

**PUPIL TRANSPORTATION SERVICES AGREEMENT**

THIS AGREEMENT ("Agreement"), made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between SHELBY COUNTY SCHOOLS, with principal offices at 160 South Hollywood Street, Tennessee, 38112, hereinafter called "DISTRICT," and \_\_\_\_\_, with administrative offices \_\_\_\_\_, hereinafter called "CONTRACTOR."

**WITNESSETH:**

WHEREAS, \_\_\_\_\_.

WHEREAS, DISTRICT and CONTRACTOR desire to enter into a \_\_\_\_-year contract for pupil transportation services within the Shelby County Schools District;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

**ARTICLE 1**

**TERMS**

The term of this Agreement shall be for \_\_\_\_\_ year, commencing \_\_\_\_\_ 20\_\_\_\_ and shall continue through \_\_\_\_\_, 20\_\_\_\_\_.

**ARTICLE 2**

**SCOPE OF THE SERVICES**

**Section 2.01.** Utilizing school buses and radio equipment to be provided by CONTRACTOR, CONTRACTOR shall provide such personnel as are required to transport conveniently, safely and reliably all students designated by the DISTRICT to be served under the provisions of this Agreement. Such transportation shall include fulfilling DISTRICT'S needs for "Regular Transportation," "Specialized Exceptional Children Transportation" and "Supplemental Transportation" (collectively, the "Services") as defined below:

"Regular Transportation" shall mean the safe and convenient transportation of any and all pupils who are designated by DISTRICT as eligible to be transported between schools or school-related activities and between school and home. Such transportation shall be provided for each and every day that school is convened and in accordance with school bus routes and schedules established by DISTRICT as provided hereunder.

"Specialized Exceptional Children ("SPED") Transportation" shall mean the safe and convenient transportation of any and all students with disabilities who are designated by DISTRICT to be transported between schools and between schools and home, and shall include the provision of vehicles necessary to accommodate all special needs designated by the Individual Education Profile ("IEP") of each student, including, but not limited to, lift equipment for students using mobility aids or wheelchairs, wheelchair securement equipment, seatbelt restraints, and child safety seats, pillows or pads. Notwithstanding, CONTRACTOR's obligations shall be limited

to equipment that can be transported safely and within prescribed governmental regulations. Such transportation, if required, shall be provided for each and every day that school is convened and in accordance with school bus routes and schedules approved by DISTRICT as provided hereunder.

"Supplemental Transportation" shall mean the convenient and safe transportation of any and all pupils or other authorized personnel as may be requested by DISTRICT for field trips, excursions, athletic activities and any other transportation purpose designated by DISTRICT, other than Regular or Specialized Exceptional Children Transportation. CONTRACTOR and DISTRICT shall use their best efforts to agree, prior to the start of the school year, upon the scheduled use of CONTRACTOR'S buses for Supplemental Transportation for scheduled athletic events (the "Supplemental Transportation Schedule"). If agreed to in writing, CONTRACTOR shall operate the Supplemental Transportation Schedule utilizing the fleet designated in the schedule, at the times and costs provided in the schedule. The Supplemental Transportation Schedule shall be attached hereto as Exhibit \_\_ and incorporated herein by reference. Except as otherwise provided herein, it is understood that utilization of CONTRACTOR'S services for Supplemental Transportation shall be optional with DISTRICT and that DISTRICT and its individual schools shall be free to make other transportation arrangements if they so desire.

**Section 2.02.** The DISTRICT'S school year is governed by the school calendar adopted by the Board of Education and consists of a minimum of \_\_\_\_\_ days in which school is required to be in session, and, optionally, summer school sessions as scheduled by the District each summer. When schools are closed (for any reason, including "Acts of God"), transportation is to be furnished on such other days as the Board of Education declares official school days. It is understood that on those days that regular public schools are closed and special education schools are open, the CONTRACTOR will be responsible for furnishing any required transportation to the special education schools at modified daily costs to the DISTRICT. Transportation to special education locations will follow the official calendar of the special education location. DISTRICT shall provide CONTRACTOR a schedule and routes for both the regular school year and summer school sessions.

**Section 2.03.** Supplemental Transportation shall be provided as scheduled in accordance with the provisions of Section 2.01, or upon request of the DISTRICT or a DISTRICT school administrator. CONTRACTOR shall notify the Transportation Advisor in the Department of Student Transportation Services, in advance, of all Supplemental Transportation scheduled by it with District schools.

CONTRACTOR understand that the DISTRICT is not financially responsible for payment of costs for Supplemental Transportation ordered by the DISTRICT'S schools, absent a purchase order issued by the DISTRICT for the Supplemental Transportation. CONTRACTOR may reuse the request for Supplemental transportation if a school fails to cause a purchase order to be issued for such transportation at least three (3) days prior to a scheduled trip.

**Section 2.04.** CONTRACTOR shall not permit anyone except assigned students, monitors or nurses, to be on a bus unless authorized in writing by School District's Transportation Manager. For the avoidance of doubt, the prohibition against unauthorized access includes parents of assigned students. Persons not assigned to

ride on buses may be permitted to ride the CONTRACTOR'S buses if previously approved by the DISTRICT. These passengers shall be approved on a case-by-case basis and the DISTRICT will coordinate advance approval and notice prior to such use of CONTRACTOR'S buses.

### **ARTICLE 3 ROUTES AND SCHEDULES**

**Section 3.01.** A route, as defined by the terms of this Agreement, generally means the shortest distance necessary to transport a given group of students to and from a pick-up point nearest their homes and their designated attendance school, and does include the distance from where the vehicle is garaged to the start of termination of its route.

**Section 3.02.** The DISTRICT will be responsible for planning all routes, stops and schedules. These routes are to be operated as scheduled by the DISTRICT'S Transportation Manager or approved representative ("Approved Representative"). Any changes necessitated to the route in timing, sequence, or bus capacity must be approved by the SCS Transportation Department, in consultation with the CONTRACTOR as needed. All routes shall be designed consistent with Board Policy, and shall be designed to maximize efficiency and minimize costs to the DISTRICT. Generally, DISTRICT does not schedule vehicles to traverse, cross, or go over railroad tracks or crossings. In the event there is no alternative to crossing a railroad track, DISTRICT may schedule such crossing into a route. In no event, other than detours for reasons of safety, weather and/or street maintenance, shall CONTRACTOR transport students across a railroad track without approval by DISTRICT in advance. CONTRACTOR shall notify DISTRICT as soon as possible of any detours created by a traffic emergency.

**Section 3.03.** The DISTRICT is currently utilizing the Edulog routing software system, but may make changes to the software provider. The CONTRACTOR, at its sole cost and expense, shall be permitted "read only" access to the DISTRICT'S routing program utilizing the CONTRACTOR'S computers and internet connection. The CONTRACTOR will be provided sufficient access to DISTRICT'S Edulog system to print maps of the DISTRICT'S routes.

