



TRANSPORTATION SERVICES AGREEMENT

(“Agreement”)

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

COVER

RFP No.: NC-2018-02

Program/Event: Student Transportation Services

CONTRACTOR

Full legal name of other party (**“Contractor”**)

DBA (*leave blank if none*):

Attn: Name of contact person, Title

Street address (**no PO box**)

City, State #####

Phone: (###) ###-####

Email: email

FCSS

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

ADDRESS FOR INVOICE TO FCSS: 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

Attn: Kevin Otto, Deputy Superintendent

Dept.: Business Services

1111 Van Ness Ave.

Fresno, CA 93721

Phone: (559) 265-3083

Email: kotto@fcoe.org

CONTRACT TERM (see § 3.1)

“Effective Date”: September 15, 2018

“Termination Date”: June 30, 2023

CONTRACT AMOUNT, INVOICE, AND PAYMENT (see Art. 2). Contractor shall invoice FCSS and FCSS shall pay Contractor the Contract Amount pursuant to the Payment Schedule stated below:

A. Contract Amount, Invoice, and Payment Schedule.

1. As full consideration and compensation for Contractor’s performance of the Services required under each purchase order issued by FCSS to Contractor in accordance with this Agreement, FCSS shall pay Contractor the amount due to Contractor as set forth in the applicable purchase order. The amount shall be based on the Vehicle Rates and the Fuel Surcharge Rate set forth in Contractor’s Proposal Form. FCSS shall pay Contractor no more than the Layover Per Diem stated in Contractor’s Proposal Form for each driver per each night during which Contractor is required to have a driver on a Special Trip that requires overnight stay. The aggregate amounts of all purchase orders issued in accordance with this Agreement shall be referred to as **“Contract Amount.”**
2. FCSS shall pay Contractor within 30 days after: (A) Contractor has completed, in accordance with the applicable purchase order and the Contract, the Services required of Contractor for the period for which Contractor requests payment; and (B) FCSS has received and approved Contractor’s invoice, which shall comply with the requirements in B below and Section 2.2.
3. FCSS is not obligated to pay Contractor for any time spent by Contractor’s employees for lunch, break, or other leaves before, during, or after an established route or Special Trip and any such time shall not be included in the time of the established route or Special Trip.

- B. *Invoice Requirements.* Each itemized invoice must be received and approved by FCSS before Contractor may receive any payment under any purchase order and the Contract. Each invoice shall state, at a minimum, the following:
1. Legal Doc./Contract No. of the Contract.
 2. Applicable purchase order issued pursuant to the Contract.
 2. Services that Contractor has performed pursuant to the applicable purchase order.
 3. Date(s) during which the Services were performed.
4. Amount that Contractor requests as compensation for performance of the Services, which amount shall not exceed the amount stated in the applicable purchase order.

CONTRACTOR OBLIGATIONS

- A. **“Services”:** Contractor shall furnish, in accordance with the applicable purchase order, this Agreement, and the other Contract Documents, all labor, vehicles as listed in Contractor’s Proposal Form, fuel, and all related equipment, materials and supplies necessary to provide FCSS with transportation services for one or more of the following as required by FCSS from time to time during the Contract Term:

Mark and complete as applicable: Charter buses School buses
 Other vehicles (*specify*): _____

1. *Special Trips.* Transportation services for field trips, special trips, and other excursions that may include the following (separately **“Special Trip”** and collectively **“Special Trips”**):
 - a. *After School Program Field Trips, Safe & Healthy Kids:* Transportation services for Special Trips to and from a variety of destinations throughout California for FCSS’ After School Program.
 - b. *Incentive Excursions, Court and Community School:* Transportation services on a monthly basis for Special Trips, the majority of which will be within Fresno County and be taken during the school day, 9:00 am – 2:45 p.m. FCSS anticipates 25-30 students and 5 – 8 chaperones on each field trip/excursion.
 - c. *Event/Field Trips, Migrant Education:* Transportation services for academic programs and activities for migrant students attending school districts throughout Fresno County.
 - d. *Other As-Needed Transportation:* Transportation services for students and other designated persons to and from various destinations throughout California for other FCSS departments and programs operated by FCSS.
2. *Court and Community School Route and Other Established Routes.* Starting in August 2021, school bus transportation for students who attend the Court and Community School Program operated by FCSS, which particular route is subject to change from time to time. Upon the Parties’ agreement, as set forth in a purchase order issued in accordance with this Agreement, Contractor shall provide school bus transportation for such other established routes as designated by FCSS for other programs operated by FCSS.

