



FINGERPRINT CONSORTIUM AGREEMENT

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

FCOE Department: Human Resources

This Fingerprint Consortium Agreement ("**Agreement**") is entered into between and amongst the Parties that have executed their respective Signature Pages and any school district, charter school, or joint powers authority in Fresno County, California that may later execute the Signature Page and become a Party to this Agreement. The Fresno County Superintendent of Schools ("FCSS") and each school district, charter school, and joint powers authority that has executed a Signature Page is referred to separately as a "**Party**" and collectively as the "**Parties**". All Parties, except FCSS, are referred to separately as a "**School District**" and collectively as "**School Districts**". Unless the context requires otherwise, any reference to a Party in this Agreement shall mean the Party and its governing body and members thereof, officers, employees, agents, and volunteers.

This Agreement contains the following, each of which is a part of this Agreement regardless of whether it is attached to this Agreement:

Recitals

General Terms and Conditions

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

Signature Page form (attached)
Operating Procedures (not attached)
Required Documents (see Section 1.10, not attached)

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

RECITALS

This Agreement is entered into based on the following recitals, which shall constitute a part of this Agreement:

- A. School districts, county boards of education, county superintendents of schools, and charter schools (separately and collectively referred to as "**LEA**") are prohibited, with certain exceptions, from hiring or retaining in employment or in specified volunteer positions persons who have been convicted of specified crimes. (Education Code § 44346.1; *See also* Penal Code § 667.5(c) ["violent felony"], rev. 04/2014; Penal Code § 1192.7 ["serious felony"], rev. 04/2014; (e) ["conviction"], rev. 05/2014.) For purposes of this Agreement, a "**Volunteer**" is any person accepted by the LEA to provide services for or on behalf of the LEA where the LEA is not required to and does not pay any monetary and/or in-kind compensation to the person.
- B. To comply with the requirements set forth in Recital A above and each LEA's respective policies, LEA are required to have each person to be employed, or used as a Volunteer in a school, by the LEA submit to fingerprinting and criminal history check.
- C. For situations in which a person is an applicant for employment, is employed on a part-time or substitute basis, or is a Volunteer in multiple school districts within a county or within contiguous counties, the school districts may agree among themselves to designate a single school district, or a county superintendent of schools may agree to act on behalf of participating school districts within the county or contiguous counties, for the purpose of performing the following duties: (1) sending fingerprints to DOJ; (2) receiving reports of convictions of serious and violent felonies, criminal

history records, and reports of subsequent arrests from DOJ; and (3) maintaining a common list of persons eligible for employment (“**Common List**”).

- D. By this Agreement, the School Districts desire to designate FCSS, and FCSS desires to act on behalf of FCSS and the School Districts to perform the following duties (collectively “**FCSS Administrator Duties**”) and other duties required of FCSS under this Agreement: (1) sending fingerprints to DOJ; (2) receiving reports of convictions of serious and violent felonies, criminal history records, and reports of subsequent arrests from DOJ; and (3) maintaining the Common List.
- E. By this Agreement, the Parties also desire to set forth the terms and conditions that will govern FCSS’ performance of the FCSS Administrator Duties and other duties required of FCSS under this Agreement, and each Party’s rights and obligations related to the Fingerprint Consortium and the handling and use of criminal offender record information (“**CORI**”), which shall mean records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. Except as specifically required of FCSS by this Agreement, FCSS does not by this Agreement undertake or assume any responsibilities, obligations, or liabilities that are required of each School District by this Agreement and/or Applicable Law.

GENERAL TERMS AND CONDITIONS

ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 ESTABLISHMENT AND CONTINUATION OF FINGERPRINT CONSORTIUM. The Parties acknowledge that the Fingerprint Consortium has existed and currently exists, and that FCSS has been and continues to perform the FCSS Administrator Duties. By this Agreement, the Parties desire to continue with the Fingerprint Consortium and to have each Party perform the obligations required of it under this Agreement. The Fingerprint Consortium is an arrangement by the Parties to implement fingerprint rolling, criminal background checks, and other related functions as set forth in this Agreement and is not a legal entity separate and apart from the Parties.

SECTION 1.2 OPERATING PROCEDURES.