**Section 3.04.** The CONTRACTOR currently utilizes the Zonar global position system ("GPS") on its vehicles, which GPS is capable of interfacing with Edulog. The DISTRICT and CONTRACTOR will work cooperatively to interface Edulog with CONTRACTOR'S GPS. The DISTRICT, at its sole cost and expense, shall be permitted "read only" access to CONTRACTOR'S GPS, including the capability to download reports or data, as necessary.

**Section 3.05.** DISTRICT will supply the name of DISTRICT employees assigned administrative responsibility for school routes at the beginning of each school year. The assigned persons must be completely familiar with the operation, school routes, drivers, equipment, and must be available to respond to questions regarding route operations. The assigned individuals must be available for contact from the time of dispatch of the first route throughout the completion of all routes for the day, and must be available for contact as emergency questions arise.

**Section 3.06.** Based on DISTRICT'S route design, DISTRICT will, for each route, furnish CONTRACTOR written route descriptions indicating streets or roads the school bus is to travel prior to the date Services are to be furnished, which route descriptions will revise as necessary. The CONTRACTOR will operate buses along the routes determined and scheduled by the DISTRICT.

**Section 3.07.** It is recognized that changes to routes, stops, time schedules, and pupil rosters happen frequently and may necessitate minor or major changes to routing schedules. Therefore, the DISTRICT reserves the right to make changes to any routes upon not less than three (3) business days' notice, unless otherwise provided for in this Agreement. A shorter notice period may be required for the transportation of students determined to be homeless at any time during the school year. Both parties to this Agreement agree to cooperate in revising the routes and trips to improve service, operating efficiencies or economy, and DISTRICT agrees that any changes must accommodate CONTRACTOR'S existing fleet.

No changes in regular routes or sets of routes may be made without prior approval by DISTRICT or its Approved Representative. Run changes and the effective date of changes will be provided to CONTRACTOR by DISTRICT'S Transportation Department. If the CONTRACTOR makes temporary route deviations for reasons of safety, weather and/or street maintenance or construction, the DISTRICT must be notified immediately *via email*. The DISTRICT will review any such deviations and determine whether it can continue.

**Section 3.08.** Under no circumstances shall CONTRACTOR double up routes in the performance of the Services. To the maximum extent possible, all routes shall *have* the same driver in both the morning and afternoon. The CONTRACTOR will provide a schematic indicating the assigned driver's name, and the route number or bus number for such driver, prior to the start of school each year. CONTRACTOR shall provide an updated schematic on a monthly basis, indicating the permanent driver changes that are made. Drivers should be assigned to Supplemental Transportation on Services only for such times that avoid conflicts with the Regular and SPED Transportation Services scheduled under this Agreement.

**Section 3.09.** Each bus used under this Agreement will display the proper route designation when on scheduled runs or trips. The route designations will be securely attached to vehicles in locations approved by DISTRICT'S Transportation Department.

**Section 3.10.** All bus routes will conform to the schedule provided for each school. Buses will deliver students to all schools not more than 10 minutes after or more than 15 minutes before, the scheduled delivery time, or as requested by DISTRICT. In no case will a student be in transit in excess of 60 minutes, except upon approval of the DISTRICT. Supplemental Transportation must be conducted in accordance with the Supplemental Transportation Schedule, or as requested by DISTRICT.

**Section 3.11.** The DISTRICT reserves the right to notify the CONTRACTOR of reasonable changes in the starting and dismissal times of a school or schools, and the Services required by such changes shall be without additional charge except as provided for in this Agreement. Reasons for such modifications include, but are not limited to: DISTRICT-wide mid-day dismissals when required;

Early dismissals, as per calendars provided by the DISTRICT; Late activity dismissals, as per published schedules; Early dismissals of any and all schools for parent conferences, special events, emergencies, etc.; Pick-ups and dismissals required during examination weeks. Except in emergencies, DISTRICT will give the CONTRACTOR three work days' notice of such changes. In emergency situations, DISTRICT will provide CONTRACTOR not less than one hour's notice of an amended schedule. Nonetheless, CONTRACTOR agrees to provide buses at locations designated for early dismissal at the times specified in the notice, but not later than one hour following receipt of notice if the specified pickup times are less than an hour from such notice.

**Section 3.12.** DISTRICT and CONTRACTOR shall monitor all routes and student loads assigned to each bus, and shall adjust routes, and loads as directed by DISTRICT. CONTRACTOR shall insure that routes are efficient and stops with no students are communicated to the DISTRICT immediately. The CONTRACTOR will assist in updating route information and operating times, performing ridership audits, and providing any other additional information deemed necessary by the DISTRICT.

**Section 3.13.** At a time established by the DISTRICT and the CONTRACTOR within (2) two weeks prior to the first day of Services under this Agreement, or (5) five days from the receipt of the routes from DISTRICT, whichever is the later to occur, each regular driver will make at least one (1) trial a.m. and p.m. run to include all stops assigned on the route. Trial runs must be operated during the typical a.m. and p.m. times to replicate common traffic issues and conditions. The CONTRACTOR will identify any routes where there is an indication of an inability to regularly perform to schedule and to safely serve the pupils, and the CONTRACTOR shall advise the DISTRICT of the same. DISTRICT shall pay CONTRACTOR for all cost associated with two trial runs at the daily rates agreed upon by the parties for the contract year in which the trial runs are performed. Trial runs include the daily routes for both REGULAR and SPED Transportation. CONTRACTOR shall invoice DISTRICT for any and all trial runs in the same manner as it invoices regular attendance days.

**Section 3.14.** Except as otherwise provided in this Agreement, no route changes are to be made by the CONTRACTOR without the written permission of the DISTRICT.

#### **ARTICLE 4 VEHICLES**

**Section 4.01.** It shall be the responsibility of the CONTRACTOR to provide a sufficient number of school buses. All vehicles will have valid Tennessee Department of Transportation ("TOOT") operating certificates and be maintained in good appearance, and in safe and suitable condition for operation. To perform the Supplemental Transportation Services, CONTRACTOR must maintain in its inventory a fleet of eight (8) large capacity buses with undercarriage storage. The CONTRACTOR shall use its best efforts not to schedule vehicles assigned for Regular and SPED Transportation Services for use in the performance of the Supplemental Transportation Services. Whenever such vehicles are used to provide the Supplemental Services, they must be scheduled in a manner that will not conflict with the timely performance of the Regular and SPED Transportation Services.