- B. *Purchase Order Issuance and Cancellation:* Any Services to be provided by Contractor under the Contract shall be set forth in a purchase order issued by FCSS to Contractor before commencement of the required Services. Contractor shall not be obligated to provide any Services to FCSS and FCSS shall not be obligated to accept or pay Contractor for any Services that are not set forth in a purchase order. The purchase order shall state, at minimum, the following information: (1) description of the particular Services to be performed by Contractor, (2) the beginning date and ending date during which Contractor shall perform the required Services, (3) each pickup location and drop-off location, and (4) the amount to be paid to Contractor for performance of the required Services. FCSS, at its discretion and upon 30 days prior written notice to Contractor, may cancel any purchase order for an established route. FCSS, at its discretion and upon 10 days prior written notice to Contractor, may cancel a purchase order for a Special Trip. If notice of cancellation of a purchase order for a Special Trip is not provided by FCSS to Contractor within the 10 days, FCSS’ sole obligation is to pay Contractor \$100 penalty for each purchase order that is cancelled less than 10 days. Upon the cancellation of a purchase order and unless stated here otherwise, the provisions set forth in Section 3.3 shall apply. The cancellation of a purchase order shall not cancel any other purchase orders and shall not terminate the Contract.

REQUIRED DOCUMENTS. Contractor shall provide to FCSS, as applicable, each document listed 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 Service (*mark each required*):
 - 1. Commercial general liability with additional insured coverage (see Section 4.1.1).
 - 2. Workers compensation and employer’s liability if Contractor has any employees.
 - 3. Commercial auto liability.
- B. Fingerprinting and Criminal Background Check Certification (**“Fingerprinting Certification”**) if Contractor is providing school bus transportation services, 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”**) if Contractor is providing school bus transportation services, 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 the Contract, Contractor and FCSS, separately referred to as a **“Party”** and collectively as the **“Parties,”** have reviewed and understand and hereby enter into the Contract. Unless the context requires otherwise, any reference to a Party in the Contract includes, as applicable, its governing body and members thereof, officers, employees, and agents. Each person executing the Contract on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to the Contract.

CONTRACTOR

FCSS

By: _____
Print Name:
Title:

B _____ y _____ :
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.

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GENERAL TERMS AND CONDITIONS

The following documents, each of which is referred to as a “**Contract Document**” and collectively as the “**Contract Documents**,” form the “**Contract**”:

This Agreement, containing the Cover and these General Terms and Conditions:

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

Packet issued by FCSS

Contractor’s Response

“**Required Documents**” (not attached) means documents to support Contractor’s representations in Section 1.1 of the General Terms and Conditions and documents required of Contractor on the Cover.

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

ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 RECITALS AND REPRESENTATIONS. The following recitals and representations constitute a part of this Agreement and the Contract:

1. Contractor represents that it is authorized to conduct business in the State of California, is authorized to provide the Services, is willing and able to so provide in accordance with the Contract, and is authorized to enter into the Contract.
2. FCSS is a local public agency duly organized and operating in the State of California, and is authorized to enter into the Contract.
3. The Contract will be paid, in part or in whole, with federal grant funds and is subject to applicable federal laws, regulations, and requirements. The Contract is entered into in accordance with Section 200.320 of Title 2 of the Code of Federal Regulations.
4. By the Contract, the Parties desire to set forth the terms and conditions upon which Contractor shall perform those obligations required of Contractor and FCSS shall pay Contractor therefor, and to set forth other rights and obligations of the Parties.

SECTION 1.2 NON-EXCLUSIVE CONTRACT. Contractor understands and agrees that the Contract does not constitute an exclusive contract for Contractor to provide transportation services to FCSS. Throughout the Contract Term, FCSS, at its sole discretion and without any notice, obligation, or liability to Contractor, may provide, through FCSS’ work force or procure through one or more third parties, transportation services that are identical or similar to the Services required of Contractor under the Contract. FCSS’ use of its work force or a third party shall not constitute or be deemed a breach of any provision of the Contract.

SECTION 1.3 CONTRACTOR QUALIFICATION. Contractor represents and shall ensure throughout the Contract Term that it and all persons whom it employs or retains to perform the Contract 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 five days after Contractor receives any notice that any such License has been revoked, suspended, placed on probation, or non-renewed.

SECTION 1.4 CONTRACTOR RESPONSIBILITY.

1.4.1 GENERALLY.

- 1.4.1.1 PROVISION OF LABOR AND EQUIPMENT. Contractor shall furnish all labor and equipment, including vehicles, personnel, fuel, tools and related equipment, materials and supplies, required to provide FCSS with transportation and related services under the Contract, and to maintain and operate all vehicles and equipment safely and in a good and workmanlike manner and in accordance with the Contract and applicable laws.
- 1.4.1.2 CHANGES AND ADJUSTMENTS. As to the Court and Community School Route, FCSS reserves the right to change school hours; adjust school start and ending times; change any aspect of or delete any established route(s); add new routes; change, increase, or decrease the number and type of vehicles required; change any school site to which transportation services will be provided; and/or change the number of or particular students assigned to a vehicle or route.
- 1.4.1.3 VEHICLE SHARING WITH OTHER SCHOOL DISTRICTS. If Contractor is providing transportation services for school districts within Fresno County, California pursuant to a contract entered into based on to the Contract or separate contracts, the Parties and such school district(s) may coordinate and share vehicles upon a mutual agreement set forth in writing and signed by all parties involved.

