECTION 2.2 TUTORING SERVICES – ADDITIVE ALTERNATE NO. 1. The provisions of this Section apply only if Contractor proposed in its Proposal Form (RFP Document D-1) to provide and FCSS has included in this Master Contract, as marked on the Cover, Tutoring Services. As full consideration and compensation for Contractor’s performance of its obligations under this Master Contract and for providing Tutoring Services required under a Tutoring Services Order, FCSS shall pay Contractor in accordance with the Tutoring Hourly Rates set forth in Contractor’s Proposal Form (RFP Document D-1), to be billed in 15-minute increments for the time during which a Tutor Staff Position provides Tutoring Services in accordance with this Master Contract and the applicable Tutoring Services Order. The total amount FCSS pays to Contractor for Tutoring Services shall not exceed the Order Amount stated in the applicable Tutoring Services Order. Contractor shall refund to FCSS any amount that is in excess of the Order Amount within 30 days of receiving a written demand from FCSS.

SECTION 2.3 MINIMUM WAGE ADJUSTMENTS. The Staff Position Hourly Rates and Tutoring Hourly Rates may be adjusted due to changes in the minimum wage rates by written amendment to this Master Contract executed by the Parties. Contractor shall notify FCSS in writing of any requests for adjustment due to changes in the minimum wage rates, stating, at a minimum, the particular changes to the minimum wage rates, proposed changes to the Staff Position Hourly Rates for the Staff Positions, proposed changes to the Tutoring Hourly Rates for the Tutor Staff Positions, and the proposed effective date of the adjustments.

SECTION 2.4 EXCLUDED CHARGES. Except as set forth in this Master Contract, Contractor shall not charge FCSS for any time during which Contractor or its officers, employees, or subcontractors (to the extent FCSS has approved such subcontractors) are attending any professional development or training, take any types of leaves, attending staff meetings, setting up at a School Site, preparing instructional programs or activities for a School Site, or cleaning up at a School Site.

SECTION 2.5 INVOICE, ADDITIONAL INFORMATION, AND DECLARATION UNDER PENALTY OF PERJURY.

2.5.1 SITE CONTRACT – BASE SERVICES OR SUPPLEMENTAL SERVICES. Before Contractor may receive any payment under this Master Contract and any Site Contract, 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 invoice shall be submitted to FCSS no later than the 15th day of the current calendar month for Base Services or Supplemental Services that Contractor provided in the prior calendar month and shall state and include, at a minimum, the following:

2.5.1.1 Site Contract Number.

2.5.1.2 School District for which Contractor provided the Base Services or Supplemental Services.

2.5.1.3 School Site on which Contractor provided the Base Services or Supplemental Services.

2.5.1.4 Not-to-exceed Site Contract Amount for the Site Contract.

2.5.1.5 Sum of all amounts that FCSS previously paid to Contractor for Base Services or Supplemental Services that Contractor performed pursuant to the Site Contract.

2.5.1.6 Amount that Contractor is requesting as compensation for Base Services or Supplemental Services performed in accordance with this Master Contract and the Site Contract. Each amount for Base Services or Supplemental Services shall be based on the Staff Positions and Staff Position Hourly Rates set forth in the Staff Positions and Staff Position Hourly Rates Schedule (RFP Document D-2). The applicable Staff Position Hourly Rate shall be billed in 15-minute increments and based on the time that the Staff Position actually spent performing the Base Services or Supplemental Services.

2.5.1.7 Daily staff sign-in/sign-out sheets or other time keeping methods acceptable to FCSS for all time during a Program Day or Field Trip for which Contractor requests payment for any Staff Position.

2.5.2 TUTORING SERVICES ORDER. Before Contractor may receive any payment under this Master Contract and a Tutoring Services Order, 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 invoice shall be submitted to FCSS no later than the 15th day of the current calendar month for Tutoring Services that Contractor provided in the prior calendar month and shall state and include, at a minimum, the following:

2.5.2.1 Order Number of the applicable Tutoring Services Order.

2.5.2.2 Not-to-exceed Order Amount of the applicable Tutoring Services Order.

2.5.2.3 Date, time duration, and location where the Tutoring Services occurred.

2.5.2.4 Sum of all amounts that FCSS previously paid to Contractor for Tutoring Services that Contractor performed pursuant to the applicable Tutoring Services Order.

