

## **CONTRACT**

**«CONTRACTOR NAME»**

**Contract No.**

**«Contract Number»**

### **COMMISSIONERS**

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*Chair*

Summer McBride  
*Vice Chair*

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Alejandra Albarran Moses,  
Ph.D.  
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Karla Pleitéz Howell

### **VICE PRESIDENTS**

Aurea Montes-Rodriguez  
JR Nino

### **A PUBLIC ENTITY**

750 N. Alameda Street, Los Angeles, CA 90012

Phone: 213.482.5920

Fax: 213.482.5903

First5LA.org

## CONTRACT

This Contract is dated Month Day, Year (“effective date”), and between the LOS ANGELES COUNTY CHILDREN AND FAMILIES FIRST - PROPOSITION 10 COMMISSION (aka FIRST 5 LA), whose address is 750 North Alameda Street, Suite 300, Los Angeles, California 90012 (“COMMISSION”) and **«CONTRACTOR NAME»** (“CONTRACTOR”), collectively referred to as the “Parties”.

## RECITALS

### A. COMMISSION Objectives:

1. Objectives: COMMISSION’s objective in entering into this Agreement is to contract with CONTRACTOR to carry out the PROGRAM as defined in Exhibit A in a manner consistent with the California Children and Families Act of 1998, as amended (“Proposition 10”) and other applicable laws so that all children in Los Angeles County enter kindergarten ready to succeed in school and life.
2. Purpose of Funds. COMMISSION is providing funds to CONTRACTOR for the programs and services described in Exhibits A and B in order to assist CONTRACTOR in improving service systems, changing policies, or providing programs in one or more of the established goals and outcomes outlined in the First 5 LA 2024-2029 Strategic Plan.

The Parties agree as follows:

### I. «PMSOW»

CONTRACTOR shall perform the work and provide the deliverables as more particularly described in the «PMSOW», attached as **Exhibit A**. Deliverables provided by CONTRACTOR to COMMISSION pursuant to this Contract are subject to COMMISSION’s approval and final acceptance, including review and approval by COMMISSION’s Quality Assurance Committee, as detailed in the Quality Assurance Process, attached as **Exhibit C**. COMMISSION may amend the «PMSOW» throughout the term of this Contract.

### II. PERSONNEL

CONTRACTOR has, or will secure at its own expense, all personnel required to perform the work and provide the deliverables required under this Contract. All of the work required under this Contract shall be performed by CONTRACTOR or under its supervision, and all personnel engaged in the work shall be qualified to perform the work. CONTRACTOR’s work performed pursuant to this Contract shall be directed by **«CONTRACTOR NAME»**. CONTRACTOR shall not assign or change personnel performing services under this Contract without the prior written

approval of the COMMISSION staff designated to this Contract (“designated COMMISSION staff”), which approval may be withheld in his or her sole and absolute discretion. CONTRACTOR shall submit requests for approval of or changes to personnel to the designated COMMISSION staff prior to such person’s performance of services under this Contract.

### III. TIME OF PERFORMANCE

CONTRACTOR shall commence the work required under this Contract on the effective date of this Contract, as set forth in the introductory clause. CONTRACTOR shall perform the work and provide the deliverables within the timelines indicated in **Exhibit A**.

### IV. TERM OF CONTRACT

The term of this Contract shall be from the effective date, as set forth in the introductory clause, through **«Contract End Date»** (“expiration date”), unless sooner terminated pursuant to this Contract. COMMISSION may revise the term of this Contract prior to final execution of this Contract by all Parties.

### V. COMPENSATION AND METHOD OF PAYMENT

- A. Compensation. As full compensation for the deliverables provided under this Contract, and subject to a total not-to-exceed amount of **«WRITTEN\_DOLLAR\_AMOUNT»** (**\$«Contract\_Amount»**), COMMISSION shall pay CONTRACTOR per COMMISSION approved deliverable in accordance with rates set forth in the Budget Forms, attached as **Exhibit B**, and in accordance with the payment terms set forth in Paragraph C of this Section V. If CONTRACTOR partially achieves a deliverable required under this Contract, COMMISSION, in its sole discretion, may pay a prorated portion of the fixed price for the deliverable if (i) COMMISSION approves the partial deliverable and (ii) the partial deliverable is useful to COMMISSION. If CONTRACTOR exceeds its budget in the performance of the work required under this Contract, CONTRACTOR shall, at no additional cost to COMMISSION, remain solely responsible for CONTRACTOR’s completion of the work and provision of the deliverables required under this Contract to COMMISSION. CONTRACTOR assumes all risk from contract or project delays. The fixed price per deliverable includes payment of all taxes and insurance, as well as indirect costs, overhead, materials and supplies. COMMISSION shall not withhold federal or state payroll and other taxes, or other deductions from payments made to CONTRACTOR.
- B. Additional Work. COMMISSION shall not allow any claims for additional work performed by CONTRACTOR unless the additional work is authorized by COMMISSION in writing prior to the performance of the additional work

or the incurrence of additional expenses. Any additional work authorized by COMMISSION shall be compensated at a rate mutually agreed to by the Parties.