**Section 4.02.** In addition to the vehicles necessary to meet the scheduled needs, the CONTRACTOR is required to maintain a minimum of 10% of the total number of route buses as standby vehicles. CONTRACTOR must include in the standby fleet at least one of each type and pupil capacity of buses serving the DISTRICT. Standby vehicles will be maintained at a location that will insure that a standby vehicle can be dispatched within 10 minutes after notification to respond to an in-district vehicle need. In the event of a mechanical failure or breakdown of any bus, CONTRACTOR agrees that a standby bus and driver will respond to the site of a breakdown for transfer of students. Drivers of stand-by vehicles must be able to operate the standby vehicles.

**Section 4.03.** CONTRACTOR will provide an annual inventory list of the vehicles used in the performance of this Agreement at the beginning of each school year. The inventory list shall specify the make, model, manufacture date, vehicle identification number, and the rated passenger capacity, miles and type of each bus, including standby buses, used in the performance of the Agreement. No deviations from this list shall be made unless the CONTRACTOR receives prior approval from the DISTRICT.

**Section 4.04.** CONTRACTOR will provide fleet for the term of this AGREEMENT including route buses plus a 10 percent spare ratio.

**Section 4.05.** At a minimum, CONTRACTOR'S buses shall be equipped with:  
Child Check Mate No Child Left Behind systems, or other demonstrated equivalent automated systems. Approval of alternative equipment is the sole responsibility of the DISTRICT; High back padded seats; Flashing stop arms;  
Two-way radios with band capacity sufficient to reach all vehicles in operation from the most distant point to the dispatching station, which shall be maintained in operable condition at all times by the CONTRACTOR;  
For vehicles that transport students with disabilities, and all vehicles that travel outside of the radio coverage area, cellular telephones operated consistent with State laws;

Wheelchair lifts, car seats and safety harnesses required for student with disabilities;

Global Positioning System ("GPS") as specified and provided by CONTRACTOR;  
Air conditioning on all vehicles transporting students; and  
Three (3) video surveillance cameras on every bus to capture, to the fullest extent possible, the students, the doorway, and the Driver. The video cameras must be operational at all times that the route is in progress.

**Section 4.06.** The CONTRACTOR shall also make available to DISTRICT *any* video recorded on equipment installed on a bus. All camera use and viewing shall be consistent with the policies and procedures established by the DISTRICT. Video surveillance systems shall be capable of recording a minimum of five (5) consecutive days on each media storage device. When the DISTRICT requests a recording to occur on a bus, CONTRACTOR shall provide for such recording within 24 hours of the request, and the resulting recorded video shall be provided to the DISTRICT by the end of the *day of* the recording. The video must be available by email or viewable on-line, and capable of being forwarded to schools or DISTRICT administrators.

**Section 4.07.** All buses will be diesel fueled unless an exception is specifically approved by the DISTRICT.

**Section 4.08.** CONTRACTOR will maintain all school buses and related equipment in a safe, clean, and operable condition according to CDC guidelines, including COVID-19 mandates. CONTRACTOR will maintain records reflecting all maintenance and repair personnel on each school bus. Every bus must pass any and all inspections and tests, and meet or exceed the standards, established by the laws and regulations of the State of Tennessee. DISTRICT will have the right at any lime to inspect any equipment and maintenance records for purposes of assuring the CONTRACTOR'S compliance.

CONTRACTOR will provide monthly reports summarizing the repairs made to the vehicles and related equipment. If the DISTRICT determines that a bus used in the performance of the Services is in unsatisfactory condition, CONTRACTOR agrees to take the bus out of service until it has been brought up to operating standards and has been inspected and approved by an individual authorized by DISTRICT. To adequately maintain the fleet, the parties agree that the fleet to mechanic ratio shall be 28.1. Any change to the ratio must be agreed to in advance by DISTRICT and CONTRACTOR.

**Section 4.09.** CONTRACTOR will have a full maintenance program in effect which is either performed by their own trained employees or contracted with an outside maintenance provider. The maintenance program will include as a minimum: Daily Pre-Trip inspections done in accordance with TOOT guidelines. CONTRACTOR will maintain a file of such inspection forms throughout the school year and provide copies to the DISTRICT upon request. Post-Trip inspection to identify any students left on the bus, including identification and return of any student to the appropriate stop.

**Section 4.10.** Unless otherwise agreed, CONTRACTOR will pay all expenses of transportation including, but not limited to, all maintenance, motor oil, fuel, lubricants, repair, and replacement expenses. The DISTRICT shall have the option, upon reasonable advance notice to CONTRACTOR, to provide the fuel at DISTRICT'S cost and expense. In such event, DISTRICT will pay the rates per route without fuel set out in Exhibit C.

## **ARTICLE 5 INCLEMENT WEATHER/SCHOOL CLOSING**

**Section 5.01.** Except as otherwise provided for in Exhibit C, DISTRICT shall not be obligated to accept or pay for Services herein agreed to be furnished by CONTRACTOR on those days when schools are closed to ensure the health or safety of the pupils, or for any other lawful reason. DISTRICT shall have the option to cancel any scheduled trips upon notification to CONTRACTOR at least two (2) hours prior to the time of the departure from the overnight parking area.

**Section 5.02.** In the event of questionable road conditions, a DISTRICT representative, with the advice and assistance of CONTRACTOR'S Director of Transportation, shall determine whether or not roads are passable and safe.

**ARTICLE 6  
FORCE MAJEURE**

**Section 6.01.** If CONTRACTOR's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes other than CONTRACTOR, due to Acts of God, explosions, vandalism, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, disease outbreak, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then CONTRACTOR shall be excused from such performance on a day-to-day basis during such restriction or interference. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, CONTRACTOR shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where CONTRACTOR fails to use its best efforts to minimize such delays, the delays shall be included in the determination of default. CONTRACTOR must notify SCS promptly upon the occurrence of any such event, or performance by CONTRACTOR will not be considered excused pursuant to this Section, and inform SCS of its plans to resume performance. In no event shall the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of CONTRACTOR's employees or subcontractors, if any; or, (b) strike, lockouts, boycotts, work stoppages or other labor difficulties. Furthermore, the DISTRICT reserves the right to take over the operation of the school buses CONTRACTOR is prevented from operating for the reasons described above, whether such school buses are supplied by CONTRACTOR or DISTRICT and may operate such school buses with school employees or other persons holding a Commercial Driver's License and such other licenses and qualifications as required by law as DISTRICT may deem appropriate until CONTRACTOR is able to resume its regular operations.

DISTRICT shall pay to CONTRACTOR for the use of such school buses the compensation which would be incurred in securing the services of operating personnel and other such costs of operation; provided, however, that DISTRICT'S deduction of such costs and expenses shall not exceed the difference between the total compensation paid to CONTRACTOR for such school buses less CONTRACTOR'S fixed costs of operation. In the event that DISTRICT does not operate such school buses with its own personnel, as provided above, the compensation paid CONTRACTOR shall be reduced by the amount which would otherwise be payable with respect to the number of days during which the failure of performance continues.