2.5.2.5 Amount that Contractor is requesting as compensation for Tutoring Services performed in accordance with this Master Contract and the Tutoring Services Order. Each amount for Tutoring Services shall be based on the Tutor Staff Positions and Tutoring Hourly Rates set forth in Contractor’s Proposal Form (RFP Document D-1). The applicable Tutoring Hourly Rate shall be billed in 15-minute increments and based on the time that the Tutor Staff Position actually spent performing the Tutoring Services.

2.5.3 ADDITIONAL INFORMATION. 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 Site Contract Amount of the applicable Site Contract or any or all of the Order Amount of the applicable Tutoring Services Order until such time that FCSS receives such information from Contractor.

2.5.4 DECLARATION UNDER PENALTY OF PERJURY. 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 Master Contract and the applicable Site Contract or Tutoring Services Order, and the correct amount for the Services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under this Master Contract and the applicable Site Contract or Tutoring Services Order; 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.

SECTION 2.6 PAYMENT SCHEDULE, DEDUCTION, AND RELEASE. FCSS shall pay Contractor, within 30 days of receipt and approval of Contractor’s invoice, for Services that Contractor performed in accordance with this Master Contract and the applicable Site Contract or Tutoring Services Order. 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 a Site Contract or Tutoring Services Order 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 Master Contract and the applicable Site Contract or Tutoring Services Order, or for deficient or defective Services that FCSS discovers after the payment is made.

SECTION 2.7 REFUND OF PAID CONTRACT AMOUNT FOR NON-PERFORMED SERVICES. The Parties agree that FCSS is obligated to pay Contractor only for Services that Contractor performs in accordance with this Master Contract and the applicable Site Contract or Tutoring Services Order. Contractor hereby agrees to refund and pay to FCSS any portion of any Site Contract Amount or Order Amount that Contractor may receive for which Contractor has not performed Services in accordance with this Master Contract and the applicable Site Contract or Tutoring Services Order, such payment to be made by Contractor to FCSS within 30 days of FCSS’ written demand for such refund and payment.

**ARTICLE 3 TERM AND TERMINATION OF MASTER CONTRACT; AND SUSPENSION OF SERVICES.**

SECTION 3.1 MASTER CONTRACT TERM AND EXTENSION. This Master Contract is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date **(“Initial Master Contract Term”)** and any written extension thereto **(“Master Contract Term”)** and, unless terminated during the Master Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Master Contract Term without any notice or action by either Party. If FCSS elects to extend the Initial Master Contract Term, FCSS shall provide written notice thereof to Contractor at least 60 days before the expiration of the Initial Master Contract Term or the then effective Master Contract Term. Thereafter, the Parties shall enter into a written amendment to extend the Initial Master Contract Term or then effective Master Contract Term for up to two one-year extensions.

SECTION 3.2 GROUNDS FOR TERMINATION OF MASTER CONTRACT DURING MASTER CONTRACT TERM.

3.2.1 CAUSE. This Master Contract shall terminate upon expiration of the Master Contract Term. During the Master Contract Term, this Master Contract may ­be terminated pursuant to the following:

3.2.1.1 TERMINATION BY FCSS. FCSS may terminate this Master Contract upon Contractor’s material breach of one or more provisions of this Master Contract, a Site Contract, or a Tutoring Services Order, including but not limited to, the following after FCSS has provided Contractor with written notice as required by Section 3.2.1.3 below:

3.2.1.1(A) Contractor refuses or fails to perform Services as required under a Site Contract or a Tutoring Services Order.

3.2.1.1(B) Contractor refuses or fails to comply with any term or condition of this Master Contract or any Site Contractor or Tutoring Services Order.

3.2.1.2 TERMINATION BY CONTRACTOR. Contractor may terminate this Master Contract upon FCSS’ material breach of one or more provisions of this Master Contract, a Site Contract, or a Tutoring Services Order and after Contractor has provided FCSS with written notice as required by Section 3.2.1.3 below.

3.2.1.3 NOTICE OF TERMINATION.A Party intending to terminate this Master Contract pursuant to Section 3.2.1.1 or Section 3.2.1.2 shall provide the breaching Party with written notice at least 30 days **(“Termination Notice Period”)** before the effective termination date and provide the breaching Party with five business days after the date that the breaching Party received the non-breaching Party’s notice to terminate **(“Cure Period”)** to cure unless the non-breaching Party shall agree in writing to an extension of the Cure Period before the expiration of the Cure Period. Upon expiration of the Cure Period and any mutually agreed upon time extension, and if the breaching Party has not cured the breach and provided written notice of completion of such corrective action to the non-breaching Party, this Master Contract shall terminate effective 12:00 midnight on the last day of the Cure Period without any further notice or actions by either Party.