1.4.2 STAFFING.

- 1.4.2.1 DESIGNATED CONTACT. Contractor shall designate a contact person with whom FCSS staff may communicate to procure Services pursuant to purchase orders issued in accordance with this Agreement. Contractor shall notify FCSS of the designated contact within 15 days of the Effective Date and at each time there is a change in the designated contact person.
- 1.4.2.2 DRIVERS. At all time during the Contract Term, Contractor shall provide adequate number and qualified and trained drivers to cover all routes and such Special Trips as FCSS may need. Contractor shall employ additional drivers and support staff required to cover absence of drivers and staff throughout the Contract Term. The number of substitute employees shall be at Contractor's discretion to assure that all established routes are covered at all times by qualified and trained drivers.
- 1.4.2.2(A) Contractor shall employ only qualified drivers trained and licensed in accordance with applicable California and federal laws to operate the vehicles that will be used to provide Services under the Contract.
- 1.4.2.2(B) Contractor shall assign the same driver to the same route whenever possible.
- 1.4.2.2(C) Drivers shall be knowledgeable of the contents of the Contract, excluding rate information; any transportation rules provided by FCSS; and all applicable laws regarding operation of vehicles and transportation of students.
- 1.4.2.3 FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION. The provisions of this Subsection applies if Contractor is providing Services in the form of school bus transportation, whether on an established route or a Special Trip. Contractor shall require and ensure that each of its employees who will be operating or riding on any vehicle where any students will be present will have been fingerprinted and criminal background checks completed, and that Contractor has completed, signed, and delivered to FCSS the Fingerprinting Notice and Criminal Background Check Certification, which Contractor must obtain from FCSS. Contractor shall apply for subsequent arrest notifications with the California Department of Justice in order for Contractor to receive subsequent arrest notices for Contractor and its employees, and shall provide FCSS with an updated Fingerprinting Certification if there are any changes to the information Contractor has provided to FCSS. Contractor must immediately remove from performance of any Services required under the Contract any of its employees who are convicted of or against whom a criminal proceeding is pending for a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

- 1.4.2.4 TUBERCULOSIS CLEARANCE CERTIFICATION. Contractor shall obtain from and complete, sign, and deliver to FCSS the Tuberculosis Clearance Certification or provide FCSS with documentation satisfactory to FCSS that each of Contractor's drivers who will provide services under the Contract has been examined and determined by a licensed physician or surgeon within four years of the Contract Effective Date to not have active tuberculosis. If during the Contract Term, any of Contractor's drivers who are providing services under this Contract are determined to have active tuberculosis, Contractor shall immediately remove such drivers from providing services under this Contract.
- 1.4.2.5 FCSS RIGHT TO OBSERVE AND REMOVE CONTRACTOR PERSONNEL. FCSS reserves the right to observe any drivers or other personnel at work to assess the interaction between students, attendants, and drivers. However, FCSS does not accept any responsibility to supervise attendants or drivers. Upon FCSS' written request, Contractor shall remove any driver or other personnel from performing services under the Contract.
- 1.4.3 VEHICLES AND OTHER EQUIPMENT. Contractor shall have the following obligations relating to each vehicle that Contractor uses to provide Services under the Contract:
- 1.4.3.1 COMPLIANCE WITH APPLICABLE LAWS. Upon FCSS' request, furnish certificates of compliance issued by the California Highway Patrol or other entities acceptable to FCSS, certifying that the vehicle complies with all applicable laws.
- 1.4.3.2 VEHICLE IDENTIFICATION NUMBER. If Contractor is providing Services to FCSS for a regular school bus route, post a sign or marking of an identification number for each vehicle that is assigned to a route, and furnish FCSS with the description of the vehicle and its identification number on or before July 15 of each year. Except for the identification signs stated in this Subsection and unless authorized by FCSS in writing, Contractor shall not use any markings or lettering on any vehicle that identifies the vehicle with or as operated for FCSS.
- 1.4.3.3 MAINTENANCE. Keep and maintain the vehicle in good operating, running and mechanical condition, and in a clean and sanitary condition, adequate for the use and purpose for which the vehicle is intended and in compliance with applicable laws. At FCSS' request, Contractor shall make the vehicle available in Contractor's facilities for inspection by FCSS or FCSS' agents. FCSS may inspect the vehicle at any time to determine whether Contractor is maintaining the vehicle in a clean, sanitary, and safe condition. These inspections may be conducted at Contractor's facilities or at a specific school site during a regular run. Date and times of inspections will not be provided in advance.
- 1.4.3.4 COMMUNICATION DEVICES. Equip the vehicle with an immediate means of communication to Contractor's base of operations by a two-way radio network system licensed by the Federal Communications Commission or other acceptable system.
- 1.4.3.5 HEATING AND AIR CONDITION. Equip each vehicle with front and rear heating and air conditioning.
- 1.4.3.6 OTHER REQUIRED EQUIPMENT. Provide all required, appropriate, or related supplies, equipment, and materials in compliance with laws applicable to vehicles used to transport students in the State of California. Any equipment required by law or by a change in any applicable laws shall be made by Contractor at Contractor's sole expense.
- 1.4.4 FUEL AND OTHER PURCHASES. Contractor, at its sole expense, shall provide all fuel (any type), labor, vehicles and equipment, materials, supplies, and any other items necessary and proper to provide Services to FCSS under the Contract. Unless pre-approved by FCSS in writing, FCSS is not obligated to and shall not pay or reimburse Contractor for any labor, equipment, materials, supplies, or any other items relating to Services provided by Contractor under any purchase order issued pursuant to the Contract. All fuel provided by Contractor shall be subject to the Fuel Surcharge Rate set forth in Contractor's Proposal Form, if any such Fuel Surcharge Rate is stated therein.