**ARTICLE 7  
PERSONNEL**

**Section 7.01.** CONTRACTOR will furnish Drivers for all of the buses used in providing transportation service. All Drivers will be qualified, competent, and trained in the operation of the buses they drive and in dealing with and handling students. All Drivers will have a Commercial Driver's License and such other licenses and qualifications as required by law. "Each driver (i) is required to have no felony convictions of any kind within the prior ten years, and (ii) cannot have been convicted of any offense listed in T.C.A. 40-39-202. Each Driver will have a certified driving record." Copies of the current driving abstracts of all Drivers will be provided to the DISTRICT.



**Section 7.02.** CONTRACTOR must provide all applicants with equal job opportunities on public contracts and prohibit discrimination against any employee, applicant or subcontractor because of age, color, creed, handicap condition, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. All CONTRACTOR solicitations and advertisements for employees will include the equal opportunity statement listed above.

**Section 7.03.** CONTRACTOR is required to submit a complete listing of bus Drivers along with their names and Drivers' license numbers (including endorsements), and addresses to the Transportation Department no later than the first Monday of August of each year of this Agreement, and will update the list on a monthly basis. All terminations of employment by CONTRACTOR must be reported to the Transportation Department within two business days of such terminations. CONTRACTOR must return to the Transportation Department the Certificates of Drivers who leave CONTRACTOR including an explanation for the departure. CONTRACTOR may not list employees such as dispatchers or mechanics as Drivers unless they are licensed and certified to operate a school bus.

**Section 7.04.** A summary of the physical examination form showing fitness for duty, the Tennessee Bureau of Motor Vehicles Driving Abstract, a current Shelby County background report (if not already on file with the DISTRICT), and a pre-employment drug screen must be submitted for all new Driver applicants. Bureau of Motor Vehicle Driving abstracts must be obtained every six (6) months.

**Section 7.05.** At no time may an individual drive a school bus prior to having met all of the standards established in this Agreement. All Drivers must:

- a) Be fit for duty and able to complete the essential functions of their jobs.
- b) Understand and speak English with proficiency.
- c) Be certified by a duly licensed medical practitioner as medically qualified and free of medical or physical conditions which would limit safe operation of a school bus {the medical examination shall be conducted prior to employment and as required by law thereafter}.
- d) Be trained in the operation of school buses and have knowledge of transportation laws and regulations prior to testing by the Tennessee Highway Patrol.
- e) Hold a current Tennessee Commercial Driver's License with school bus and passenger endorsement in the appropriate vehicle class.
- f) Meet all factors concerning driver eligibility required by CONTRACTOR.
- g) Have a driving certificate issued by the State of Tennessee. A TEMPORARY CERTIFICATE IS NOT ACCEPTABLE without DISTRICT approval. This certificate must be evidenced by a driving endorsement on the employee's driver's license.
- h) Successfully complete CONTRACTOR'S Driver Training Program.
- i) Maintain a professional demeanor including a clean, neat appearance.

Drivers are expected to dress in a designated uniform consistent with DISTRICT standards and CONTRACTOR'S dress code policy. Minimum uniform standards will be defined as a single color polo or button down twill shirt, a single color {black, navy or khaki) and style of pants, a belt if belt loops are on the pants, socks, and neat, clean shoes. If a cap is worn, it must be a uniformed cap with the company

logo. Outerwear, if worn over the uniform while the Driver is on duty, must be a uniformed jacket. Drivers may wear white or black turtlenecks under the uniform during the winter months. Specifically excluded are:

Sleeveless shirts or Tank Tops, Short shorts or short skirts or dresses. All shorts, skirts, and dresses must touch the knee. T-shirts or hats with inappropriate language or slogans. Inappropriate footwear such as open-toed shoes or sandals.

Visibly wear, at all times when driving or on DISTRICT property, a photo identification badge issued by CONTRACTOR.

**Section 7.06.** CONTRACTOR is responsible for seeing that new Drivers meet all of the qualifications for school Bus Drivers as prescribed in this Agreement. All new Drivers must be accompanied by an experienced Driver for a minimum of two days prior to driving solo. CONTRACTOR is responsible for assuring that new Drivers are competent and capable of operating their vehicles, particularly pick up and drop off procedures and managing students prior to permitting the Driver to drive solo. At no time may a Driver who is not fully qualified as a Bus Driver transport children.

**Section 7.07.** All employees of CONTRACTOR coming into contact with pupils shall be fit for duty as require by law and able to complete the essential function of their jobs. CONTRACTOR shall do everything reasonably possible to assure such qualities in its personnel. Swearing, vulgarity, undue familiarity, rowdiness, and gambling or any other unbecoming acts which might have a detrimental effect on the pupils shall be prohibited. CONTRACTOR shall not knowingly allow any person to drive a school bus who is not at the time in a condition of mental and emotional stability. CONTRACTOR shall prohibit the use of a controlled substance in the workplace (including prescribed medications), the uses of which might impair the safe conduct of CONTRACTOR'S business.

**Section 7.08.** Drivers assigned to transport students with disabilities, and students attending early intervention programs, will be given special training in the techniques of handling such students. The DISTRICT reserves the right to place its own personnel on these vehicles to assist these students for physical, emotional, or disciplinary reasons. CONTRACTOR shall have no obligation to administer any medical treatment to any students.

**Section 7.09.** Drivers will not:

- a) Wear headphones while driving a route.
- b) Use personal cellular or smart phones, including hands-free and wireless devices, or other portable communication devices shall not be used by the Driver either while the bus is in motion or while the Driver is supervising the loading or unloading of students.
- c) Act in or engage in any behavior prohibited by law or DISTRICT policy or procedure. Except as otherwise provided for in this Agreement, deviate from the routes unless authorized by the Director of Transportation or an Approved Representative.
- d) Back up buses on school property without adult supervision.
- e) Idle diesel engines in excess of 5 minutes in school loading or unloading zones, except when needed to operate a wheelchair lift or to cool or heat buses for the convenience of the students.

- f) Unless specifically waived by a parent in writing and communicated to CONTRACTOR, release any Pre-Kindergarten, kindergarten, first grade or students with disabilities at a bus stop where there is no parent or designated guardian available to receive the student. In such event, Driver must contact the Terminal Manager, provide the student's name, route number, and pickup location, and await instructions. The DISTRICT's Standard Operating Procedure is to return the students to their pickup location at the completion of the route. In certain circumstances, the Driver will be instructed to drop off the student at an alternative location.

**Section 7.10.** CONTRACTOR must comply with all requirements of the Comprehensive D.O.T. Drug and Alcohol Testing Program as required by 49 CFR, Parts 40, 382, 391 and 392 and all bus Driver applicants must submit to a drug screen test prior to employment. At CONTRACTOR'S expense, "for cause" drug or alcohol testing as described in 49 C.F.R. Part 382 may be required at the discretion of the DISTRICT. Reports of "for cause" testing will be hand delivered or faxed to the DISTRICT.