- C. Method of Payment. CONTRACTOR shall submit to COMMISSION invoices for COMMISSION approved deliverables or tasks provided to COMMISSION by CONTRACTOR pursuant to this Contract utilizing an invoice form provided to CONTRACTOR by COMMISSION. All properly completed invoices submitted by CONTRACTOR are collectively incorporated into this Contract as **Exhibit G** upon COMMISSION's receipt of each invoice. Invoices are due not later than the last business day of the calendar month following the calendar month in which COMMISSION approved a deliverable. CONTRACTOR shall address invoices to the COMMISSION staff per the instructions provided on the invoice form provided to CONTRACTOR from COMMISSION. The invoices shall describe in detail tasks completed and COMMISSION approved deliverables provided by CONTRACTOR during the prior period set forth in Exhibit C. If there are any errors contained in any invoice submitted to COMMISSION, CONTRACTOR shall describe and explain the error in CONTRACTOR's subsequent invoice submitted to COMMISSION. COMMISSION shall review the invoices and notify CONTRACTOR within ten (10) business days of any disputed amounts. COMMISSION shall pay CONTRACTOR all undisputed invoice amounts within thirty (30) calendar days of COMMISSION's receipt of an invoice timely submitted. COMMISSION shall make checks payable to CONTRACTOR as listed in Section XXV [the Payee, «Payee\_Name», at «Payment\_Address»] or at CONTRACTOR's election, COMMISSION shall make payments through automated clearing house (ACH) in which funds are electronically deposited to the CONTRACTOR's bank account as specified in an authorization form. If CONTRACTOR fails to timely submit a properly completed invoice, COMMISSION shall process the late invoice in the subsequent month from COMMISSION's date of receipt. COMMISSION shall not be liable for payment of invoice amounts on any invoice received by the COMMISSION more than ninety (90) calendar days following the invoice due date. Provided that CONTRACTOR is in full compliance with all provisions of this Contract and is not in material breach of this Contract, COMMISSION shall make final payment in accordance with the provisions of this Section V and upon CONTRACTOR's satisfactory performance of all work and provision of all deliverables. In the event COMMISSION reasonably believes COMMISSION has overpaid CONTRACTOR, COMMISSION may seek a financial accounting from CONTRACTOR and avail itself of all legal remedies to seek compliance and the repayment of any amounts overpaid. CONTRACTOR's submission of fraudulent invoices shall constitute a material breach of this Contract.

## VI. EXPENDITURES BY CONTRACTOR

- A. CONTRACTOR shall make expenditures in the performance of this Contract in accordance with **Exhibits A and B**.
- B. COMMISSION may modify the work and deliverables required under **Exhibits A and B**.
- C. **Exhibit B** shall be modified only in writing signed by both Parties in accordance with Section XXVII of this Contract. CONTRACTOR shall submit budget modification requests to the designated COMMISSION staff, prior to incurring the modified expenses.
- D. CONTRACTOR shall restrict its use of payments made by COMMISSION to CONTRACTOR under Section V of this Contract to CONTRACTOR's performance of the work and provision of the deliverables described in **Exhibits A and B**. CONTRACTOR shall only use the payments to supplement existing levels of service and not to fund existing levels of service. In no event shall CONTRACTOR or its officials, officers, directors, employees, agents, subcontractors or assignees supplant state, county, local or other governmental general fund money with COMMISSION payments for any purpose. No COMMISSION funds shall be granted or used for any previously existing project or program funded by state or local general funds unless the existing funding has formally been terminated or the CONTRACTOR demonstrates to the COMMISSION that COMMISSION funds will be used to supplement an existing project or program, and not to supplant existing funding.

## VII. RESTRICTED ACTIVITIES

- A. Funds appropriated by COMMISSION for the purpose of this Contract may not be used for the lobbying of any policymaker, local, state or federal legislative organization. While education regarding a policy issue is an eligible activity, funding may not support lobbying for specific policies or legislation.
- B. Funds appropriated by COMMISSION for the purpose of this Contract may not be used to influence or mobilize voters to support or oppose any candidate, specific legislation, or ballot measure at any level of government.

## VIII. EXHIBITS

The following exhibits constitute a part of this Contract and are incorporated into this Contract by this reference:

- Exhibit A «PMSOW»
- Exhibit B BUDGET FORMS
- Exhibit C QUALITY ASSURANCE PROCESS
- Exhibit D COMPLIANCE GUIDELINES
- Exhibit E DATA USE APPROVAL FORM
- Exhibit F STYLE GUIDE  
(Please see <https://www.first5la.org/article/branding>)

The following exhibits constitute a part of this Contract and are incorporated into this Contract upon receipt by COMMISSION from CONTRACTOR:

- Exhibit G INVOICE(S)

If any inconsistency exists or arises between a provision of this Contract and a provision of any exhibit, the provisions of this Contract shall control.

#### **IX. INDEPENDENT CONTRACTOR**

CONTRACTOR is, and shall at all times remain as to COMMISSION, a wholly independent contractor. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of COMMISSION. Neither COMMISSION nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as set forth in this Contract. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its officials, officers, directors, agents or employees are in any manner employees of COMMISSION. CONTRACTOR agrees to pay all required taxes on amounts paid to CONTRACTOR under this Contract, and to indemnify and hold COMMISSION harmless from any and all taxes, assessments, penalties, and interest asserted against COMMISSION by reason of the independent contractor relationship created by this Contract. CONTRACTOR shall fully comply with the workers' compensation law regarding CONTRACTOR and CONTRACTOR's employees. CONTRACTOR shall indemnify and hold COMMISSION harmless from any failure of CONTRACTOR to comply with applicable workers' compensation laws. COMMISSION may offset against the amount of any fees due to CONTRACTOR under this Contract any amount due to COMMISSION from CONTRACTOR as a result of CONTRACTOR's failure to promptly pay to COMMISSION any reimbursement or indemnification arising under this Section IX.