- 1.4.5 TRAINING AND SAFETY PROGRAM. Contractor shall comply with all California, federal, and local laws governing the safe operation of vehicles used to provide transportation services under the Contract and the training of personnel as it relates to the safety of students transported under the Contract. Times for established routes shall be scheduled through mutual agreement between the Parties to provide for semi-annual emergency exit drills. These drills shall be held within the first four weeks of each school semester. If unexpected problems develop to prohibit such scheduled drills during the weeks specified, a make-up drill shall be scheduled as soon thereafter as possible.
- 1.4.6 STUDENT DISCIPLINE ON VEHICLES.
- 1.4.6.1 Contractor shall maintain proper student supervision and monitoring for the safety of all persons aboard a vehicle. Contractor's driver shall be primarily a reporting agent only and is not to perform acts of discipline upon any students.
- 1.4.6.2 Drivers shall maintain orderly conduct of students while students are riding on any vehicle operated by Contractor.
- 1.4.6.3 For established routes (e.g., Court and Community School Route), Contractor shall report any student behavior problems that develop on a vehicle through issuance of a pupil conduct report to FCSS for disciplinary action, and/or suspension or removal from riding on Contractor-operated vehicles. FCSS may require that the pupil conduct report be made on a form provided by FCSS.
- 1.4.6.4 Contractor's drivers and employees are not authorized to remove students from any vehicles.
- 1.4.7 SCHOOL CLOSURE, INCLEMENT WEATHER, AND CANCELLED ROUTE AND STOP.
- 1.4.7.1 SCHOOL CLOSURE AND EARLY DISMISSAL. The decision to close a school at the start of the day or for early dismissal during the day shall be made by FCSS, the school district where the student is attending, and/or other public agency, and FCSS will provide Contractor with notice thereof as soon as reasonably possible. If FCSS does not provide Contractor with notice thereof before a vehicle has commenced on a route or Special Trip, FCSS, upon FCSS' receipt and approval of an itemized invoice, shall reimburse Contractor for the cost of the actual time spent by the driver or minimum call-out time of the driver, whichever cost is less.
- 1.4.7.2 INCLEMENT WEATHER. Contractor shall, taking into consideration the safety of operations, provide transportation services for routes and Special Trips during inclement weather conditions, provide appropriate equipment and trained personnel, and implement alternate routes as necessary and approved by FCSS under such inclement conditions. Foggy day schedules shall be determined by FCSS, the school district where the student is attending, and/or other public agencies, and notice thereof will be communicated by FCSS to Contractor as soon as reasonably possible. If FCSS does not provide Contractor with notice of foggy day schedules before a vehicle has commenced on a route or Special Trip, FCSS, upon FCSS' receipt and approval of an itemized invoice, shall reimburse Contractor for the cost of the actual time spent by the driver or minimum call-out time of the driver, whichever cost is less.
- 1.4.7.3 CANCELLATION OF ESTABLISHED ROUTE. If any established route is being canceled on any day for reasons other than those stated in Subsection 1.4.7.1 or 1.4.7.2, FCSS will notify Contractor of the cancellation at least one hours before the first scheduled pickup stop. If FCSS fails to give Contractor this one-hour notification, FCSS, upon FCSS' receipt and approval of an itemized invoice, shall reimburse Contractor for the cost of the actual time spent by the driver or minimum call-out time of the driver, whichever cost is less.
- 1.4.7.4 CANCELLATION OF STOP. FCSS may cancel any stop on an established route or Special Trip by notifying Contractor at least one hour before the first scheduled pickup stop. FCSS' failure to so notify Contractor shall not entitled Contractor to any additional compensation for the route or Special Trip.
- 1.4.8 ACCIDENT REPORTS AND CITATIONS. All accidents or citations that involve Contractor's personnel while providing Services under any purchase order issued under th Contract shall be reported to FCSS.

