



STUDENT MEAL SERVICES AGREEMENT

(“Agreement”)

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

COVER

RFP No.: NC-2018-03

Program/Event: **Student Meal Services**

CONTRACTOR	
Full legal name of other party (“Contractor”) DBA (<i>leave blank if none</i>): Attn: Name of contact person, Title Street address (no PO box) City, State ##### Phone: (###) ###-#### Email: email	
FCSS	
Fresno County Superintendent of Schools (“FCSS”) Attn: Pam Coronado, Administrator Dept.: Court & Community Schools 1111 Van Ness Ave Fresno, CA 93721-2000 Phone: (559) 600-4950 Email: pcoronado@fcoe.org	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
INITIAL CONTRACT TERM (see § 3.1)	EXTENSION OF INITIAL CONTRACT TERM
“Effective Date”: September 28, 2018 “Termination Date”: June 30, 2018	The Parties, by mutual written amendment to this Agreement, may extend the term of this Agreement for one-year periods up to three times.
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:	
<p>A. <i>Contract Amount, Invoice, and Payment Schedule.</i> As full consideration and compensation for Contractor’s performance of the required Services and the Contract, FCSS shall pay Contractor as follows: Services that Contractor performs in accordance with the Contract, to be invoiced monthly and billed at a meal unit price of \$_____ per breakfast, \$_____ per lunch, and \$_____ per snack for all delivered meal units, as confirmed by delivery receipts, and the sum of which shall <i>not exceed</i> the “Contract Amount” of \$350,000.00. Contractor shall submit each invoice to FCSS monthly by no later than the 15th day of the month immediately following the last day of the month for which Contractor requests payment. FCSS shall pay Contractor within 30 days after: (A) Contractor has completed, in accordance with 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.</p> <p>B. <i>Invoice Requirements.</i> Each itemized invoice must be received and approved by FCSS before Contractor may receive any payment under the Contract. Each invoice shall state, at a minimum, the following: the Services that Contractor has performed in accordance with the Contract, the period during which the Services were performed, the amount that Contractor requests as compensation for performance of the Services, the total amount that Contractor has been paid under the Contract, and the total amount that remains unpaid under the Contract. Each invoice must give a detailed breakdown of the number and type of each meal unit delivered and signed for, broken down by delivery site. No payment shall be made unless the required delivery receipts have been signed by FCSS’s authorized representative(s). All Contractor invoicing shall otherwise comply with any applicable requirements that are or may be established by the United States Department of Agriculture (USDA) for the National School Lunch Program/School Breakfast Program, meeting all state and federal requirements to qualify for FCSS reimbursement</p>	
PREVAILING WAGE (<i>mark if a portion or all of the Services are subject to the payment of prevailing wages</i>): A portion	

or all of the Services that Contractor will provide under the Contract are subject to the payment, monitoring, and enforcement of prevailing wages. The Prevailing Wage Work Addendum (General/Standard Services Agreement) is attached hereto and constitutes a part of the Contract. FCSS shall pay Contractor within 30 days after: (A) Contractor has completed, in accordance with 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. NOTE: If prevailing wage work is marked here, FCSS' Facilities & Operations shall complete and attach the Prevailing Wage Work Addendum (General/Standard Services Agreement).

CONTRACTOR OBLIGATIONS. Unless specifically stated otherwise on this Cover, Contractor shall provide all labor, materials, supplies, equipment, and transportation necessary to perform all obligations required of Contractor as set forth elsewhere in the Contract and the Services stated below, of which shall be performed in accordance with the terms and conditions of the Contract:

A. **“Services”**: Contractor shall prepare, transport, and deliver student meals (consisting of breakfasts, lunches, and/or snacks) (**“Meals”**) to FCSS schoolsites five days a week, Monday through Friday, except holidays, in accordance with the number of Meals requested by FCSS, and the terms and conditions of this agreement. All Meals shall comply with the nutrition standards established by the United States Department of Agriculture (USDA) for the National School Lunch Program/School Breakfast Program, meeting all state and federal nutrition and meal pattern requirements to qualify for reimbursement to FCSS. Contractor shall abide by all rules and regulations governing California Child Nutrition Programs, in accordance with state and federal regulations including policy and instructions issued by the USDA or the California Department of Education (CDE). (7 CFR 210 (National School Lunch Program), 7 CFR 215 (Special Milk Program), 7 CFR 220 (School Breakfast Program), 7 CFR 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk), 7 CFR 250 (Food Distribution Program), 7 CFR 225 (Summer Food Service Program for Children), and 7 CFR 3052 (Audit Requirements).) Contractor's provision of the Services shall be in accordance with all applicable USDA regulations regarding food service vendors, including those specified for commercial service, as applicable. Throughout the term of this Agreement, Contractor shall ensure that all health, packaging, delivery, and sanitation recruitments of the California Retail Food Code, the County of Fresno, and any other applicable state or local health entity are met at all times in its provision of the Services. Contractor shall provide FCSS with a copy of all permits and licenses required by California law, and/or Fresno County, for the food facility(ies) in which it prepares the Meals. Contractor shall make appropriate substitutions in the food components for Meals for students with disabilities. For nondisabled students who are unable to consume regular Meals, substations will be made on a case-by-case basis, in coordination with FCSS.