#### **X. COLLECTION AND EVALUATION OF DATA AND INFORMATION**

- A. If CONTRACTOR's performance of work under this Contract includes, at COMMISSION's direction, gathering data and information, evaluating the

data and information, or reporting to COMMISSION its conclusions and recommendations arising out of that collection and evaluation process, then the following limitations shall apply to CONTRACTOR's use of the data and information in addition to any other conditions and limitations imposed by this Contract:

1. Data and Information Ownership. The data and information collected by CONTRACTOR, in whatever form, shall be COMMISSION's sole property. CONTRACTOR shall maintain the data and information on COMMISSION's behalf in form and substance consistent with accepted research practices throughout the term of this Contract. Within thirty (30) calendar days of the expiration or termination of this Contract, CONTRACTOR shall deliver all original collected data and information to the designated COMMISSION staff in hard copy, electronic format, or in such other format as requested by the designated COMMISSION staff. CONTRACTOR shall cease use of all data and information at the expiration or termination of this Contract.
2. Dissemination of Data and Information. COMMISSION, in its sole discretion, shall determine the timing, format and manner of the dissemination of the data and information and any report of CONTRACTOR's results, conclusions or recommendations. COMMISSION shall attribute the collection and evaluation of the data and information to CONTRACTOR upon dissemination. CONTRACTOR shall not disseminate the data and information without COMMISSION's Executive Director's, or Executive Director's designee's, prior written consent. CONTRACTOR shall request COMMISSION's consent to disseminate the data and information in writing not less than ten (10) business days in advance of the dissemination by submitting the Data Use Approval Form, attached as **Exhibit E**. CONTRACTOR's request shall state the specific purpose for which consent is being sought. If CONTRACTOR desires to use the data and information for a purpose that will result in profit or financial compensation to CONTRACTOR, or any party related to CONTRACTOR, CONTRACTOR shall submit a written request for consent to COMMISSION. In such cases, COMMISSION may enter into a royalty, licensing or reimbursement agreement with CONTRACTOR, as appropriate, prior to giving its consent, to compensate or reimburse COMMISSION for the use of its data and information. COMMISSION shall not seek compensation or reimbursement for the permitted use of its data and information for purely academic or scientific purposes. In published material arising out of academic or scientific activities, CONTRACTOR shall acknowledge COMMISSION's participation and funding pursuant to

Section XII and shall provide COMMISSION with two (2) copies of the published material.

3. CONTRACTOR shall implement and comply with adequate procedures to maintain the confidentiality of the data and information. CONTRACTOR shall require that its personnel performing work and providing deliverables under this Contract comply with the confidentiality provisions of this Contract.
4. To the extent permitted by state and federal law, including the Health Insurance Portability and Accountability Act ("HIPAA") (Pub. L. 104-191), the HIPAA Administrative Simplification Regulations (45 C.F.R. Parts 160, 162, and 164) and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), which was enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub. L. 111-5), CONTRACTOR shall provide COMMISSION with all collected raw data and information, including individual identifiers, and, upon COMMISSION's request, permit COMMISSION to review collected raw data and information at CONTRACTOR's address specified in Section XXV of this Contract.
5. CONTRACTOR shall comply with all applicable state and federal laws governing the gathering, use and protection of personal data and information, including the Family Educational Rights and Privacy Act (FERPA), the HIPAA Administrative Simplification Regulations and the HITECH Act. Any health care provider, health plan or health care clearinghouse that transmits health information in an electronic manner is considered a Covered Entity under HIPAA. If CONTRACTOR is legally considered a Covered Entity and/or if CONTRACTOR conducts business with Covered Entities, CONTRACTOR shall comply with HIPAA, the HIPAA Administrative Simplification Regulations and the HITECH Act and, as may be applicable to such data, (i) the California Confidentiality of Information Act, California Civ. Code Sec. 56.10 *et seq.*, and (ii) the California Consumer Privacy Act of 2018, California Civ. Code Section 1798.100 *et seq.* CONTRACTOR may, at its option, comply with the foregoing by applying for and receiving Hitrust Certification as offered by the Hitrust Alliance and meeting its Common Security Framework in compliance with ISO/IEC 27000-series and HIPAA.
6. CONTRACTOR shall immediately notify COMMISSION upon discovery of any breach of confidential data and information and of CONTRACTOR's participation in legal or non-legal actions to remedy such breaches. A breach of confidential data and information shall constitute a material breach of this Contract. If CONTRACTOR is a "covered entity" or "business associate," as the terms are defined

under HIPAA, CONTRACTOR shall comply with the requirements of HIPAA and the HIPAA Rules in protecting the privacy and security of health information and providing individuals with certain rights with respect to their health information, and shall comply with the Evaluation and Investigation of Alleged Noncompliance with Client Confidentiality Process set forth in **Exhibit D**.

7. If applicable, CONTRACTOR shall gather data and information in compliance with the requirements of HIPAA and Institutional Review Boards ("IRBs"), including obtaining informed consents. CONTRACTOR shall disclose in all informed consent forms used in the performance of this Contract that CONTRACTOR, to the extent permitted by state and federal law, will share data and information gathered pursuant to this Contract with COMMISSION.

## **XI. PROPRIETARY RIGHTS**

COMMISSION and CONTRACTOR agree that literary, artistic and intellectual works, including software, materials, published documents or reports created by CONTRACTOR in the performance of this Contract are works made for hire. COMMISSION shall own the copyright in all works made for hire. CONTRACTOR shall not file an application for copyright registration of the works made for hire. CONTRACTOR represents and warrants that literary, artistic and intellectual works created by CONTRACTOR in the performance of this Contract do not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party. To the full extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless Indemnitees, as defined in Section XVI, from and against any liability, claim, damage, demand, suit, cause of action, proceeding, judgment, penalty, lien, loss, expense or cost of any kind, including reasonable fees of accountants, attorneys and other professionals, and all costs associated therewith, whether actual, alleged or threatened, arising out of, pertaining to, or relating to the literary, artistic and intellectual works' infringement of any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party.

## **XII. FUNDING ATTRIBUTION AND PROMOTIONAL MATERIALS**

- A. CONTRACTOR shall indicate prominently in every press release, public statement, electronic media, project signage or printed materials, including, brochures, newsletters, and reports, related to the programs and work conducted by CONTRACTOR pursuant to this Contract that the programs and work are funded by COMMISSION. CONTRACTOR shall ensure that the COMMISSION funding attribution in promotional materials, activities and publications developed in support of the program and work conducted by CONTRACTOR pursuant to this Contract conform to the formatting

requirements outlined in **Exhibit F** (COMMISSION's Style Guide), including the appropriate display of COMMISSION's logo and a funding attribution statement. In all documents to be created and distributed by CONTRACTOR pursuant to this Contract, CONTRACTOR shall include, in a prominent location that conforms to the COMMISSION's Style Guide, the COMMISSION's logo and the statement "Funded by First 5 LA, a leading public grantmaking and child advocacy organization" and shall provide COMMISSION staff with material for review and approval prior to finalizing the print publication or digital media.