- 1.2.1 **DEVELOPMENT.** FCSS shall prepare and provide to each School District the Operating Procedures. Each Party hereby agrees to comply with the Operating Procedures, including any revisions that FCSS may make thereto in accordance with Subsection 1.2.2. The Operating Procedures may include requirements and procedures relating to the following:
- 1.2.1.1 Submission of the Employee Statement or other DOJ-required forms.
 - 1.2.1.2 Issuance of passwords to Designated Personnel to allow access into the Common List.
 - 1.2.1.3 Access to and use of the Common List.
 - 1.2.1.4 FCSS notices to the School Districts regarding inspection of, and provision to the applicable Applicant of a copy of, CORI or the subsequent arrest reports.
 - 1.2.1.5 Process and form(s) that each School District will use to submit the notice of termination of an employee or a Volunteer.
 - 1.2.1.6 Forms to be used by the Parties in providing notices and implementing the requirements of this Agreement.
 - 1.2.1.7 Other requirements and procedures that FCSS determines necessary to comply with applicable laws and/or implement this Agreement and the Fingerprint Consortium.

The requirements and procedures set forth in the Operating Procedures shall not be in conflict with any provision of this Agreement or Applicable Law.

- 1.2.2 **REVISION.** From time to time, FCSS may revise the Operating Procedures as FCSS determines appropriate for the efficient operation of the Fingerprint Consortium and/or to comply with the Applicable Law and the requirements of DOJ or other applicable government agencies, provided that

any such revision to the Operating Procedures shall not conflict with any provisions of this Agreement. The revised Operating Procedures shall not take effect until after FCSS has provided the School Districts with written notice thereof before the date on which they will become effective. FCSS shall provide the written notice by electronic mail to each School District's Contact Person listed on the School District's Signature Page or subsequently designated as the Contact Person by School District.

SECTION 1.3 FCSS AS CUSTODIAN OF RECORDS.

- 1.3.1 DESIGNATION OF CUSTODIAN OF RECORDS. FCSS shall designate one or more FCSS employees to serve as the custodian of records for purposes of the Fingerprint Consortium (separately and collectively referred to as "**Custodian of Records**"). Each FCSS employee whom FCSS designates as a Custodian of Record shall be confirmed by DOJ, submit to a fingerprint-based criminal background clearance by DOJ, and meet the requirements of Penal Code section 11102.2 and other applicable legal requirements. The Custodian of Records shall be responsible for the following:
- 1.3.1.1 Receiving CORI and other communications from DOJ.
 - 1.3.1.2 Security, storage, dissemination, and destruction of CORI that DOJ furnishes to FCSS and serving as the primary contact for DOJ for any related issues.
 - 1.3.1.3 Communicate with the School Districts regarding CORI that DOJ furnishes to FCSS and serve as the primary contact for the School Districts for any related issues.
- 1.3.2 RECORD KEEPING. FCSS shall perform the following record keeping functions relating to the Fingerprint Consortium:
- 1.3.2.1 Maintain a list of each School District to which FCSS has released or communicated CORI.
 - 1.3.2.2 Maintain a record of all persons to whom FCSS has shown a CORI or report of subsequent arrest for any Applicant on the Common List, which record FCSS shall make available to DOJ to monitor compliance with the requirements of confidentiality contained in Education Code section 44830.2.
 - 1.3.2.3 Maintain a list of the Parties to this Agreement ("**List of Parties**") and update the List of Parties as new Parties join or terminate this Agreement. FCSS shall provide a copy of the List of Parties to any Party that requests it.
- 1.3.3 SCOPE OF FCSS OBLIGATIONS. By performing the obligations required of FCSS under Subsections 1.3.1 and 1.3.2, the FCSS Administrator Duties, and other obligations required of FCSS to administer and implement the Fingerprint Consortium, FCSS does not assume any responsibilities, obligations, and/or liabilities to any affected Applicant, any affected School District, or any third party arising out of, relating to, or caused by: (A) any CORI or subsequent arrest or disposition notification or reports received from DOJ, and/or (B) the School District's employment decisions and actions, and/or notices thereof.

SECTION 1.4 FCSS AND SCHOOL DISTRICT AS EMPLOYERS. Each Party, in its capacity as an employer, is solely responsible for the following:

- 1.4.1 NEW APPLICANT: Review any CORI received from DOJ relating to a New Applicant (as defined in Subsection 1.5.1 below), determine whether to hire the New Applicant, and perform all obligations required of the Party under Section 1.5 below.
- 1.4.2 EXISTING APPLICANT: Review any subsequent arrest information received from DOJ relating to an Existing Applicant (as defined in Subsection 1.6.1 below), determine whether to retain the Existing Applicant as an employee or a Volunteer, and perform all obligations required of the Party under Section 1.6 below.