**Section 7.11.** CONTRACTOR will not provide or assign to DISTRICT any Drivers that it knows has been convicted of driving under the influence of alcohol or a prohibited substance within the past 7 years (or in accordance with CONTRACTOR'S policy, if more stringent). Any person who reports to drive a bus under the influence of drugs or alcohol will be removed immediately as a Driver for DISTRICT and disciplined in accordance with CONTRACTOR's policies up to and including termination. The use of stimulants, sedatives or any other substance, which will affect the bus Driver's judgment and driving ability during his/her route, is also prohibited.

**Section 7.12.** Any driver who refuses to participate in drug and alcohol testing or fails a drug test will be removed immediately as a driver for DISTRICT, reported to the DISTRICT within 24 hours and disciplined in accordance with CONTRACTOR'S policies up to and including termination. CONTRACTOR must utilize a certified testing laboratory to document compliance with drug and alcohol policies. Such report will be hand delivered or faxed to the DISTRICT.

**Section 7.13.** CONTRACTOR agrees that during the term of this Agreement, any drug/alcohol testing program mandated by a Federal or State agency having regulatory authority and any additional testing established by the District will become part of this Agreement as if written herein.

**Section 7.14.** CONTRACTOR shall ensure that all employees who provide pupil transportation shall have first undergone and passed a criminal background check as required of school employees pursuant to T.C.A. §40-39-202. Each employee (if a background check is not already on file with the DISTRICT) shall report to the DISTRICT'S Fingerprint Office within 5 days of employment to submit fingerprints. The CONTRACTOR will be invoiced by the DISTRICT at the then current rate established by the State for each employee fingerprinted (subject to price increases). No driver shall be allowed to drive until cleared to do so by the Fingerprint Office.

The CONTRACTOR shall not employ any person that has a criminal record check that indicates that such person has been convicted of an offense that, after July 1, 2007, is classified as a sexual offense or a violent sexual offender, as defined by Tennessee Code Annotated § 40-39-202, to perform Services under this Agreement.

CONTRACTOR will replace any bus Driver whose credentials check reveals violations such as a suspended Tennessee Commercial Driver's License, an expired School Bus Operator's Certificate, false or illegally certified Certificate of Completion, will be reported immediately to CONTRACTOR by the DISTRICT.

**Section 7.15.** CONTRACTOR will promptly investigate all complaints of improper conduct on the part of any Driver and will report the complaint and the results of the investigation to the DISTRICT. No person will be permitted to drive a bus if there is reason to believe that such person has engaged in any improper conduct with any pupil. CONTRACTOR will take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. The DISTRICT may require CONTRACTOR to reassign a Driver to a Different bus route within the district.

If a Driver exhibits unsatisfactory behavior or poor driving in the performance of his/her duties, which in the opinion of the DISTRICT, warrants his/her removal from any bus under this Agreement, CONTRACTOR must, at the request of the DISTRICT, remove the Driver from further service under this Agreement. CONTRACTOR further agrees not to use Drivers in the performance of this Agreement that, in the opinion of the DISTRICT, have exhibited unsatisfactory behavior or have had a prior accident record when employed by the DISTRICT or another company. Contractor will provide results of investigation to DISTRICT in writing within 5 days of completion.

**Section 7.16.** All transportation personnel shall be the responsibility of the CONTRACTOR and shall be CONTRACTOR'S employees. All drivers, mechanics, and attendants must meet all, legal and regulatory requirements for holding their respective positions, and shall in all respects be in compliance with all requirements of law, ordinance or regulation of the State of Tennessee. CONTRACTOR will be responsible for payment of all compensation and related fringe benefits under this agreement, inclusive of all applicable payroll taxes and deductions required by local, State, and federal law, and all workers.

**Section 7.17.** The responsibility for hiring and discharging personnel with respect to all obligations arising from the Agreement shall rest entirely upon the CONTRACTOR, and the CONTRACTOR agrees not to enter into any agreement or arrangement with any employee, person, group or organization which will in any way interfere with the ability to comply with this requirement, except as otherwise required or permitted by law. Notwithstanding, the CONTRACTOR further agrees that the DISTRICT or its Superintendent of Schools shall have the right to request removal of any person (driver, monitor, or office personnel) who in his/her opinion will detract from the safe and efficient operation of school buses and/or the safety of the pupils thereon under the Agreement. The DISTRICT reserves the right, in the exercise of its sound discretion, to reject drivers or monitors or to direct that they be replaced, without being limited to considerations of health and driving records. District shall make such request in writing, state the reasons therefor, provided that such request does not violate applicable local, state and federal laws and regulations.

**Section 7.18.** CONTRACTOR will provide an "Area General Manager"("A GM") to oversee the entire Shelby County Schools operations and who will function as a direct

liaison to the DISTRICT on behalf of the CONTRACTOR. In addition, the AGM will be responsible to the DISTRICT for any inefficient management practices at any of the CONTRACTOR's (4) four terminals. CONTRACTOR will provide a "Site Supervisor" (or similar function/title) that will have complete authority over the operation of the CONTRACTOR'S buses at each of the terminals. The Terminal Manager will be directly responsible for working with the DISTRICT'S supervisory personnel on all routing of buses and, as authorized by DISTRICT, contacts with parents regarding transportation problems under this Agreement.

The Terminal Manager shall also be responsible for compliance with all DISTRICT transportation policies, all statistical studies and reports required by the DISTRICT and/or the State, including those items necessary for State Aid purposes, and monthly reports on pupil load, driver and student discipline problems and accident reports. The Terminal Manager, or his/her duly authorized designee(s), shall arrange with the DISTRICT to be available at the dispatching station during all hours that Services are being performed pursuant to this Agreement, prior to the beginning of each day's hours of service, and for meetings with representatives of the DISTRICT.

Sufficient management personnel shall be maintained and available from 6:00 a.m. to 6:00 p.m. when school is in session. The Terminal Manager overseeing the terminal at any time when school is in session is precluded from any bus driver duties or from driving any bus. The Terminal Manager (or designee) will remain at the terminal until all drivers have returned to the terminal, checked their buses, and reported that all students have been appropriately dropped off. The Contractor will also provide a contact name and number for night and weekend bus trips.

**Section 7.19.** CONTRACTOR will provide a "Safety Supervisor" who will be certified to train bus drivers. Additional trainers should be employed to meet the needs of the DISTRICT. The Safety Supervisor's responsibilities will include, but not limited to, driver training, daily oversight to ensure adherence to established practices and safety regulations, on-the-road driver performance reviews, and related functions. Safety Supervisor(s) shall not be assigned a regular run.