B. **Performance Period**: During the Contract Term.

The Parties' designated staff may mutually change any date stated above if such new date is within the Contract Term and there is no change to the Contract Amount.

C. **Location(s) for Performance of Services**: Contractor shall perform the Services at the following location(s): CTEC High School, 1320 N Mariposa St., Fresno, CA 93703, and Violet Heintz Education Center, 4939 E Yale Ave., Fresno CA 93727. During the Contract Term, FCSS may add or remove sites upon prior written notice to Contractor.

D. **Other Terms and Conditions (leave blank if none designated)**:

Records

Contractor shall maintain full and accurate records documenting its Services, sufficient to provide for FCSS reimbursement for the Meals, including, but not limited to: (a) the menus provided to FCSS during the term of this Agreement; (b) a listing of all components of all Meals; (c) an itemization of the quantities of each component used to prepare the Meals; (d) providing FCSS with production/transport sheets indicating how menu items contribute to meal pattern requirements and supporting documentation for contribution; (e) records exhibiting Contractor's acquisition of the meal components and quantities itemized in the meal preparation records; and (f) daily, accurate counts of the number of Meals, by type, requested by and prepared for FCSS. Contractor agrees to provide meal preparation documentation by using yield factors for each food item as listed in the USDA Food Buying Guide or child nutrition labels or manufacturers' product information statement when calculating and recording the quantity of food prepared for each of the Meals.

Packaging and Preparation

Hot Meal packaging shall be suitable for maintaining meals in accordance with local health standards. Container and overlay should have an airtight closure, be of non-toxic material, and be capable of withstanding temperatures of 135°F or higher. Cold Meal unit or unnecessary-to-heat container and overlay shall be plastic or paper and non-toxic. Meals shall be delivered with the following non-food items: condiments. All Meals shall be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery.

Delivery

Contractor shall deliver all Meals and dairy products at the specified time. Adequate refrigeration or heating shall be provided during the transportation and delivery of all food to insure the wholesomeness of food at delivery in accordance with state and local health codes. Contractor shall provide the number of Meals as ordered by FCSS. Counts of Meals will be made at the site before Meals are accepted. Damaged or incomplete meals shall not be included when the number of delivered Meals is determined.

Inspection of Meals

FCSS reserves the right to inspect and determine the quality of Meals delivered, and reject any Meals that do not comply with this Agreement. Contractor shall not be paid for unauthorized menu changes, incomplete Meals, Meals not delivered within the specified delivery period, and Meals rejected because they do not comply with the required specifications. FCSS reserves the right to obtain Meals from other sources if Meals are rejected due to any of the stated reasons. Contractor shall be responsible for any excess cost but will receive no adjustment in the event the Meals are procured at a lesser cost. FCSS shall notify Contractor in writing as to the number of Meals rejected and the reasons for rejection.

Inspection of Facility(ies)

Contractor shall allow FCSS, USDA, or CDE inspection of Contractor's Meal preparation facility(ies) without notice during the Contract Term. Contractor's facility(ies) shall be subject to periodic inspections by the USDA, state, and local health departments, or any other agency designated to inspect meal quality for the state. This will be accomplished in accordance with USDA, federal, state, and local laws, regulations, and codes. Contractor shall provide for Meals that it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the Meals being prepared, transported, and delivered. Such levels shall conform to the standards that are applied by the local health authority with respect to the level of bacteria that may be present in meals served by other establishments in the locality.

Supervision and Management

Contractor shall provide management supervision at all times and maintain constant quality control inspections to check for portion size, appearance, and packaging, in addition to the quality of products, for all Meals. Contractor is solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for Contractor to perform this Agreement; (B) the acts and omissions of Contractor's officers, employees, agents, and any other persons who Contractor retains to perform this Agreement; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and/or damage or loss to the property of Contractor's officers, employees, agents and any persons who Contractor retains to perform this Agreement, to any officers, employees, agents, students, or invitees.

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

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

Menu Cycle

FCSS shall work with Contractor to establish a written menu cycle that shall serve as the basis for the delivery of Meals. Deviation from the menu cycle shall be permitted only upon authorization of FCSS. When

an emergency prevents Contractor from delivering a specified meal component, Contractor shall notify FCSS immediately so substitutions can be agreed upon between the Parties. FCSS reserves the right to periodically suggest menu changes that are within Contractor's food cost.

Ordering Meals

FCSS shall order Meals on Friday, or other mutually agreeable day of the week preceding the week of delivery; orders will be placed for the total number of days in the succeeding week and will include breakdown totals for the site and each type of Meal. FCSS reserves the right to increase or decrease the number of Meals ordered on a 24-hour notice or, if mutually agreed upon between the Parties, less than 24 hours. FCSS shall designate mutually agreeable times for times for Meal delivery.