SECTION 1.5 NEW APPLICANTS.

- 1.5.1 NEW APPLICANT DEFINED. **“New Applicant”** means one of the following persons where he/she is required by Applicable Law to submit to a Fingerprint:
- 1.5.1.1 A person who has applied and is being considered by a Party for employment with the Party.
 - 1.5.1.2 A person who has applied and is being considered by a Party for a volunteer position with the Party.
- 1.5.2 PARTY REFERRAL AND SCHEDULING OF NEW APPLICANTS FOR FINGERPRINTING.
- 1.5.2.1 REFERRAL OF NEW APPLICANTS. Each Party shall refer Applicants to FCSS for Fingerprints. On a case-by-case basis as determined between FCSS and the affected Party, a Party may refer an Applicant to a Live Scan center operated by a third party for fingerprint rolling, with the resulting CORI to be transmitted by DOJ to FCSS as part of the Fingerprint Consortium.
 - 1.5.2.2 PERSONS NOT ELIGIBLE FOR FINGERPRINTING THROUGH FINGERPRINT CONSORTIUM – EMPLOYEE OR VOLUNTEER OF THIRD PARTY. A Party shall not refer to FCSS for a Fingerprint any employee, volunteer, or any other person who is otherwise retained by a third party. As an example, a School District shall not refer to FCSS for a Fingerprint the employee of a contractor where the contractor has agreed in a contract with the School District to provide certain services for School District’s students at School District’s sites.
 - 1.5.2.3 SCHEDULING OF FINGERPRINTING AND COMPLETION OF DOJ FORM(S). FCSS shall prepare and provide to each School District the Operating Procedures (see Section 1.2 above).
- 1.5.3 FCSS FINGERPRINT ROLLING AND TRANSMISSION THEREOF TO DOJ AND FBI.
- 1.5.3.1 CERTIFIED FINGERPRINT ROLLER. FCSS shall provide one or more staff to exercise the functions of fingerprint roller, each such staff to be certified as required by DOJ and shall meet the requirements under Penal Code section 11102.1.
 - 1.5.3.2 FINGERPRINT ROLLING. For each Applicant, FCSS shall conduct fingerprint using Live Scan bearing the legible rolled and flat impressions of the Applicant’s fingerprints, input demographic information of the Applicant, and transmit the fingerprints and the Applicant’s personal description to DOJ (collectively **“Fingerprint”**). FCSS shall prepare and maintain records relating to the Fingerprint as required by Applicable Law.
 - 1.5.3.3 TRANSMISSION TO DOJ AND FBI. FCSS shall transmit the Fingerprint to DOJ and, if required by Applicable Law or requested by the School District requesting the Fingerprint of a New Applicant, FCSS shall request that DOJ forward the Fingerprint to the Federal Bureau of Investigation (**“FBI”**) for the purpose of obtaining any record of previous convictions of the New Applicant.
- 1.5.4 FCSS RECEIPT OF REPORTS AND RECORDS FROM DOJ, AND NOTICE TO AND REVIEW THEREOF BY SCHOOL DISTRICTS. FCSS shall receive any CORI on all New Applicants from DOJ. When FCSS receives a CORI, FCSS shall notify the applicable School District’s Designated Personnel to inspect the CORI at FCSS’ office on a date and time to be agreed upon by FCSS’ staff and School District’s staff.
- 1.5.5 PARTY RESPONSIBILITY FOR HIRING OF AND COMMUNICATION WITH NEW APPLICANT. Each Party is solely responsible for reviewing CORI received from DOJ relating to any New Applicant whom the Party desires to employ or retain as a volunteer, determining whether to hire as an employee or retain as a volunteer the New Applicant, and communicating with the New Applicant regarding the Party’s hiring decisions.

- 1.5.6 SCHOOL DISTRICT NOTICE OF NON-HIRING OF NEW APPLICANT; FCSS NOTICE TO DOJ. Each School District shall notify FCSS in writing via email immediately when School District does not hire a New Applicant.

SECTION 1.6 EXISTING APPLICANTS.