Accidents involving injuries to students or other persons shall be reported to FCSS immediately after Contractor is notified of them. Contractor may deliver accident or incident reports by telephone but Contractor must provide to FCSS a written report, which includes all pertinent information, as soon as reasonably possible after each accident but in no event later than three business days after the accident.

- 1.4.9 MEANS, METHODS, AND SAFETY. Unless stated otherwise in a Contract Document 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 the Contract; (B) the acts and omissions of Contractor's officers, employees, agents, and any other persons who Contractor retains to perform the Contract; 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 the Contract, to any officers, employees, agents, students, or invitees of FCSS, or to any Third Party.

SECTION 1.5 COURT AND COMMUNITY SCHOOL ROUTE AND OTHER ESTABLISHED ROUTES.

- 1.5.1 APPLICATION OF SECTION. This Section applies to Contractor if Contractor is providing transportation on school buses for the Court and Community School Route or other established routes as agreed upon between FCSS and Contractor in a purchase order issued in accordance with this Agreement. An established route shall mean each route as agreed upon by the Parties whereby Contractor is obligated to regularly pick up and drop off students based on stops and time schedules agreed to by the Parties.
- 1.5.2 CONDITION OF VEHICLES. Throughout the Contract Term, each school bus that Contractor uses to provide transportation services under the Contract shall be no more than seven years old and have no more than 150,000 miles of use. Contractor must replace any vehicle that is more than seven years old or has over 150,000 miles, whichever occurs first.
- 1.5.3 TRANSPORTATION NEED SUBJECT TO CHANGE. During the Contract Term, the Parties shall communicate and coordinate regarding the particular routes, time schedules, number and types of vehicles, and the students who Contractor will transport on each established route. The number of students who will need transportation on an established route will change throughout the Contract Term. Because of this, the exact number of students that Contractor will transport on each established route at any point in time during the Contract Term cannot be accurately determined. Therefore, FCSS' need for transportation on an established route may change, resulting in changes to the pick-up and drop-off locations and/or time schedules. Contractor, at all times throughout the Contract Term, shall have all required school buses and qualified and trained drivers available to provide uninterrupted transportation for all established routes, plus spare school buses in sufficient number to assure that uninterrupted services can be provided if a school bus suffers mechanical breakdowns or other problems. The spare school buses shall comply with all of the requirements as the vehicles assigned to the established routes.
- 1.5.4 CANCELLATION OF ESTABLISHED ROUTE. FCSS may cancel any established routes by cancelling the applicable purchase order in accordance with the provisions set forth on the Cover.

SECTION 1.6 SPECIAL TRIPS.

- 1.6.1 APPLICATION OF ARTICLE. This Section applies to Contractor with respect to any Special Trip for which Contractor provides Services under any purchase order issued in accordance with this Agreement.
- 1.6.2 SCHEDULING OF SPECIAL TRIP. Upon FCSS' request and subject to availability of vehicles, Contractor shall provide transportation service for Special Trips. FCSS shall provide notice to Contractor at least two business days before the scheduled Special Trip. If Contractor does not have the required

vehicle(s) and/or personnel available at the time requested by FCSS, Contractor may suggest an alternate time and/or date or FCSS may retain, at FCSS' own expense, another company or entity to provide transportation services for a Special Trip. Such retention and use of another company or entity shall not constitute or be deemed a breach of any provision of the Contract. Upon Contractor agreeing to provide the required transportation services for a Special Trip, FCSS shall issue a purchase order in accordance with the requirements set forth on the Cover.

1.6.3 CALCULATION OF TIME FOR SPECIAL TRIPS. Time spent for transportation services for *each* Special Trip shall be calculated as follows: (A) for picking up students, the total time commencing at the time a vehicle departs from the first pick-up stop and continuing until the time the vehicle arrives at the destination specified by FCSS; and (2) the total time commencing at the time a vehicle departs from the specified destination and continuing until the time the vehicle arrives at the last drop-off stop. For purposes of calculation under this Section 1.6, time shall be computed to the nearest quarter hour (15 minutes). FCSS is not obligated to pay Contractor for any time spent by Contractor's employees for lunch, break, or other leaves before, during, or after a Special Trip and any such time shall not be included in the time of the Special Trip.

1.6.4 CANCELLATION OF SPECIAL TRIP. FCSS may cancel any scheduled Special Trip by cancelling the applicable purchase order in accordance with the provisions set forth on the Cover.