3.2.2 ADDITIONAL GROUNDS. Notwithstanding any provisions to the contrary in this Master Contract, this Master Contract shall terminate during the Master Contract Term pursuant to any of the following:

3.2.2.1 CONVICTION OR CRIMINAL PROCEEDING INVOLVING SERIOUS OR VIOLENT FELONY. FCSS, at FCSS’ sole discretion and upon written notice by FCSS to Contractor, may terminate this Master Contract, effective on the date stated in FCSS’ notice of termination, if Contractor provides any Staff Position or Tutor Staff Position who has a conviction of, or a pending criminal proceeding for, a violent felony listed in Penal Code section 667.5(c) and/or a serious felony listed in Penal Code section 1192.7(c).

3.2.2.2 CONTRACTOR NONCOMPLIANCE WITH APPLICABLE LAWS. FCSS, at FCSS’ sole discretion and upon written notice to Contractor, may terminate this Master Contract effective on the date stated in FCSS’ written notice if Contractor, in performing Services, fails to comply with federal, state, or local laws that apply to Contractor’s performance of the Services and the Applicable Law as defined in this Master Contract.

3.2.2.3 RECEIVERSHIP OR BANKRUPTCY OF, OR INABILITY TO PAY DEBTS BY, CONTRACTOR This Master Contract 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.

3.2.2.4 CONTRACTOR UNAUTHORIZED SUBCONTRACT, ASSIGNMENT, OR TRANSFER OF CONTRACT. Any subcontract, assignment, or transfer of this Master Contract, any Site Contract, or any Tutoring Services Order by Contractor in violation of the provisions in Section 7.3 constitutes a material breach of this Master Contract and FCSS, at FCSS’ sole discretion and upon written notice to Contractor, may terminate this Master Contract effective on the date stated in FCSS’ written notice.

3.2.2.5 CONTRACTOR FAILURE TO PROCURE AND MAINTAIN REQUIRED INSURANCE. If Contractor fails to maintain any of the insurance required by this Master Contract, FCSS, upon providing Contractor with written notice, may terminate this Master Contract effective on the date stated in FCSS’ written notice.

3.2.2.6 NON-ALLOCATION OF OR INSUFFICIENT ALLOCATED FUNDS. Upon written notice to Contractor, FCSS may terminate this Master Contract effective on the date stated in FCSS’ notice if, during the Master Contract Term, FCSS and/or other government agencies and/or grant or funding entities from whom FCSS or a School District receives or is to receive funds to pay for the Site Contracts or Tutoring Services Orders entered into pursuant to this Master Contract: (1) reduce or eliminate some or all funds to make each such payment, (2) fail to or determine not to appropriate or allocate funds for future payments, or (3) fail or determine not to allocate funds in an amount sufficient to make future payments.

3.2.2.7 LICENSE, CERTIFICATION, OR PERMIT. FCSS, at FCSS’ sole discretion and upon written notice to Contractor, may terminate this Master Contract effective on the date stated in FCSS’ written notice if Contractor’s license, certification, or permit required to provide Services under this Master Contract has been revoked, repealed, suspended, or placed on probation by any governmental or accrediting agency.

3.2.2.8 OTHER GROUNDS. FCSS may terminate this Master Contract effective on the date stated in FCSS’ written notice of termination to Contractor pursuant to any of the following: (A) Contractor fails to provide to FCSS and/or comply with the Fingerprinting Certification; (B) Contractor fails to provide to FCSS and/or comply with the TB Certification; (C) Contractor’s legal rights to exist or conduct business in California has been revoked or terminated by the California Secretary of State, another agency, or a court; and/or (D) Contractor’s legal rights to exist or conduct business in California has been suspended or rendered inactive by the California Secretary of State, another agency, or a court and such suspension lasts more than 30 consecutive days.

SECTION 3.3 TERMINATION OF SITE CONTRACT OR TUTORING SERVICES ORDER. Each Site Contract and Tutoring Services Order shall terminate at 12:00 midnight on the last day of the Site Contract Term or Order Term without any notice or action by either Party. A Party, with or without cause, may terminate any Site Contract or Tutoring Services Order by giving the other Party written notice at least 30 days before the effective date of termination.