- 1.6.1 EXISTING APPLICANT DEFINED. **“Existing Applicant”** means a person who: (A) has submitted to fingerprinting and criminal background checks by DOJ and, if applicable, by FBI; (B) DOJ has previously furnished information to FCSS that such person has no criminal records; (C) is a current employee or Volunteer of one or more Parties; and (D) is listed in the Common List.
- 1.6.2 COMMON LIST.
- 1.6.2.1 FCSS MAINTENANCE. As authorized by California laws, FCSS maintains the Common List based on information that DOJ has furnished to FCSS that the Existing Applicants listed on the Common List have no criminal records. FCSS stores the Common List and makes it accessible only to Designated Personnel.
- 1.6.2.2 RESTRICTED ACCESS TO DESIGNATED PERSONNEL. The Common List is accessible electronically to each Party’s superintendent and/or such employee(s) of the Party as designated by the Party’s superintendent or authorized designee (separately and collectively **“Designated Personnel”**). Each Party shall monitor and ensure that each Designated Personnel designated by the Party has submitted to a Fingerprint, met and continues to meet applicable legal requirements for the Designated Personnel to access the Common List, and signed the Employee Statement or other form(s) as required by DOJ or Applicable Law. A Party that desires to designate or remove from designation a Designated Personnel must complete and sign a Personnel Designation/Removal Form, which form shall be obtained from FCSS.
- 1.6.3 SUBSEQUENT ARREST REPORTS AND ACTIONS RELATED THERETO.
- 1.6.3.1 REQUEST FOR SERVICES AND REPORTS FROM DOJ. FCSS will request from DOJ subsequent arrest services and reports for each Existing Applicant.
- 1.6.3.2 FCSS RECEIPT OF SUBSEQUENT ARREST REPORTS AND ACTIONS RELATED THERETO. FCSS will receive from DOJ any subsequent arrest reports on any Existing Applicant. When FCSS receives from DOJ a subsequent arrest report or other notice that a person listed on the Common List has any criminal record, FCSS will: (A) remove the affected Existing Applicant from the Common List; and (B) communicate to each School District where FCSS’ Custodian of Records has information that the Existing Applicant is an employee or Volunteer regarding FCSS’ receipt of the report or notice from DOJ. FCSS’ removal of an Existing Applicant from the Common List does not affect in any way a School District’s employment of an Existing Applicant or retention of the Existing Applicant as a Volunteer. Each affected School District must review the subsequent arrest reports and determine whether to retain the affected Existing Applicant, and perform all obligations required of School District pursuant to this Section 1.6.
- 1.6.4 TERMINATION OF EMPLOYMENT OR VOLUNTEER POSITION AND ACTIONS RELATED THERETO.
- 1.6.4.1 SCHOOL DISTRICT NOTICE OF TERMINATION OF EMPLOYMENT OR VOLUNTEER POSITION. Each School District shall notify FCSS in writing immediately via email when an Existing Applicant is no longer an employee or Volunteer of the School District.
- 1.6.4.2 FCSS RECEIPT OF NOTICE OF TERMINATION OF EMPLOYMENT OR VOLUNTEER POSITION AND ACTIONS RELATED THERETO. When FCSS receives from a School District written notice that an Existing Applicant is no longer an employee or a Volunteer of the School District, FCSS shall use reasonable diligence to determine whether the affected Existing Applicant is employed or a Volunteer with any other Party. If, after using reasonable diligence, FCSS determines that the affected Existing Applicant is employed or is a Volunteer with another Party, the affected Existing Applicant shall

remain on the Common List. If, after using reasonable diligence, FCSS determines that the affected Existing Applicant is not and has not been employed or held a volunteer position with any Party for a continuous period of 18 months, FCSS will notify DOJ in accordance with DOJ requirements by completing DOJ's No Longer Interested Form or other form(s) as DOJ may require.

SECTION 1.7 ENSURING CONFIDENTIALITY OF CRIMINAL HISTORY INFORMATION. Under California laws, all information obtained from the DOJ is confidential.

1.7.1 STORAGE, DISSEMINATION, AND DISCLOSURE. Each Party shall ensure the following as to information received from DOJ:

1.7.1.1 No recipient may disclose its contents or provide copies of information.

1.7.1.2 Information received shall be stored in a locked file separate from other files, and shall only be accessible to the Custodian of Records and be made available for inspection by Designated Personnel.