SECTION 1.7 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

1.7.1 GENERALLY. Each Party shall comply with all laws and regulations (collectively "**Law**") applicable to its performance of the Contract, and all Law that it agrees to comply under the 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 Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in the Contract and an Applicable Law, the provision in the 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. Each Party shall comply with each grant (if any) that provides funding to pay for the Contract and all Law and requirements applicable to such grant.

1.7.2 FEDERAL GRANT FUNDS. The Contract 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 the 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 Contract Term, Contractor shall cooperate with and provide FCSS with documents and information relating to the Contract that are necessary for FCSS to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of the Contract.

SECTION 1.8 RECORDS AND INFORMATION.

1.8.1 REQUIRED DOCUMENTS. Contractor shall provide to FCSS each Required Document listed on the Cover, each of which is incorporated into and constitutes a part of the Contract. 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.

1.8.2 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 the Contract, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as the 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 the Contract; 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 the Contract.

- 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 the Contract for at least five years after the date on which the 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. If the Contract 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 the Contract.
- 1.8.4 BOOKS AND RECORDS OF SERVICES. Upon FCSS' request and except as prohibited by applicable laws, Contractor shall provide to FCSS within five business days of the request all books, records, reports and documents relating to services provided under the Contract, including but not limited to the following:
- 1.8.4.1(A) Weekly reports and/or records, stating for each established route the following: the route number, identification number of the vehicle assigned to the route, the name of the assigned driver, the pickup and drop-off stops and times, number of students carried on the route, average travel time of the route, miles traveled, and all late or missed runs or stops on the route and the cause of the problem and corrective action(s) taken.
 - 1.8.4.1(B) Copies of all, if any, California Highway Patrol, California Motor Carrier and Federal Department of Transportation vehicle inspection reports on Contractor's vehicles.
 - 1.8.4.1(C) Monthly report of vehicles receiving preventative maintenance services, stating which vehicles and the nature of the maintenance.
 - 1.8.4.1(D) Monthly report of vehicles receiving major repairs, stating which vehicles and the nature of the repairs.

SECTION 1.9 COMMUNICATIONS AND PUBLIC RELATIONS. The Parties, through each Party's contact person listed on the Cover, shall:

- 1.9.1 OPERATIONAL PROBLEMS. Cooperate to resolve disputes involving routes, schedules, public relations, and other operational problems relating to the Contract that may arise during the Contract Term.
- 1.9.2 PUBLIC RELATIONS. Contractor shall cooperate with FCSS to maintain good public relations with parents, the community, and news media so that any pertinent items affecting FCSS' transportation programs, the Services under the Contract, or the students for whom transportation services are to be provided under the Contract can be addressed appropriately. Contractor shall notify FCSS immediately of any media inquiries relating to any incidents involving Services that Contractor provides to FCSS.

ARTICLE 2 PAYMENT.

SECTION 2.1 PAYMENT. Compensation for Contractor's performance of the Contract and Services shall be each amount stated in a purchase order issued in accordance with this Agreement and as stated on the Cover. Except as stated in a purchase order, Contractor shall not be entitled to any other payment from FCSS; in the event Contractor has received any payment that is not set forth in a purchase order, Contractor shall refund such payment to FCSS within 30 days of FCSS' request.

SECTION 2.2 INVOICE AND PAYMENT REQUEST DOCUMENTS. Before Contractor may receive any payment under any purchase order issued in accordance with this Agreement, Contractor shall submit an itemized invoice in accordance with the requirements stated on the Cover as well as other documents stated below, to FCSS at FCSS' address for invoice stated on the Cover.

- 2.2.1 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 knows 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 the Contract and the correct amount for those Services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under the Contract; 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.

2.2.2 ADDITIONAL DOCUMENTATION. Upon receiving an invoice and if FCSS objects to it and/or requires additional information or documentation, FCSS shall notify Contractor and Contractor shall provide such information and/or documentation 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 any payment due to Contractor under the Contract until such time that FCSS receives such information from Contractor.

SECTION 2.3 DEDUCTION AND RELEASE. 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 the Contract 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 the Contract or for deficient or defective Services that FCSS discovers after the payment is made.

SECTION 2.4 LIQUIDATED DAMAGES UPON CONTRACTOR'S REFUSAL OR FAILURE TO PERFORM REQUIRED SERVICES.

2.4.1 ASSESSMENT OF LIQUIDATED DAMAGES. Contractor's refusal, failure, and/or delay in performing the Services as required by a purchase order issued in accordance with this Agreement shall subject Contractor to liquidated damages. The remedies provided under this Section 2.4 shall be in addition to any other rights that FCSS may have under the Contract.