**Section 7.20.** Each driver and/or attendant performing Services pursuant to this Agreement shall be involved in all Safety Programs that are or may be required by the laws, rules and regulations of the State of Tennessee. CONTRACTOR'S driver trainers shall personally travel each route with assigned drivers at least once a year to survey not only the driver's performance but route hazards and equipment efficiency. All drivers must participate in both classroom and on the road training programs devoted to safety, proper bus operation, special education needs, student discipline policies, rules and regulations, and first aid. Bus monitors provided by CONTRACTOR must participate in classroom training devoted to safety, proper student management techniques, special education needs, rules and regulations, and first aid. The CONTRACTOR will notify the DISTRICT of such training through a written report of the training and driver attendance.

**Section 7.21.** To the extent required by law, all employees hired by the CONTRACTOR to provide services pursuant to the Agreement must be approved for employment by the DISTRICT'S Superintendent of Schools. The CONTRACTOR shall submit to the DISTRICT a list of the names of all regular and substitute drivers and monitors employed to provide the Services required hereunder. Said list shall be updated

monthly by the CONTRACTOR by adding or deleting such information regarding any such driver or attendant hired or terminated after that date and at the time such hiring or termination takes place. Completed driver application forms are to be submitted to the DISTRICT, in a file, along with a certification that the CONTRACTOR'S Terminal Manager has verified previous employment, reviewed driver's license and abstract, obtained letters of reference, completed fingerprint forms, obtained the applicant's authorization for a criminal background check, verified that CDL requirements are current, provided the applicant with a minimum of fifteen (15) hours in excess of State and Federal mandated school bus safety instruction, provided at least ten (10) hours of actual behind the wheel bus driver training (for new and rehire), and conducted a personal interview

**Section 7.22.** The CONTRACTOR shall at all times have stand-by drivers in the event of mechanical or other difficulties to maintain and provide the services which are required under this Agreement. The number of standby drivers shall not be fewer than 5% of the number of drivers required to bring children to and from school on a regular basis. These drivers cannot be used for any other purpose without the express permission of the DISTRICT.

**Section 7.23.** The CONTRACTOR shall be responsible for providing practice and instruction to the drivers with regard to the location, use and operation of the emergency door(s), fire extinguisher(s), first aid equipment, windows and roof hatches as means of escape in case of accident. Similar drills for students shall be held under the general supervision of the DISTRICT at such times and in such fashion as may be required by the applicable regulations of this State or the law. CONTRACTOR, along with the respective driver and monitor, will be responsible for the safety and supervision of the children transported under this Agreement.

**Section 7.24.** The CONTRACTOR shall provide dispatchers a designated telephone number to answer calls concerning daily service, including missed service and late pickups or drop-offs. Said dispatchers will maintain contact with the DISTRICT until the last student is off the last bus and the dispatchers notify the DISTRICT, by email or other method designated by the District, that all of the students have been delivered to the designated drop-off point. The dispatchers may not have a regularly assigned route.

**Section 7.25.** When directed by a student's Individual Education Plan (IEP), each vehicle utilized in performing Services for any students with disabilities must have a monitor, in addition to the Driver, who is employed by the CONTRACTOR and properly trained by the DISTRICT. Except for DISTRICT employees that the DISTRICT may assign as monitors, the CONTRACTOR shall be responsible for providing monitors under this Agreement, at the cost set out in Exhibit C. Each such employee shall be fully capable of lifting and seating pupils when required. An IEP must be completed in cases where a special needs student is being required to ride a non-special needs bus. The transportation portion of the IEP must be given to the CONTRACTOR in advance of the special needs student riding the bus. CONTRACTOR shall have no obligation to administer any medical treatment to students.

**Section 7.26.** Each Driver and monitor performing Services pursuant to the Agreement must undergo physical examinations required by law prior to

employment. The physical examinations of Drivers and monitors shall be at the CONTRACTOR'S expense. At the DISTRICT'S option, one or more physical exam reports may be reviewed and approved by the DISTRICT'S Physician before a CONTRACTOR'S Driver or monitor may be placed in service. Incomplete or inadequate reports will be returned and the driver's or monitor's service delayed until the appropriate information is provided. All employees shall also be subject to any physical ability tests that may be mandated by Federal or state law during the term of this Agreement.

## **ARTICLE 8 SAFETY PROGRAM/DRIVER TRAINING PROGRAM**

**Section 8.01.** CONTRACTOR agrees that safety will be a primary factor in the performance of the Services. CONTRACTOR will comply with and observe in every respect all codes, laws or ordinances of the City of Memphis, Shelby County, State of Tennessee, the United States government and all other uniform standards established, including HB322 for the protection and safety of the persons being transported.

**Section 8.02.** CONTRACTOR shall be responsible for implementing and maintaining comprehensive pupil transportation on Safety and Driver Training Programs. A summary of the Safety Program shall be provided for review by DISTRICT.

**Section 8.03.** Driver training shall be the responsibility of CONTRACTOR. The Driver Training Program shall be written and implemented by the Safety Director and approved by DISTRICT. Continuous assistance from the State Department of Education relative to driver training is recommended. The number of hours shall exceed the minimum of hours required by law. The Driver Training Program shall include classroom instruction, in school bus safety, pupil discipline, human relations, defensive driving, CPR/first aid, use of fire extinguisher, traffic laws, COVID-19 training and DISTRICT'S policies and regulations including behind-the-wheel school bus driving instruction. Additionally, drivers and bus assistants assigned to vehicles with automated lift systems shall receive training on the proper, safe use of the systems. Drivers and assistants shall also receive training on the proper methods of securing each type of wheelchair transported under the Contract, prior to being placed on vehicles so equipped. Drivers and monitors shall be provided by the CONTRACTOR Personal Protection Equipment (PPE) to be in compliance with CDC, City, County, State, Department of Safety, TN Code Annotates, and Federal mandates. The DISTRICT reserves the right to prescribe training as deemed necessary for specific drivers to ensure the safety of students.

**Section 8.04.** All routes shall be driven prior to transporting pupils and shall be considered as part of the Driver Training Program. Acceptable dress, which includes shoes, as it pertains to transportation safety, will be incorporated in the Driver Training Program.

**Section 8.05.** School transportation vehicles must be operated at all times by capable and competent personnel at safe and reasonable rates of speed. The Board of Education, through the Superintendent of Schools, reserves the right to require any and all reasonable precautions for the safety of students in their transportation to and from school. All students are to enter and leave vehicles at the curb or

roadside and at no time are pupils to be transported off the public highways, except in compliance with present practice or at the direction of the DISTRICT.

## **ARTICLE 9 PUPIL DISCIPLINE**

**Section 9.01.** It is important that Drivers work with pupils and parents to maintain positive working relationships. CONTRACTOR will adhere to and enforce the DISTRICT'S pupil transportation discipline policy and will cooperate in any pupil discipline hearings necessary for the enforcement of those policies, using the following guidelines:

Drivers should begin the school year by communicating the rules and regulations that apply to pupils riding the bus.