- B. If applicable to the performance of this Contract, CONTRACTOR shall also prominently display all COMMISSION supplied promotional materials, such as educational posters, banners, brochures and fliers at project and program sites.

### **XIII. OWNERSHIP OF PERSONAL PROPERTY**

All personal property purchased with compensation provided to CONTRACTOR from COMMISSION under this Contract Project shall become COMMISSION's property upon the expiration or termination of this Contract, unless otherwise agreed to by COMMISSION. COMMISSION shall exercise its option to physically retain items of tangible personal property within the thirty (30) calendar days immediately preceding and or following the completion of the project or initiative that is the subject of this Contract, whether completed within the Term of this Contract or any other subsequent agreement executed by COMMISSION and CONTRACTOR. The terms of this Section XIII shall survive the expiration or termination of this Contract.

### **XIV. CONFLICT OF INTEREST AND CONFIDENTIALITY**

CONTRACTOR and its officials, officers, directors, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to CONTRACTOR's services under this Contract, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090, *et seq.* During the term of this Contract, CONTRACTOR shall retain the right to perform similar work not related to the COMMISSION for other clients, but CONTRACTOR and its officials, officers, directors, employees, associates and subcontractors shall not provide evaluation, advice or technical assistance regarding the project or initiative that is the subject of this Contract to any COMMISSION grantee, collaborator, partner or contractor with which the CONTRACTOR or its officials, officers, directors, employees, associates and subcontractors has a prior or existing business relationship without the prior written approval of COMMISSION's Executive Director or Executive Director's designee. CONTRACTOR and its officials, officers, directors, employees, associates and subcontractors shall not accept work, income, compensation, employment or gifts, whether actual or promised,

from another person or entity for whom CONTRACTOR is not currently performing work that would require CONTRACTOR or one of its officials, officers, directors, employees, associates or subcontractors to abstain from making, participating in or attempting to influence a governmental decision under this Contract pursuant to a conflict of interest statute. CONTRACTOR shall maintain the confidentiality of any confidential information obtained from COMMISSION during the term of this Contract and shall not use such information for personal or commercial gain outside of the scope of this Contract. The term “confidential information” shall mean any and all information that is disclosed by COMMISSION to CONTRACTOR verbally, electronically, visually or in a written or other tangible form that is either identified or should be reasonably understood to be confidential or proprietary. CONTRACTOR shall not subsequently solicit or accept employment or compensation under any program, grant or service from COMMISSION that results from or arises out of the «PROGRAM\_NAME» PROGRAM without the prior written consent of COMMISSION’s Executive Director or Executive Director’s designee.

## **XV. INSURANCE**

- A. CONTRACTOR, at its own expense, shall obtain and maintain at all times during the term of this Contract the following policies of insurance with the minimum limits indicated below, unless otherwise approved in writing by COMMISSION’s Executive Director or Executive Director’s designee:
1. Commercial General Liability coverage with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) General Aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury and personal and advertising injury. If the policy is on a claims-made basis, the retroactive and continuity dates must be before the effective date of this Contract or the beginning of CONTRACTOR’s performance of services under this Contract. If the policy is on a claims-made basis, CONTRACTOR shall maintain the insurance for three (3) years after the completion of CONTRACTOR’s services under this Contract and if the coverage is cancelled or non-renewed and not placed with another claims-made policy with a retroactive date prior to the effective date of this Contract or the beginning of CONTRACTOR’s performance of services under this Contract, CONTRACTOR must purchase extended reporting coverage for a minimum of three (3) years after the completion of CONTRACTOR’s services under this Contract.
  2. Business Auto Liability coverage on ISO Business Auto Coverage forms with minimum limits of one million dollars (\$1,000,000) per

accident for bodily injury and property damage. Insurance shall cover liability arising out of CONTRACTOR's use of autos pursuant to this Contract, including owned, leased, hired, or non-owned autos, as each may be applicable. Coverage shall be as broad as Insurance Services Office (ISO) Form CA 00 01.

3. Workers' Compensation Insurance as required by the State of California and with minimum statutory limits and Employers' Liability Insurance with a minimum limit of one million dollars (\$1,000,000) per accident and per employee and in the Aggregate for disease.
  4. When the law establishes a professional standard of care for CONTRACTOR's services or if the services or a portion of the services performed by CONTRACTOR involves the use of professional knowledge, Professional Liability coverage with a minimum limit of one million dollars (\$1,000,000) per occurrence or claim and two million dollars (\$2,000,000) in annual Aggregate. If the policy is on a claims-made basis, the retroactive and continuity dates must be before the effective date of this Contract or the beginning of CONTRACTOR's performance of services under this Contract. CONTRACTOR shall maintain the insurance for three (3) years after the completion of CONTRACTOR's services under this Contract and if the coverage is cancelled or non-renewed and not placed with another claims-made policy with a retroactive date prior to the effective date of this Contract or the beginning of CONTRACTOR's performance of services under this Contract, CONTRACTOR must purchase extended reporting coverage for a minimum of three (3) years after the completion of CONTRACTOR's services under this Contract.
- B. The policies of insurance required under this Section XV shall be issued by insurers authorized to do business in the State of California, with a minimum A.M. Best's Insurance rating of A:VIII, unless otherwise approved in writing by COMMISSION's Executive Director or Executive Director's designee.
- C. All insurance coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion on any policy of insurance.
- D. The following endorsements are required by the COMMISSION:
1. The Commercial General Liability, Professional Liability and Business Auto Liability policies are to contain or be endorsed to contain the "Los Angeles County Children and Families First – Proposition 10 Commission", or if abbreviated, "LA Cty Prop 10 Commn.", its officials, officers, directors, agents, consultants and

employees as additional insureds with respect to liability and defense of claims arising out of work or operations performed by or on behalf of CONTRACTOR. A Blanket Additional Insured endorsement indicating Additional Insured status "as required by written contract or agreement" is acceptable.