2.4.2 AMOUNT OF LIQUIDATED DAMAGES. The actual occurrence of damages and the actual amount of damages that FCSS would suffer if the Services are not performed in accordance with the applicable purchase order and the Contract are dependent upon many circumstances and conditions that could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages that FCSS would suffer if Contractor refuses, fails, or delays performance of the required Services include, but are not limited to, cost incurred to provide alternative transportation services, disruption of the programs of FCSS and participating school districts, costs of administration, loss of funding due to student absence from school, and the loss suffered by FCSS, school districts, and students who use the transportation services that Contractor is required to provide under the Contract. Assessment of liquidated damages under this Section 2.4 shall in no way relieve Contractor of its obligations to provide spare vehicles and drivers sufficient to cover all interruptions in Service to FCSS due to failure of equipment or lack of personnel. Accordingly, the Parties agree that the amount stated below shall be the amount of damages that FCSS shall directly incur upon Contractor's refusal, failure, and/or delay in performing the Services as required by the applicable purchase order and the Contract:

2.4.2.1 MISSED ENTIRE ROUTE. If Contractor fails or refuses to perform Services for an entire established route, Contractor shall pay to FCSS, for each day that such Services are required, an amount equivalent to the greater of the daily rate applicable to the route or the actual costs incurred by FCSS to provide alternative transportation services for the route ("**Missed Route Charge**") plus 20 percent of the Missed Route Charge. For purposes of assessing liquidated damages under this Subsection 2.4.2.1, when a vehicle is late by 30 minutes or more, Contractor will be considered to have missed the entire route.

2.4.2.2 MISSED PORTION OF ROUTE. If Contractor fails, refuses, and/or delays to perform Services for only a portion of an established route and Contractor is late by less than 30 minutes on the route, Contractor shall pay FCSS an amount equivalent to the greater of the daily rate prorated based on the daily route time that Contractor has not performed in comparison to the daily route time that Contractor performed ("**Missed Route Charge**") plus 20 percent of the Missed Route Charge.

2.4.2.3 MISSED SPECIAL TRIP. If Contractor fails or refuses to perform Services for an entire or any portion of a Special Trip, Contractor shall pay to FCSS an amount equivalent to the greater of the total costs that Contractor is charging for the Special Trip or the actual costs incurred by FCSS to provide transportation services for the Special Trip (“**Missed Special Trip Charge**”) plus 20 percent of the Missed Special Trip Charge.

2.4.2.4 MISSED STUDENTS. If any student is not picked up and/or dropped off for an established route or a Special Trip due to Contractor’s fault, Contractor shall, on its own time and at its own expense, pick up or drop off the missed student in a timely manner. If Contractor fails or refuses to do so and FCSS incur any costs to pick up or drop off the student, Contractor shall reimburse FCSS for the costs, and, upon Contractor’s failure to so reimburse FCSS within 30 days of FCSS’ request, FCSS may deduct such costs from any payment due to Contractor under the applicable purchase order.

2.4.3 DEDUCTION FROM PAYMENTS DUE TO CONTRACTOR. If Contractor becomes liable for liquidated damages under this Section 2.4, FCSS, in addition to all other rights and remedies under the Contract and applicable laws, shall have the right to deduct and retain from any payment due to Contractor under the applicable purchase order an amount equivalent to the liquidated damages that FCSS assesses pursuant to this Section.

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

SECTION 3.1 CONTRACT TERM. The Contract is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date (“**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 TERMINATION BY CONTRACTOR - FCSS MATERIAL BREACH; NOTICE AND OPPORTUNITY TO CURE. Contractor may terminate the Contract only upon FCSS’ material breach of one or more of FCSS’ obligations under the Contract. If Contractor believes that FCSS has materially breached one or more of FCSS’ obligations under the Contract, Contractor shall provide FCSS with written notice stating the specific obligations of the Contract that FCSS materially breached and the acts or omissions of FCSS that caused the material breach. FCSS shall have 30 days from the date that FCSS receives Contractor’s notice to cure the material breach and provide Contractor written notice of such cure. If, upon expiration of the 30-day cure period and provided that FCSS has not disputed the material breach, FCSS has not cure the material breach, the Contract shall terminate at 12:00 midnight on the 30th day after FCSS receives Contractor’s notice of material breach without any further notice or action by either Party. Any dispute between the Parties relating to FCSS’ material breach and corrective actions shall be resolved in accordance with Article 6. During the 30-day cure period and the pendency of any dispute between the Parties, Contractor shall continue performing all Services required of Contractor.

3.2.2 TERMINATION BY FCSS. During the Contract Term, FCSS may terminate the Contract pursuant to one or more of the following:

3.2.2.1 WITH OR WITHOUT CAUSE/CONVENIENCE. FCSS may terminate the Contract, with or without cause, by giving Contractor written notice at least 30 days before the effective termination date.