CONTRACTOR shall cooperate with the DISTRICT in performing student head counts on the bus when requested by the DISTRICT. This head count will not be required more than four times annually.

If a problem occurs, the Driver should attempt to work with the student, school and parent in the resolution of the problem. If resolution does not occur, the Driver should complete a "School Bus Conduct Notice" and provide it to the school administrator. These forms are supplied by the DISTRICT and each Driver should maintain a supply of forms on the bus. The DISTRICT will consider appropriate disciplinary action, including but not limited to suspension of ridership privileges, for any student receiving three (3) School Bus Conduct Notices in a school year.

Under no conditions may a Driver deny transportation to an eligible pupil, even where a student boards without the DISTRICT required bus pass. Transportation can only be denied by a school administrator or in accordance with written procedures agreed to by the DISTRICT and CONTRACTOR. The DISTRICT will submit a School Bus Conduct Notice to the school administrator for any students boarding the bus without the DISTRICT required bus pass. CONTRACTOR will arrange with the school administrator for conferences as needed to work out pupil problems.

While on school premises. Drivers are expected to respond courteously and informatively to any questions from administrators. Any request from an administrator which conflicts with Transportation policies should be immediately referred to the Driver's supervisor. Authority to suspend or expel any pupil from transportation services rests solely with the DISTRICT and may only be exercised in accordance with DISTRICT policy. CONTRACTOR'S Drivers are responsible only for such discipline as is required to properly and safely operate the Company's buses. Each Driver will handle all disciplinary matters in strict accordance with DISTRICT policy. All discipline problems will be reported in writing following completion of the route.

**Section 9.02.** As part of DISTRICT'S routing responsibilities, within thirty (30) days of the start of a school year, but in no case no less than 14 calendar days, DISTRICT will provide to CONTRACTOR all appropriate student data necessary for CONTRACTOR to perform its obligations hereunder. Specifically, DISTRICT will provide CONTRACTOR a trip sheet for each route that includes the name, address, and bus stop for each student on the route. In addition, DISTRICT may require a



photo identification card for each student that is assigned to a bus route. In such event, CONTRACTOR will require its drivers to check the photo identification cards to determine and comply with the eligibility requirements for an assigned route.

## **ARTICLE 10 FUEL COST**

**Section 10.01.** The DISTRICT shall furnish all fuel to be used in the performance of this Agreement, CONTRACTOR is required to provide weekly logs (the "Fuel Logs") of the fuel used for Regular Transportation and SPED Transportation. The Fuel Logs shall include, at a minimum, the date of fueling, vehicle VIN# (or other identifier), current vehicle mileage, gallons of fuel pumped, and the employee's name. The Fuel Logs must be submitted each Tuesday for vehicles used during the previous week's period.

**Section 10.02.** If CONTRACTOR uses the vehicles for charter transportation for third parties to properly account for fuel acquired by DISTRICT for use in connection with this AGREEMENT, CONTRACTOR will fill the vehicle's fuel tank with fuel from DISTRICT'S pumps. At the conclusion of the charter, CONTRACTOR's drivers will, using the CONTRACTOR'S company-owned fuel card, re-fuel the vehicle to full prior to returning the vehicle to service under this AGREEMENT. A copy of the fuel receipt will be stapled to each record of a charter trip, which records will be subject to audit by DISTRICT, subject to the provisions of Article 18 of the Agreement.

**Section 10.03.** For Supplemental Transportation, CONTRACTOR shall contract with the schools at an hourly rate that includes the cost of fuel, as set forth in Exhibit C. For each trip, CONTRACTOR will credit the DISTRICT at a rate of \$3.00 for each hour charged to a school for the Supplemental Transportation. The credit will appear on the next DISTRICT invoice due following receipt of payment from the school.

## **ARTICLE 11 CONTRACT PAYMENTS**

**Section 11.01.** CONTRACTOR agrees that DISTRICT will pay only for rendered Services pursuant to the Contract Prices set forth in Exhibit \_\_. CONTRACTOR shall accompany each invoice for Services with a complete list of all Services accepted by DISTRICT under this Contract and correlate the Services to the Contract Price. The Contract Price will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. The Contract Price will include all elements necessary to perform the Services (planning, application design, engineering, testing, wiring, termination, installation, and training), whether priced separately or bundled. Any no-cost items will be clearly identified with applicable rate schedule. CONTRACTOR agrees that elements of the Services for which there is no associated pricing will be considered no charge items.

**Section 11.02.** Payments for services rendered under the provisions of this Agreement shall be made upon receipt of a proper itemized invoice. Such payments shall be made monthly on the basis of Services already rendered. The style and detail on said invoice shall be in written and/or electronic format acceptable to the DISTRICT. Invoices shall be submitted within 5 business days following the end of each month, and upon verification shall be scheduled for payment within 10 days of receipt.

Payment for invoices submitted late may be delayed until the following month. Such payments shall be made monthly on the basis of the number of buses required, and or students transported, at the service levels required by the transportation program. No payment will be made for standby buses unless used in actual service. The number of buses paid for are those buses that the DISTRICT has approved for daily runs, special runs, or field trips. No payment will be made for buses that are scheduled to operate but that fail to provide Services due to mechanical problems, driver shortages or similar operating issues that are deemed by the DISTRICT to be under the control of the CONTRACTOR.

**Section 11.03.** The CONTRACTOR shall maintain records during the term of the Agreement of the daily Services provided to the DISTRICT on a route-by-route basis, and shall submit such records upon request by the DISTRICT for audit in support of each of the monthly invoices. As stated herein, length of day for each bus shall be determined by the DISTRICT consistent with the route schedules and detail contained in this Agreement.

**Section 11.04.** In consideration for Services provided by the CONTRACTOR, DISTRICT shall pay to CONTRACTOR all undisputed sums and owing no later than the thirtieth(30<sup>th</sup>) day after the end of each month. CONTRACTOR will submit to DISTRICT a statement of its services rendered during the preceding month. Such statement will reflect any and all credits to which DISTRICT may be entitled under any of the terms of this AGREEMENT. After verification of the statement, DISTRICT shall promptly pay CONTRACTOR (or its agent for receipt of payment) the undisputed amount after an updated invoice is issued for undisputed charges.