1.7.1.3 Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations and other Applicable Law.

1.7.1.4 Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Penal Code section 11077 governing the use and security of CORI.

1.7.2 UNAUTHORIZED FURNISHING OR RECEIPT OF RECORD. Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor. Any person, except those specifically referred to in Evidence Code section 1070, who, knowing he/she is not authorized by law to receive a record or information obtain from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor. As used in this Subsection 1.7.2, "**record**" means the master record of information compiled by the California Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

1.7.3 PROTECTION OF CONFIDENTIAL MATERIAL. Unless stated otherwise in this Agreement or Applicable Law in which case such provisions shall apply to the extent provided therein, the following shall apply to any document and/or information that is subject to nondisclosure or protection under federal and/or California laws (collectively and separately "**Confidential Material**") that are provided to or created by any Party for or pursuant to this Agreement. Each Party shall: (A) not release, disseminate, publish, or disclose the Confidential Material except as required by law or a court order, as this Agreement may permit, or as FCSS, through its contact person listed on the Cover or other designated FCSS staff, may authorize in writing; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to a Party's performance of its obligations or exercise of its rights under this Agreement; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Subsection 1.7.3 shall survive the termination of this Agreement.

SECTION 1.8 COMPLIANCE WITH APPLICABLE LAWS. Each Party shall comply with all laws and regulations (collectively "**Law**") applicable to its performance of this Agreement, and all Law that it agreed to comply with under this Agreement (referred to collectively and separately as "**Applicable Law**" and shall include provisions in the California Education Code, California Penal Code, and federal and California statutes and regulations relating to fingerprinting and criminal history check of persons employed by school district as well as amendments and Law that are in effect as of the Effective Date or become effective). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and an Applicable Law, the provision in this Agreement shall govern except

where the provision in this Agreement is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein.

SECTION 1.9 COMPLIANCE WITH APPLICABLE CONTRACTS. Each Party shall comply with the terms and conditions of each contract that is in effect between DOJ and FCSS governing the Fingerprint Consortium, and other contract(s) that FCSS may enter into that are necessary to administer or implement the Fingerprint Consortium.

SECTION 1.10 PROVISION OF REQUIRED DOCUMENTS.

- 1.10.1 Each Party shall provide to FCSS each document that is required of the Party to be submitted to FCSS under this Agreement, which are referred to separately as **“Required Document”** and collectively as **“Required Documents”**. Each Required Document is incorporated by reference into and constitutes a part of this Agreement regardless of whether it is attached to this Agreement.
- 1.10.2 The Required Documents shall include but are not limited to the following documents when they are completed, signed, and submitted to FCSS: (A) Personnel Designation/Removal Form; (B) Employee Statement; (C) proof of insurance in accordance with Article 4; and (D) each document required to be submitted by the Operating Procedures.
- 1.10.3 FCSS may modify the Personnel Designation/Removal Form, Employee Statement, and any other the forms required by this Agreement or the Operating Procedures as FCSS determines necessary in order to comply with Applicable Law and/or implement this Agreement and the Fingerprint Consortium.

ARTICLE 2 PAYMENT.

SECTION 2.1 FINGERPRINT FEE.

- 2.1.1 **SCHOOL DISTRICT APPLICANTS.** As full consideration and compensation for Fingerprint, the FCOE Administrative Services, and other services that FCSS provides to each School District under this Agreement, each School District shall pay FCSS the applicable Fingerprint Fee based on each Fingerprint that FCSS performs for any Applicant whom School District refers for a Fingerprint (**“School District Applicant”**) or on each fingerprint rolling that a third party performs but FCSS transmits to DOJ and receives reports relating thereto from DOJ. FCSS will invoice each School District after each quarter (on or around January, April, July, and October of each year) for all Fingerprint Fees for Fingerprints that FCSS performs for the School District Applicants during the previous quarter. FCSS will not accept any payment for any Fingerprint from any School District Applicant. Each School District, in accordance with Applicable Law, may require that an Applicant pay or reimburse School District directly for the Fingerprint Fee.
- 2.1.2 **FCSS APPLICANTS.** FCSS, in accordance with Applicable Law, shall pay for or collect from each Applicant the Fingerprint Fee for each Fingerprint that FCSS performs for each Applicant whom FCSS refers for a Fingerprint (**“FCSS Applicant”**).
- 2.1.3 **FINGERPRINT FEE.** **“Fingerprint Fee”** means the fee that FCSS charges for each Fingerprint and that is in effect at the time FCSS performs the Fingerprint. FCSS shall prepare and provide to the School Districts the Fingerprint Fee Schedule. FCSS shall have the right to modify the rates of the Fingerprint Fee and the modified rates shall be effective as to each School District within 15 days after FCSS provides written notice of such modification to the School District or such later date as FCSS may state in the written notice.