2. The Commercial General Liability, Professional Liability and Business Auto Liability policies shall be or endorsed to be primary and non-contributing as respects the "Los Angeles County Children and Families First – Proposition 10 Commission", or if abbreviated, "LA Cty Prop 10 Commn.", its officials, officers, directors, agents, consultants and employees.
  3. No policies of insurance provided to comply with this Section XV shall prohibit CONTRACTOR, or CONTRACTOR's employees or agents, from waiving the right of subrogation prior to a loss. CONTRACTOR waives any right of subrogation that CONTRACTOR or CONTRACTOR's insurer may acquire against COMMISSION. CONTRACTOR shall obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy as required by Paragraph A of this Section XV shall include a waiver of subrogation endorsement as required in this Paragraph D.3. CONTRACTOR's failure to provide COMMISSION with a waiver of subrogation endorsement from CONTRACTOR's insurer(s) shall not relieve CONTRACTOR of its obligations under this Paragraph D.3.
- E. Should the policies of insurance required under this Section XV be suspended, voided, modified, terminated or non-renewed, CONTRACTOR will provide thirty (30) days' prior written notice to COMMISSION, excepting only for non-payment of premium, in which case CONTRACTOR shall provide ten (10) days' written notice to COMMISSION. If the policies of insurance required under this Section XV are suspended, voided, modified, terminated or non-renewed, CONTRACTOR shall, within two (2) business days of notice from the insurer(s), notify COMMISSION by phone, fax or certified mail, return receipt requested of the suspension, voiding, modification, termination or non-renewal of the policies.
- F. The requirements of specific coverage features or limits contained in this Section XV are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance policy. Specific reference to a given coverage feature is for purpose of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of any other coverage, or a waiver of any type.

- G. The requirements of this Section XV shall supersede all other sections and provisions of this Contract to the extent that any other section or provision conflicts with or impairs this Section XV.
- H. All insurance coverage and limits provided by CONTRACTOR and available and applicable to this Contract shall apply to the fullest extent of the policies. Nothing in this Contract shall be interpreted as limiting the application of insurance coverage as required under this Section XV.
- I. CONTRACTOR or CONTRACTOR's insurance agent or broker shall deliver certificates or other evidence of insurance coverage and copies of all required endorsements to COMMISSION in accordance with Section XV.I of this Contract. COMMISSION utilizes myCOI Central, a software management system, to collect certificates of insurance and to track and verify CONTRACTOR's insurance coverage. Upon CONTRACTOR's receipt of this executed Agreement, CONTRACTOR will receive an email from [ccd@first5la.org](mailto:ccd@first5la.org) with instructions for registration. CONTRACTOR shall follow the instructions contained in the email and complete the online registration within 10 business days after receipt of the registration email. Upon completion of registration, COMMISSION will request proof of insurance directly from CONTRACTOR's insurance agent(s). Any actual or alleged failure on the part of COMMISSION or any other additional insured under these requirements to obtain evidence of insurance required under this Contract in no way waives any right or remedy of COMMISSION or any additional insured in this or any other regard.
- J. Renewal Certificates shall be provided not less than ten (10) calendar days prior to CONTRACTOR's policy expiration dates. COMMISSION, at any time, may request and obtain from CONTRACTOR complete, certified copies of any insurance policies required of CONTRACTOR under this Section XV.
- K. CONTRACTOR may submit evidence of adequate self-insurance as a substitute for the policies of insurance required under this Section XV subject to the approval of COMMISSION's Executive Director or Executive Director's designee. Copies of CONTRACTOR's audited financial statements to support any self-insurance or other financial documents may be required by COMMISSION. CONTRACTOR shall submit to COMMISSION a copy of the self-insured certificate and evidence of the authorized third-party administrator of the self-insured program.
- L. CONTRACTOR shall include all subcontractors as insureds under CONTRACTOR's own policies or shall require all subcontractors performing work under this Contract to comply with all insurance requirements set forth in this Section XV. CONTRACTOR shall obtain certificates or other evidence of insurance and copies of all required

endorsements from all subcontractors, and CONTRACTOR assumes all responsibility for ensuring that coverage is provided by subcontractors in conformity with the requirements of this Section XV.

- M. CONTRACTOR's failure to maintain the policies of insurance required under this Section XV, complete registration in myCOI Central, or submit compliant certificates of insurance shall constitute a breach of this Contract for which COMMISSION may withhold payment to CONTRACTOR until such time as CONTRACTOR complies with the insurance requirements contained in this Section XV, terminate this Contract pursuant to Paragraph C of Section XXI of this Contract or secure alternate insurance at CONTRACTOR's expense.
- N. CONTRACTOR also shall promptly report to COMMISSION any injury or property damage accident or incident, including any injury to a CONTRACTOR's employee occurring at a COMMISSION sponsored event, and any loss, disappearance, destruction, misuse, or theft of COMMISSION property, monies or securities entrusted to CONTRACTOR. CONTRACTOR also shall promptly notify COMMISSION of any third party claim or suit filed against COMMISSION or any of its subcontractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against CONTRACTOR and/or COMMISSION.

## **XVI. INDEMNIFICATION**

- A. Indemnity for Professional Liability. When the law establishes a professional standard of care for CONTRACTOR's work or if the work or a portion of the work performed by CONTRACTOR involves the use of professional knowledge, and to the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless COMMISSION, its officials, officers, directors, employees, servants, designated volunteers and agents serving as independent contractors in the role of COMMISSION officials (collectively "Indemnitees"), from and against any liability, claim, damage, demand, suit, cause of action, proceeding, judgment, penalty, lien, loss, expense or cost of any kind, including reasonable fees of accountants, attorneys and other professionals, and all costs associated therewith (collectively, "damages"), whether actual, alleged or threatened, arising out of, pertaining to, or relating to any negligent or wrongful act, error or omission of CONTRACTOR, its officials, officers, directors, agents, employees, subcontractors, or any entity or individual that CONTRACTOR bears legal liability thereof, in the performance of professional services under this Contract. CONTRACTOR shall defend Indemnitees in any action or actions filed in connection with any such damages with counsel of COMMISSION's choice and shall pay all costs and expenses, including actual attorney's fees, incurred in connection with such defense.