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

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

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from 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:

By: _____
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:

- 1.1.1 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.
- 1.1.2 FCSS is a local public agency duly organized and operating in the State of California, and is authorized to enter into the Contract.
- 1.1.3 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.
- 1.1.4 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 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, services that are identical or similar to the Services. 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 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 10 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. 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 WORK PRODUCTS AND RIGHTS THERETO. Unless stated otherwise on the Cover in which case such provisions shall apply to the extent provided therein, this Section shall survive the termination of the Contract and apply to: (A) any Work that FCSS provides to Contractor pursuant to or relating to the Contract (“**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 the Contract (“**Contractor Work**”). The following applies to the FCSS Work: (A) the FCSS Work is FCSS’ property and FCSS has all interests and rights thereto; (B) Contractor does not own and shall not claim any interest or right to or in the FCSS Work; (C) FCSS grants to Contractor a limited license during the Contract Term to use and reproduce only those portions of the FCSS Work necessary for Contractor to perform the Contract; and (D) Contractor shall return any or all FCSS Work to FCSS upon FCSS’ request. The following applies to the Contractor Work: (A) Contractor represents that the Contractor Work is Contractor’s original work and does not contain any unlawful matter or infringe upon any Third Party’s copyright, right, or interest; (B) the Contractor Work is an instrument of service and constitutes FCSS’ sole property, and Contractor shall deliver to FCSS the Contractor Work within 30 days of the date of completion of the Services or the date of termination of the Contract, whichever is earlier; and (C) FCSS shall have the right to, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the Contractor Work. “**Work**” means any data, document, display, drawing, report, material, invention, work, and discovery, including any copyright, right, and interest therein or thereto and whether written, recorded, or electronically stored, and shall include source codes and other codes and information if the Contract requires Contractor to prepare, create, modify, update, or perform work relating to any website, webpage, and/or computer software, program, or product.

SECTION 1.6 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

1.6.1 **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.

1.6.2 **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 1.7 RECORDS AND INFORMATION.

1.7.1 **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 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.

- 1.7.2 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.
- 1.7.3 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.

SECTION 1.8 COOPERATION AND COORDINATION. If Contractor is replacing a third party in the provision of the Services, Contractor shall cooperate and coordinate with the third party and FCSS to facilitate an orderly transition of Services in order to minimize disruption and interruption of FCSS’ operations and programs.

ARTICLE 2 PAYMENT.

SECTION 2.1 PAYMENT. Compensation for Contractor’s performance of the Contract and Services are as stated on the Cover. Except as stated in this Agreement or an amendment to the Contract, 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 this Agreement or an amendment to the Contract, 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 the Contract, 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.

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 ("**Initial Contract Term**") and any extension thereto in accordance with the provisions set forth on the Cover ("**Extended 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. "**Contract Term**" shall mean the Initial Contract Term and the Extended Contract Term.

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.** FCSS shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, 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 AND TRANSITION OF SERVICES.** Contractor shall cease performance of any Services that remain and assist FCSS to transition such Services to FCSS' work force or any third party engaged by FCSS to complete the Services.
- 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 marked on the Cover and complying, at a minimum, with the applicable requirements stated below. If Contractor is a California public agency, the required coverage may be through self-insurance. FCSS, in its sole discretion, may waive in writing any requirement in this Article; however, FCSS' failure to insist or request that Contractor comply with such requirements shall not constitute a waiver on FCSS' part. FCSS reserves the right to reject any insurance and/or to require that Contractor obtain insurance through an insurer satisfactory to FCSS.

- 4.1.1 *Commercial General Liability*, in effect during the Contract Term, coverage for property damage, bodily injury, and personal and advertising injury with limits of not less than \$1,000,000 per occurrence and

\$2,000,000 general aggregate. This insurance shall contain a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools and the Fresno County Board of Education and their officers, employees, agents, and volunteers as an additional insured.

- 4.1.2 *Workers Compensation* in accordance with California laws and *Employer's Liability Insurance* with a limit of not less than \$1,000,000 per accident, both of which shall be in effect during the Contract Term.
- 4.1.3 *Commercial Automobile Liability*, in effect during the Contract Term, with limits per accident not less than the amount stated on the Cover and providing coverage, at a minimum, for non-owned and hired autos and, if there are any autos owned by Contractor, then also covering owned autos.
- 4.1.4 *Professional Liability*, in effect during the Contract Term and three years thereafter, with limits of not less than \$1,000,000 per claim and \$2,000,000 general aggregate, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of the Contract.

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: Cover, General Terms and Conditions, request for price quotations or proposals issued by FCSS, the Required Documents, and Contractor's response to FCSS' request for price quotations or proposals. 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. Unless stated on the Cover, 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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