SECTION 3.4 RIGHTS AND OBLIGATIONS UPON TERMINATION.

3.4.1 EFFECT OF TERMINATION OF MASTER CONTRACT ON PENDING SITE CONTRACT AND TUTORING SERVICES ORDER. Termination of this Master Contract shall also terminate, on the effective termination date of this Master Contract, all Site Contracts where the Site Contract Term has not expired and Tutoring Services Order where the Order Term has not expired.

3.4.2 EFFECT OF TERMINATION OF SITE CONTRACT OR TUTORING SERVICES ORDER. Termination of a Site Contract or Tutoring Services Order shall only be effective as to that Site Contract or Tutoring Services Order. Such termination shall not terminate or affect any other Site Contracts or Tutoring Services Orders.

3.4.3 PAYMENT.Upon termination of this Master Contract during the Master Contract Term, the following shall apply and survive the termination of this Master Contract: (A) FCSS shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, this Master Contract and the applicable Site Contract or Tutoring Services Order before the effective date of termination; (B) Contractor shall submit an invoice within 30 days of the effective date of termination; (C) Sections 2.5 and 2.6 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.

3.4.4 RETURN OF RECORDS AND INFORMATION. At FCSS’ request, all documents, records, data, information, and materials and other items that FCSS or School Districts provided to Contractor related to this Master Contract, any Site Contract, or any Tutoring Services Order shall be returned to FCSS no later than 30 days after the effective date of termination of this Master Contract or the date of FCSS’ request, whichever is earlier.

SECTION 3.5 SUSPENSION OF SERVICES. Despite any contrary provision in this Master Contract, FCSS shall have the right to suspend, delay, or interrupt any or all Services at any time during the applicable Site Contract Term or Order 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 a Site Contract or Tutoring Services Order but did not perform during the Suspension Period, and the Site Contract Amount or Order Amount shall be adjusted to deduct the amount of such compensation and such adjustment shall be set forth in an amendment to the applicable Site Contract or Tutoring Services Order; (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 Master Contract Term and Site Contract Term or Order Term shall remain the same.

SECTION 3.6 FORCE MAJEURE.A Party is not liable for failing to perform or delaying performance of this Master Contract or any Site Contract or Tutoring Services Order 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 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 Site Contract Amount or Order Amount that is due to Contractor where Contractor has performed, in accordance with this Master Contract and the applicable Site Contract or Tutoring Services Order, the Services for which payment is requested, and submitted an invoice and supporting information as required Section 2.5. 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, shall maintain in effect insurance that complies, at a minimum, with the applicable requirements stated below. 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 throughout the Master 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, the Fresno County Board of Education, the School Districts 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 throughout the Master Contract Term.

4.1.3 *Commercial Automobile Liability,* in effect throughout the Master Contract Term, with limits per accident not less than $1,000,000 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.

SECTION 4.2 PROOF AND NOTICE; DEDUCTIBLE OR SELF-INSURED RETENTION.Contractor shall provide to FCSS: (A) before commencement of any Services 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 Master Contract.

**ARTICLE 5 INDEMNITY.**

Except as stated in the Fingerprinting Certification or the TB Certification in which case the indemnity provisions contained in each certificate required of Contractor shall govern to the extent provided therein, each Party’s indemnity, defense, and hold harmless obligations to the other Party under or related to this Master Contract, any Site Contract, and any Tutoring Services Order shall be governed solely by this Article. A Party **(“Indemnitor”)** shall: (A) indemnify and hold harmless the other Party **(“Indemnitee”)** to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor’s liability based on a Final Determination; and (B) defend and pay for all of Indemnitor’s attorney’s fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party shall notify the other Party in writing and within a reasonable time after the Party 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 Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Master Contract. **“Claim”** means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Master Contract where there has been no Final Determination. **“Loss”** means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney’s fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Master Contract and for which there has been a Final Determination that a Party is or both Parties are liable. **“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. **“Final Determination”** means any judgment, order, or decision, each a **“Determination,”** by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

**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 Master Contract or any Site Contract or Tutoring Services Order, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Master Contract or any Site Contract or Tutoring Services Order that arises or occurs after the termination of this Master Contract or the termination of a Site Contract or a Tutoring Services Order. During any dispute, FCSS’ decision, for the time being, shall prevail and Contractor shall perform this Master Contract and the applicable Site Contract or Tutoring Services Order as FCSS directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under this Master Contract or a Site Contract or Tutoring Services Order, 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 Master Contract or any Site Contract or Tutoring Services Order until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Master Contract or the applicable Site Contract or Tutoring Services Order.