- B. Indemnity for Other than Professional Liability. To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless Indemnitees from and against any liability, claim, damage, demand, suit, cause of action, proceeding, judgment, penalty, lien, loss, expense or cost of any kind, including reasonable fees of accountants, attorneys and other professionals, and all costs associated therewith (collectively, "claims"), whether actual, alleged or threatened, arising out of, pertaining to, or relating to CONTRACTOR's performance of this Contract, including the Indemnitee's active or passive negligence, except for claims arising from the sole negligence, recklessness or willful misconduct of Indemnitees, as determined by final arbitration or court decision. CONTRACTOR shall defend Indemnitees in any action or actions filed in connection with any such claims with counsel of COMMISSION's choice and shall pay all costs and expenses, including actual attorney's fees, incurred in connection with such defense.
- C. Survival. The terms of this Section XVI shall survive the expiration or termination of this Contract.

## **XVII. ACCOUNTABILITY**

- A. It is COMMISSION's intent to contract with responsible entities. CONTRACTOR shall notify COMMISSION if CONTRACTOR is debarred, suspended, proposed for debarment, or declared ineligible by any federal, state or local funding agency. CONTRACTOR shall notify COMMISSION if CONTRACTOR's license or certification, as applicable, has been revoked or suspended. CONTRACTOR shall notify COMMISSION within the (10) business days of receipt of notification that CONTRACTOR is subject to any proposed or pending debarment, suspension, indictments, termination or revocation of license or certificate.
- B. CONTRACTOR shall perform the work and provide the deliverables required under this Contract under the direction of COMMISSION's Executive Director and the designated COMMISSION staff. COMMISSION's Executive Director or the designated COMMISSION staff shall ensure that CONTRACTOR performs the work and provides deliverables in compliance with the terms and timelines set forth in **Exhibits A and B** in accordance with the procedures set forth in **Exhibit D**. CONTRACTOR shall copy all written communications related to the performance of work under this Contract to the designated COMMISSION staff. CONTRACTOR shall update the designated COMMISSION staff concerning the performance of work under this Contract, including, completing and submitting deliverables. If CONTRACTOR fails to achieve a performance objective by the due date set forth in **Exhibits A and B**, CONTRACTOR shall notify the designated COMMISSION staff of CONTRACTOR's failure within thirty (30) calendar days after the due date

at which point the COMMISSION may modify **Exhibit A**, request from CONTRACTOR a written plan detailing the corrective action steps CONTRACTOR proposes to take to achieve the performance objective and the time period required for reporting and compliance (“Corrective Action Plan”), place CONTRACTOR in non-compliant status pursuant to the Compliance Guidelines or terminate this Contract pursuant to Paragraph C of Section XXI of this Contract for breach of this Contract. Corrective Action Plans are subject to COMMISSION’s approval. If CONTRACTOR fails to comply with an approved Corrective Action Plan, COMMISSION may place CONTRACTOR in non-compliant status in accordance with the Compliance Guidelines, attached as **Exhibit D**. COMMISSION, at its sole discretion, may also place the CONTRACTOR into non-compliant status without a Corrective Action Plan. The rights and obligations created by the Compliance Guidelines, attached as **Exhibit D**, with respect to contract compliance, shall survive the expiration or termination of this Contract.

- C. If applicable, COMMISSION shall make relevant, non-confidential and non-privileged information available and accessible to CONTRACTOR to assist in CONTRACTOR’s successful completion of the work and deliverables required under this Contract.
- D. CONTRACTOR shall provide any deliverables required under **Exhibits A** and **C** to the designated COMMISSION staff within and by the timelines required under **Exhibits A** and **B** and with the highest degree of quality and service to COMMISSION.
- E. CONTRACTOR shall conduct itself and its performance of work under this Contract in an ethical manner, with high integrity and with respect for the individuals involved in the performance of this Contract.
- F. COMMISSION, in its sole discretion, may conduct internal evaluations and reviews of CONTRACTOR’s performance of work under this Contract. CONTRACTOR shall comply with COMMISSION’s inquiries and requests for information arising out of such evaluations within the timeframe specified by COMMISSION in the inquiry or request. The evaluation(s) shall include, but are not limited to, contract compliance and the effectiveness of CONTRACTOR’s performance of the work and provision of deliverables required under **Exhibits A** and **B** and this Contract. COMMISSION may modify this Contract based on the results of the COMMISSION’s evaluation(s) and review(s).
- G. CONTRACTOR shall respond to COMMISSION’s inquiries and requests for information arising out of the performance of this Contract within the timeframe specified by COMMISSION in its inquiry or request.

- H. If applicable to the performance of work under this Contract, CONTRACTOR shall comply with California Public Contract Code Section 3410, which requires preference to United States-grown produce and United States-processed foods when there is a choice and it is economically feasible to do so.
- I. If applicable to the performance of work under this Contract, CONTRACTOR shall comply with California Public Contract Code Section 22150, which requires the purchase of recycled products, instead of non-recycled products, whenever recycled products are available at the same or lesser total cost than non-recycled items. CONTRACTOR may give preference to suppliers of recycled products and may define the amount of this preference.
- J. CONTRACTOR shall provide COMMISSION with timely notification of any major changes to CONTRACTOR's financial system, primary funding sources or overall organization funding that may negatively impact CONTRACTOR's ability to perform the work required under this Contract.