3.2.2.2 LOSS OF RIGHTS TO CONDUCT BUSINESS. FCSS may terminate the Contract effective on the date stated in FCSS’ written notice of termination to Contractor if: (A) Contractor’s legal rights to exist or conduct business in California has been revoked or terminated by the State of California, any other agency, or a court; or (B) Contractor’s legal rights to exist or conduct business in California has been suspended or rendered inactive by the State of California, any other agency, or a court and such suspension lasts more than 30 consecutive days.

3.2.2.3 OTHER GROUNDS. FCSS may terminate the Contract 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, federal or state agency, and/or any entity from which FCSS receives or is to receive funds to pay for the Contract reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make

future payments under the Contract; (D) a government or issuing agency revokes, suspends, places on probation, or non-renews any License that Contractor must hold to perform the Contract; (E) Contractor assigns, transfers, or subcontracts any or all of Contractor's obligations and/or rights under the Contract in breach of Section 7.3; (F) Contractor fails to maintain and provide written proof of insurance as required by Article 4; or (G) Contractor is required to provide particular staff to perform the Contract but such staff is not able, not willing, or not available to perform the Contract.

3.2.3 **BANKRUPTCY OR INSOLVENCY.** The Contract shall terminate effective the day immediately preceding the day on which Contractor: (A) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors; (B) applies for, consents to, or has an order, judgment, or decree entered by a court for, approval of a petition or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor's assets; (C) 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) makes a general assignment for the benefit of creditors.

SECTION 3.3 RIGHTS AND OBLIGATIONS UPON TERMINATION DURING CONTRACT TERM. If the Contract is terminated during the Contract Term for any reasons and the Parties have not agreed otherwise in a writing executed by them or this Agreement does not provide otherwise, the following applies and survives the termination of the Contract:

3.3.1 **PAYMENT BY FCSS.** Unless specifically stated otherwise on the Cover in which case such provision shall apply, FCSS shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, the applicable purchase order and the Contract before the effective date of termination. Contractor shall submit an invoice within 30 days of the effective date of termination. The provisions in Article 2 shall apply to Contractor's invoice and FCSS' payment under this Subsection. 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.

3.3.2 **CESSATION OF SERVICES.** Contractor shall cease performance of any Services that remain.

3.3.3 **DELIVERY OF FCSS WORK AND CONTRACTOR WORK.** Within 30 days of the effective termination date of the Contract, Contractor shall deliver to FCSS any FCSS Work that FCSS provided to Contractor and any Contractor Work, whether or not it is complete.

SECTION 3.4 SUSPENSION OF SERVICES. Despite any contrary provision in this Agreement or any other Contract Documents, 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 the Contract but did not perform during the Suspension Period, and the amount due to Contractor 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 3.5 FORCE MAJEURE. A Party is not liable for failing to perform or delaying performance of the Contract 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 amount that is due to Contractor where Contractor has performed, in accordance with the Contract, 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, shall maintain in effect insurance as stated below and on the Cover, and complying, at a minimum, with the 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 \$10,000,000 and providing coverage, at a minimum, for owned, non-owned, and hired autos. 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.

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 the Contract.

ARTICLE 5 INDEMNITY.

The indemnity provision of the Fingerprinting Certification, the Sole Proprietor Fingerprinting Addendum, and/or the TB Certification, to the extent such document(s) is/are applicable as indicated on the Cover, shall govern to the extent provided therein. In all other respects relating to the Contract, each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to the Contract shall be governed solely by the provisions of 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 the 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 the 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 the 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 the Contract, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to the Contract that arises or occurs after the termination of the Contract. During any dispute, FCSS' decision, for the time being, shall prevail and Contractor shall perform the Contract as FCSS directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under the Contract, 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 the Contract until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of the Contract.

ARTICLE 7 GENERAL PROVISIONS.

SECTION 7.1 ENTIRE AGREEMENT, CONFLICT, EXECUTION, AMENDMENT, AND WAIVER. The Contract is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. The Contract consists of, and any conflict or inconsistency in the Contract shall be resolved by giving precedence as follows: This Agreement consisting of the Cover and General Terms and Conditions, the RFP Packet issued by FCSS, the Required Documents, and Contractor's response to FCSS' RFP. The Parties may execute the Contract and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of the Contract 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 the Contract 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 the Contract, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of the Contract 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 the Contract shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to the Contract 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 the Contract void, illegal, or unenforceable, the Contract shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of the Contract and the remaining provisions shall be construed to preserve the Parties' intent in the Contract. Any provision in the Contract that by its nature applies after, or is specifically stated to survive, the termination of the Contract shall survive the termination of the Contract.

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. The Contract 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 the Contract, including by operation of law or change of control or merger, without FCSS' prior written consent. Contractor shall not subcontract with any third party 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 the Contract 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 the Contract.

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