SECTION 2.2 DOJ FINGERPRINT PROCESSING FEE. Each Party that has an account with DOJ shall be solely responsible for payment and shall pay directly to DOJ all fees that DOJ charges for DOJ to process fingerprint rolling and conduct criminal background checks of the Party's Applicants (**“DOJ Fees”**). If a School District does not have an account with DOJ, FCSS will invoice the School District after each quarter (on or around January, April, July, and October of each year) for all DOJ Fees relating to the Party's Applicants.

SECTION 2.3 ADDITIONAL COSTS. FCSS currently owns or leases Live Scan machines in order to conduct the fingerprint rolling and transmission thereof to DOJ. At FCSS' election and after providing written notice to the School Districts, FCSS may purchase or lease one or more Live Scan machines to replace or

add to existing Live Scan machines. FCSS' notice shall state, at a minimum, the Live Scan machine(s) that FCSS intends to purchase or lease, the purchase or lease price of each Live Scan machine, the amount that each Party will be expected to contribute to the purchase or lease price, and the date on which FCSS expects to complete each purchase or lease. FCSS shall give such notice in writing to School Districts at least 60 days before the date on which FCSS intends to complete a purchase or lease. Any contribution made pursuant to this Section shall be set forth in a separate agreement or an amendment to this Agreement and provisions shall be included in such agreement or amendment addressing the handling of the purchase or lease of any Live Scan machine upon a Party's termination from this Agreement.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT.

SECTION 3.1 CONTRACT TERM. This Agreement is effective on the following "**Effective Date**": (A) March 1, 2016 as to each Party listed on the attached Parties List; or (B) the date on which FCSS accepts a Party that is not listed on the attached Parties List and that enters into this Agreement by executing the Signature Page and submitting it to FCSS. This Agreement shall continue in full force and effect unless terminated in accordance with Section 3.2 below.

SECTION 3.2 TERMINATION OF AGREEMENT.

- 3.2.1 SCHOOL DISTRICT TERMINATION AS PARTY TO AGREEMENT FOR CAUSE/WITHOUT CAUSE. Unless specifically permitted otherwise in this Section 3.2, a School District may terminate, with or without cause, this Agreement as to the School District only by giving FCSS and the other School Districts written notice thereof at least 90 days before the date on which termination of this Agreement becomes effective for the Party.
- 3.2.2 FCSS TERMINATION OF AGREEMENT FOR CAUSE/WITHOUT CAUSE. Unless specifically permitted otherwise in this Section 3.2, FCSS may terminate, with or without case, this Agreement as to FCSS and all School Districts by giving the School Districts written notice thereof at least 180 days before the effective date of termination of this Agreement.
- 3.2.3 TERMINATION OF SCHOOL DISTRICT FOR CAUSE. Despite any contrary provisions in this Agreement, FCSS may terminate this Agreement as to any School District upon the School District's material breach of one or more provisions of this Agreement and after FCSS has provided the breaching School District written notice at least 30 days before the date on which termination of this Agreement becomes effective for the School District and provided the School District an opportunity to cure the material breach within the 30 days and to notify FCSS in writing when such cure has been completed. If the breaching School District has not cured the material breach upon expiration of the 30 days or any extension thereof agreed upon between FCSS and the breaching School District, this Agreement shall terminate only as to the School District effective 12:00 midnight on the 30th day or the last day of the extension (if any) without any further notice or action by FCSS or any other Party.
- 3.2.4 RIGHTS AND OBLIGATIONS UPON TERMINATION. Upon and after termination of this Agreement pursuant to Subsection 3.2.1, 3.2.2, or 3.2.3, each School District that is no longer a Party to this Agreement shall be responsible for payment and shall pay: (A) to FCSS all Fingerprint Fees for School District Applicants whom the School District referred to FCSS for Fingerprints; and (B) to FCSS or, if School District has an account, to DOJ any and all DOJ Fees that are due to DOJ.