#### **XVIII. INTERPRETATION AND JURISDICTION**

This Contract, and any dispute arising from the relationship between the Parties to this Contract, shall be interpreted and governed according to California law. Any dispute that arises under or relates to this Contract (whether contract, tort or both) shall be resolved in a state court in Los Angeles County, California.

#### **XIX. COMPLIANCE WITH APPLICABLE LAWS**

- A. CONTRACTOR shall conform to and abide by all applicable local, state and federal laws, regulations and ordinances, and licensing and accrediting authorities, in the performance of this Contract, including standards of professional ethics governing the use of assessment tools and standards governing the provision of services via the Internet and telephone and the dissemination of information and educational materials. CONTRACTOR's failure to comply with such laws, ordinances, codes, regulations and authorities shall be deemed a material breach of this Contract.
- B. Contractor shall ensure that Contractor, its employees and subcontractors, as well as the participants in any program or service conducted hereunder, comply with all applicable federal, State and local public health orders to protect against the spread of the COVID-19 virus or other public health threat, including, without limitation, maintaining social distancing requirements, avoiding unnecessary or non-essential gatherings, and providing or requiring personal protective devices such as face masks, gloves and cleaning supplies.

**XX. LIMITATION OF COMMISSION OBLIGATIONS DUE TO LACK OF FUNDS**

- A. COMMISSION'S payment obligations pursuant to this Contract are payable solely from funds appropriated by COMMISSION for the purpose of this Contract. CONTRACTOR shall have no recourse to any other funds allocated to or by COMMISSION. CONTRACTOR acknowledges that the funding for this Contract is limited to the term of the Contract only, with no future funding promised or guaranteed.
- B. COMMISSION and CONTRACTOR expressly agree that full funding for this Contract over the term of this Contract is contingent on the continued collection of tax revenues pursuant to Proposition 10 and the continued allocation of Los Angeles County's share of those revenues to COMMISSION. In the event of any repeal, amendment, interpretation, or invalidation of any provision of Proposition 10 that has the effect of reducing or eliminating COMMISSION's receipt of Proposition 10 tax revenues, or any other unexpected material decline in COMMISSION's revenues, COMMISSION may reduce or eliminate funding for this Contract at a level that is generally proportionate to the elimination or reduction in the COMMISSION's receipt of Proposition 10 tax revenues.

**XXI. TERMINATION OF WORK**

- A. Termination without Cause. Either Party may terminate this Contract by giving written notice to the other Party at least thirty (30) calendar days before the termination is to be effective. COMMISSION shall compensate CONTRACTOR for work and deliverables satisfactorily rendered to the effective date of termination. Neither Party shall be liable to the other for damages of any kind, including incidental or consequential damages, resulting from the termination of this Contract under this Section XXI.A.
- B. Termination for Non-Appropriation of Funds. Notwithstanding any other provision of this Contract, COMMISSION shall not be obligated for CONTRACTOR's performance under this Contract or by any provision of this Contract during any of COMMISSION's future fiscal years unless and until COMMISSION appropriates funds for this Contract in the COMMISSION's budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30<sup>th</sup> of the last fiscal year for which funds were appropriated. COMMISSION shall notify CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date. COMMISSION shall not be liable to CONTRACTOR for damages of any kind, including incidental or consequential damages, resulting from the termination of this Contract under this Section XXI.B.

- C. Termination for Cause. Either Party may terminate this Contract for cause, effective immediately, by giving written notice to the other Party. For purposes of this Contract “cause” includes CONTRACTOR’s failure to perform the work or provide the deliverables described in **Exhibits A and B** or a Party’s material breach of any provision of this Contract. COMMISSION shall compensate CONTRACTOR for work and deliverables satisfactorily rendered to the effective date of termination. Neither Party shall be liable to the other for damages of any kind, including incidental or consequential damages, resulting from the termination of this Contract under this Section XXI.C.

## **XXII. SURVIVAL CLAUSE**

Notwithstanding the Term of this Contract, all terms and conditions set forth in **Exhibit A** related to the delivery of any required report to COMMISSION by CONTRACTOR shall survive the expiration or termination of this Contract. CONTRACTOR shall prepare and provide to COMMISSION all reports required under **Exhibit A** at no additional cost to COMMISSION.

## **XXIII. ATTORNEY FEES**

In any litigation, arbitration or other proceeding by which one Party either seeks to enforce its rights under this Contract (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Contract, the prevailing Party shall be awarded reasonable attorney fees, together with any costs or expenses, to resolve the dispute and to enforce the final judgment.

## **XXIV. RECORDS AND AUDITS**

- A. CONTRACTOR shall maintain a record for each item of tangible real or personal property of a value in excess of five hundred dollars (\$500.00) acquired pursuant to this Contract. The records shall include the model number, serial number, legal description (if applicable), cost, invoice or receipt, and date acquired.
- B. CONTRACTOR shall maintain notes, business records, and working papers (collectively “records”) on file during the term of this Contract and for a period of not less than four (4) years following the expiration or termination of this Contract. COMMISSION may, at any time during CONTRACTOR’s business hours, and upon reasonable notice to CONTRACTOR, (i) conduct site visits to evaluate, audit, inspect and monitor CONTRACTOR’s facilities, program operations and the records maintained in connection with this Contract or (ii) audit and examine the records and require supporting documentation, such as employee timesheets and invoices, to substantiate CONTRACTOR’s invoices. COMMISSION may, upon seven (7) days’ advance written notice to CONTRACTOR, inspect and copy the records.

The terms of this Section XXIV shall survive the expiration or termination of this Contract for four (4) years.

- C. CONTRACTOR shall participate in and cooperate with statewide evaluations of California Proposition 10 (1998) ("Proposition 10") efforts and reporting of data required by First 5 California as requested by COMMISSION. CONTRACTOR shall be relieved of this participation obligation if CONTRACTOR provides COMMISSION with written notification that CONTRACTOR's participation would violate the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (Pub. L. 104-191), the HIPAA Administrative Simplification Regulations (45 C.F.R. Parts 160, 162, and 164) and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), which was enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub. L. 111-5), federal, state or local laws, confidentiality agreements, or any CONTRACTOR policies related to the dissemination of confidential data. No release from the obligation to participate in statewide evaluations of Proposition 10 efforts shall release CONTRACTOR from its obligation to provide aggregate data or completed surveys about systems change and operations accomplished by CONTRACTOR, its lead agency or collaborative partners.