**ARTICLE 7 GENERAL PROVISIONS.**

SECTION 7.1 ENTIRE AGREEMENT, EXECUTION, AMENDMENT, AND WAIVER. This Master Contract is a complete and exclusive statement of the Parties’ agreement under Code of Civil Procedure section 1856. The Parties may execute this Master Contract, a Site Contract, a Tutoring Services Order, and any amendment in counterparts such that each Party’s signature is on a separate page. A copy or an original of this Master Contract, a Site Contract, a Tutoring Services Order, 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 Master Contract, a Site Contract, or a Tutoring Services Order 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 Master Contract, the Site Contract, or a Tutoring Services Order, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Master Contract and any Site Contracts and Tutoring Services Orders 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 Master Contract, any Site Contracts, and any Tutoring Services Orders shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Master Contract or any Site Contracts or Tutoring Services Orders 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 Master Contract or any Site Contracts or Tutoring Services Order void, illegal, or unenforceable, this Master Contract and the particular Site Contract or Tutoring Services Order shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Master Contract or the particular Site Contract or Tutoring Services Order and the remaining provisions shall be construed to preserve the Parties’ intent in this Master Contract and the particular Site Contract or Tutoring Services Order. Any provision in this Master Contract, a Site Contract, or a Tutoring Services Order that by its nature applies after, or is specifically stated to survive, the termination of this Master Contract and the applicable Site Contract and Tutoring Services Order shall survive the termination of this Master Contract and the applicable Site Contract and Tutoring Services Order.

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. This Master Contract and any Site Contracts and Tutoring Services Orders do 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, transfer, or subcontract any or all of its obligations and/or rights under this Master Contract or any Site Contract or Tutoring Services Order, including by operation of law or change of control or merger, without FCSS’ prior written consent.

SECTION 7.4 NOTICES. Except as may be stated otherwise in this Master Contract 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 Master Contract, any Site Contracts, or any Tutoring Services Orders 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***.* 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 Master Contract and the applicable Site Contract or Tutoring Services Order.

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FORM NO. 1

Site Contract

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FORM NO. 2

Tutoring Services Order

**TUTORING SERVICES ORDER**

**(“Order”)**

Order No.: \_\_\_\_C

Contractor:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FCSS Department: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Business Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Fresno, California \_\_\_\_\_\_\_\_\_\_\_\_

Phone No.: (559)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_@fcoe.org

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| --- | --- | --- |
| **“Order Term”**: | Start Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | End Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

This Order is entered into pursuant to the Master Program Provider Agreement **("Master Contract"),** effective August 1, 2018 and entered into by and between Contractor and Fresno County Superintendent of Schools **(“FCSS”)**. This Order incorporates by reference the terms and conditions of the Master Contract. Contractor shall provide the Tutor Staff Position(s) stated below to provide Tutoring Services at such time and location(s) as designated by FCSS, which location(s) shall be within Fresno County, California. The Staff Position No., Title, and Tutoring Hourly Rate shall match those stated in Contractor’s Proposal Form (RFP Document D-1).

|  |  |  |  |
| --- | --- | --- | --- |
| **Staff Position No.** | Title of **“Tutor Staff Position”*****(state position/title)*** | Description of Job Functions | **“Tutoring Hourly Rate”**(Rate Per Hour) |
| T1 |  |  |  |
| T2 |  |  |  |
| T3 |  |  |  |
| T4 |  |  |  |
| T5 |  |  |  |
| T6 |  |  |  |
| T7 |  |  |  |

Except as stated in this Order, all terms and conditions of the Master Contract and amendments thereto, if any, shall remain in full force and effect in accordance with the terms and conditions stated therein and all terms used in this Order shall have the same meaning as in the Master Contract. If any terms or provisions of this Order conflict with any terms or conditions of the Master Contract, the terms and conditions of the Master Contract shall govern.

CONTRACTOR FCSS

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| --- | --- |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Jim A. Yovino or Authorized Designee |

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