SECTION 3.3 FORCE MAJEURE. A Party is not liable for failing or delaying performance of its obligations under this Agreement due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as 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 a School District's payment to FCSS of any portion of the Fingerprint Fee that is due from School District to FCSS or School District's payment to DOJ of any portion of the DOJ Fee that is due from School District to DOJ.

ARTICLE 4 INSURANCE.

Each Party, at its cost, shall maintain in effect insurance or self-insurance that complies, at a minimum, with the following requirements, and shall provide written proof of such insurance to any other Party upon that

other Party's request: (A) *commercial general liability* with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate and with coverage for property damage, bodily injury, and personal and advertising injury; (B) *workers compensation* in accordance with California laws and *employer's liability insurance* with a limit of not less than \$1,000,000 per accident; and (C) *commercial automobile liability* covering, at a minimum, non-owned and hired autos and, if there are any autos owned by a Party, then also covering owned autos, with a combined single limit of not less than \$1,000,000 per accident.

ARTICLE 5 INDEMNITY.

Each Party's indemnity, defense, and hold harmless obligations to any other Party under or related to this Agreement shall be governed solely by this Article. A Party ("**Indemnitor**") shall: (A) indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from any other Party shall notify that other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Agreement. "**Claim**" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Agreement where there has been no Final Determination. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Agreement and for which there has been a Final Determination that one, several, or all of the Parties are liable. "**Third Party**" means a person who or an entity that is *not* any of the following: (A) a Party; (B) a Party's governing body and members thereof, officer, employee, or agent; or (C) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party's behalf. "**Final Determination**" means any judgment, order, or decision, each a "**Determination**," by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

ARTICLE 6 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During a dispute regarding payment under this Agreement, the affected School District shall pay FCSS the portion of the Fingerprint Fee that is undisputed and due to FCSS from the School District; if a disputed portion of the Fingerprint Fee is determined in a Final Determination to be due to FCSS, the School District shall pay such amount to FCSS 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 School District and FCSS, in which case, the School District shall pay FCSS in accordance therewith. Any dispute between a Party and DOJ relating to the DOJ Fees shall be resolved by and between the Party and DOJ. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 7 GENERAL PROVISIONS.

SECTION 7.1 ENTIRE AGREEMENT, EXECUTION, AMENDMENT, AND WAIVER. This Agreement replaces and supersedes any other agreement and/or understanding that may be in effect between FCSS and any of the School Districts relating to fingerprinting, criminal background checks, and/or other subjects covered by this Agreement. This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. The Parties may execute this Agreement and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties' signatures, whether original or transmitted by electronic

means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.

SECTION 7.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION. If there is uncertainty of any language in this Agreement, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Fresno County, California, provided that each Party does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

SECTION 7.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, TRANSFER, AND SUBCONTRACT. Each Party 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 any other Party. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between any of the Parties. Each Party shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without FCSS' prior written consent.

SECTION 7.4 NOTICES. Except as may be stated otherwise in this Agreement or the Operating Procedures in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement or the Operating Procedures in writing and by one of the following methods to the other Parties at their respective address and/or email stated on the each Party's Signature Page, delivery to be effective as to each Party upon receipt thereof by that 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, **as to FCSS, a copy of any notice and demand by email to:** FCOE Legal Services at legalservices@fcoe.org. A Party may change its contact person and/or contact information stated on the Party's Signature Page by notifying the other Parties of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

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Fingerprint Consortium Agreement Attachment 1 | Signature Page

DISTRICT INFORMATION

District Name: _____

Superintendent / Principal: _____

Title: _____

Street Address: _____

Phone: _____

Email Address: _____

ACKNOWLEDGEMENT AND SIGNATURE

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from the Agreement, the above-named Party has reviewed, and understands and hereby enters into the Agreement. The above-named Party understands and agrees that the Agreement is between and amongst the Parties that have executed their respective Signature Form.

The person executing below on behalf of the above-named Party represents that he/she is authorized to execute on behalf of and to bind the Party to the Agreement.

Signature: _____ Date: _____

Print Name: _____

**Completed form must be received prior to scheduling first appointment and/or viewing confidential information.
Please email to the FCSS Fingerprint Technician.**