## **XXV. NOTICES**

- A. Notices. Except as otherwise required of CONTRACTOR by COMMISSION, all notices, consents, requests, demands, reports, invoices or other communications required or permitted under this Contract shall be in writing and shall conclusively be deemed effective (1) on personal delivery, (2) on confirmed delivery by courier service, (3) on the first business day after transmission is sent by facsimile, (4) three business days following deposit in the United States mail, by first class mail, postage prepaid, addressed to the Party to be notified as set forth below, or to such other addresses as the Parties may, from time to time, designate in writing or (5) on the first business day after transmission is sent by email, if permitted by the designated COMMISSION staff. E-mails shall be confirmed in hard copy by United States mail, overnight courier or facsimile, as required by the designated COMMISSION staff.

To CONTRACTOR:

«CONTRACTOR\_NAME»  
«Contractor\_Address»  
«City\_State\_Zip»

*Primary Contact*

«Primary\_Contact\_Name»  
«Primary\_Contact\_Phone»  
«Primary\_Contact\_Email»

*Fiscal Contact*

«Fiscal\_Contact\_Name»  
«Fiscal\_Contact\_Phone»  
«Fiscal\_Contact\_Email»

To COMMISSION:

FIRST 5 LA, Contract Administration and Purchasing Department  
Attention: Kevin Proff, Contract Compliance Officer  
750 North Alameda Street, Suite 300  
Los Angeles, California 90012

- B. Notice of Delays. When either Party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that Party shall, within three (3) business days, give written notice, including relevant information, to the other Party.

## **XXVI. WORD USAGE**

Unless the context clearly requires otherwise, (a) the words “shall” or “agrees” are mandatory, and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” and “including” are not limiting.

## **XXVII. MODIFICATION OF CONTRACT**

This Contract may be supplemented, amended or modified only by a writing signed by both Parties. No oral conversation, promise or representation by or between any officer or employee of the Parties shall modify any of the terms or conditions of this Contract. COMMISSION shall not be deemed to have approved or consented to any alteration of the terms of this Contract, including its Exhibits, by virtue of COMMISSION’s review and approval of, or failure to object to, contracts or other business transactions entered into by CONTRACTOR.

## **XXVIII. ASSIGNMENT AND DELEGATION**

Unless otherwise approved in this Agreement as specified in Exhibit A and B, CONTRACTOR may not assign any of its rights or delegate any of its duties under this Agreement without COMMISSION’s prior consent, which shall be approved in accordance with Section XXVII. Such consent may be withheld in COMMISSION’s sole and absolute discretion. CONTRACTOR shall submit the request to the

designated COMMISSION staff through written correspondence for COMMISSION's review and consent. The written correspondence shall identify the proposed subcontractor, the subcontracted amount, and the subcontractor's proposed scope of work. If required by the designated COMMISSION staff, CONTRACTOR shall submit a copy of the subcontract or memorandum of understanding between CONTRACTOR and the subcontractor for COMMISSION's prior review and approval. If requested by the designated COMMISSION staff, CONTRACTOR shall provide copies of executed subcontracts for all approved subcontractors.

Despite COMMISSION's consent, COMMISSION shall not be liable for the actions of the subcontractors and no assignment or delegation will release CONTRACTOR from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this provision is void and will entitle COMMISSION to terminate this Agreement. As used in this Section XXVIII, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, subcontract or other transfer of all or any portion of the rights, obligations or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs or any change in CONTRACTOR's corporate structure, governing body or management.

#### **XXIX. WAIVER**

No delay or omission to exercise any right, power or remedy accruing to COMMISSION under this Contract shall impair any right, power or remedy of COMMISSION, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure or a condition or any right or remedy under this Contract shall be (1) effective unless it is in writing and signed by the Party making the waiver; (2) deemed to be a waiver of, or consent to, any other breach, failure of condition or right or remedy; or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

#### **XXX. ENTIRE AGREEMENT**

This Contract and all exhibits referred to in this Contract constitute the final, complete and exclusive statement of the terms of the agreement between the Parties and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Contract by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Contract.

#### **XXXI. TIME OF ESSENCE**

Time is of the essence in respect to all provisions of this Contract that specify a time for performance; provided, however, that the foregoing may not be construed

to limit or deprive a Party of the benefits of any grace or use period allowed in this Contract.

#### **XXXII. AMBIGUITIES**

Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in interpreting this Contract.

#### **XXXIII. HEADINGS**

The headings in this Contract are included solely for convenience or reference and shall not affect the interpretation of any provision of this Contract or any of the rights or obligations of the Parties of this Contract.

#### **XXXIV. SEVERABILITY**

If a court or an arbitrator of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid for any reason, the validity and enforceability of the remaining provisions of this Contract shall not be affected.

#### **XXXV. SIGNATURES**

The Parties, through their respective duly authorized signatories, are signing this Contract on the date stated in the introductory clause.

*[SIGNATURES PAGE FOLLOWS]*

COMMISSION

Los Angeles County Children and  
Families First Proposition 10  
Commission,  
aka First 5 LA

CONTRACTOR

«CONTRACTOR\_NAME»

By: \_\_\_\_\_

Name: «First\_5\_LA\_Signer\_Name»

Title: «First\_5\_LA\_Signer\_Title»

By: \_\_\_\_\_

Name: «Signatory»

Title: «Title»

Approved as to Form:

By: \_\_\_\_\_

Name: Serita R. Young

Title: Legal Counsel

By: \_\_\_\_\_

Name: «Signatory\_2»

Title: «Title\_2»