**Section 11.05.** Notwithstanding anything to the contrary in this Agreement, and in addition to the other rights of DISTRICT hereunder with respect to disputing invoices or withholding amounts, DISTRICT, in its sole discretion, may set off against any and all amounts otherwise payable to CONTRACTOR pursuant to any of the provisions of this Agreement: (i) any and all amounts claimed by DISTRICT in good faith to be owed by CONTRACTOR to DISTRICT pursuant to any of the provisions of this Agreement; and (ii) any and all amounts that DISTRICT believes in good faith that it does not owe to CONTRACTOR pursuant to any of the provisions of this Agreement. Within twenty (20) calendar days after any such set-off by DISTRICT, DISTRICT shall provide CONTRACTOR with a written accounting of such set-off, a written statement of the reasons therefor, and a reasonable opportunity to meet and discuss the claimed set-off. In the event CONTRACTOR does not agree with the set-off applied, CONTRACTOR may contact DISTRICT to seek equitable resolution or exercise its right under applicable law.

## **ARTICLE 12 FACILITIES**

**Section 12.01.** For the Regular Home-To-School contract, the DISTRICT agrees to lease to the CONTRACTOR, and the CONTRACTOR agrees to lease from the DISTRICT, the DISTRICT'S transportation facilities as follows:

North Lot - 1384 Farmville, Memphis. Facility is approx. 3000 SF, with parking for approx. 142 buses.

East Lot - 1681 Getwell, Memphis. Facility is approx. 4000 SF, with parking for approx. 113 buses.

Two additional Contractor-provided facilities will be required in the South area and the Northeast area of the District to house approximately 80 buses each.

All Contractor-provided facilities must ensure proper accommodations for drivers, to include restroom facilities and break rooms and telephones for the drivers' use. Portables are not considered restroom facilities for purposes of this Agreement.

**Section 12.02.** The lease of the DISTRICT facilities shall be for a sum of \$1.00 per contract year. CONTRACTOR will be permitted at all times on or after July 16, 2021, and during the term of this Agreement, the reasonable use of the DISTRICT owned facilities, as well as the designated parking lots and access roads, and the bus loading and unloading areas at all DISTRICT buildings. CONTRACTOR shall be responsible for tenantable repairs to the structures such as interior repair, including repair of broken windows. The CONTRACTOR will be responsible for costs of heat, air conditioning, electricity, water, sewer, or other utility charges, including telephone usage. DISTRICT shall be responsible for capital improvements, including but not limited to building structure, roof, plumbing and sewers, HVAC, flooring and parking lot.

**Section 12.03.** In fulfilling the obligations of this Agreement, care must be exercised by the CONTRACTOR to avoid damage to these facilities, and any of the buildings, equipment, driveways, or other property of the DISTRICT. The CONTRACTOR shall be required to make the necessary repairs at its expense, as soon as possible after the damage occurs, for any property damaged by the CONTRACTOR or its employees. Facilities shall be inspected by the DISTRICT and CONTRACTOR at the beginning of this Agreement, and at the termination of this Agreement, with the CONTRACTOR liable for any repairs not attributed to day-to-day operations, reasonable wear and tear excepted.

**Section 12.04.** The CONTRACTOR shall not be responsible for any real property taxes or ad valorem water or sewer district taxes. The DISTRICT shall continue to be responsible for major structural maintenance, including building structure, roof, plumbing and sewers, HVAC, flooring, parking lot sidewalks, and plumbing wiring renovations or repairs. The CONTRACTOR is specifically prohibited from using the facilities for any maintenance, parking, or related services for any other agencies or contracts being serviced by the CONTRACTOR, or any CONTRACTOR vehicles not in service to the DISTRICT.

**Section 12.05.** The CONTRACTOR shall be responsible for maintaining the properties in compliance with all Environmental Protection Agency regulations, and the CONTRACTOR shall be solely responsible for any environmental clean-up or remediation due to CONTRACTOR'S use of the facility only if the contamination is proven to have been caused by CONTRACTOR. CONTRACTOR shall indemnify, defend and hold DISTRICT harmless from any causes of action, damages or claims arising from environmental contamination proven to have been caused by CONTRACTOR.

**Section 12.06.** DISTRICT shall maintain all storage tanks located on the premises, whether buried or above-ground, in accordance with applicable laws, ordinances, rules, regulations and requirements of governmental authorities.

**Section 12.07.** [Reserved]

**Section 12.08.** The CONTRACTOR shall accept the premises under the normal terms and conditions of an operating lease, substantially in the form of Exhibit A. To the extent there may be any conflicts between the terms of this AGREEMENT and the lease for the properties mentioned herein, the lease, or leases, shall take priority.

**Section 12.09.** CONTRACTOR shall have no fewer than 30 days to vacate the premises after the last day of operation, even if this date is after the term of this Agreement.

**Section 12.10.** As further consideration for the award of this Agreement, the CONTRACTOR agrees to provide, at its sole cost and expense, one additional terminal in the Southwest area of the school district, to operate routes to schools in that area. All other facilities required by CONTRACTOR for CONTRACTOR'S operations will be provided by CONTRACTOR at CONTRACTOR'S sole cost and expense.

### **ARTICLE 13 OPERATIONAL MATTERS**

**Section 13.01.** (a) Communications: The CONTRACTOR must provide a private telephone number to allow the DISTRICT immediate, direct access to the Terminal, and afterhours telephone names and telephone numbers to be used in the case of afterhours emergencies. The CONTRACTOR is required to provide one designated emergency phone number that will be manned by CONTRACTOR management personnel or a contracted answering service, and answered at all times 24/7, and a fax machine in the terminal, and shall provide said numbers to the DISTRICT. Additionally, the CONTRACTOR is required to have access to internet communications and periodically throughout school days check an email address that the CONTRACTOR will supply to the DISTRICT.

**Tolls:** The cost of tolls incurred by CONTRACTOR(s) for regularly scheduled routes, or for extra-curricular events, will be reimbursed monthly by the DISTRICT upon presentation and validation of receipts.

**Advertising:** Vehicles used in performance of this Agreement to transport pupils of the DISTRICT shall not be used to display, either inside or outside of the vehicle, any commercial advertisement without the proper written authorization of the Superintendent or his/her designee.

**DISTRICT Operating Policies:** CONTRACTOR shall conform to and abide by the policies, rules, and regulations of the School DISTRICT as set out in the present written policies and rules of the School DISTRICT, relevant to student transportation, as modified by current practice, and such other future regulations as may reasonably be required by the DISTRICT. See Board Policy at Appendix A.

## Driver Training and Additional Training:

Emergency Bus Drill: The CONTRACTOR shall be responsible for providing training and instruction to the Drivers and attendants with regard to the location, use and operation of emergency door, fire extinguisher, first aid equipment, and windows as a means of escape in case of fire or accident. Such drills shall be held at such times and in such fashion as may be required by law. The CONTRACTOR shall, when requested, provide a bus and driver for student emergency bus evacuation drills, according to State regulations, as well as new student bus safety indoctrination held in late summer or early fall. Such services shall be provided at no additional cost to the DISTRICT.

Emergency Closings: The CONTRACTOR will be required to consult with the Superintendent or her/his designee, during times of inclement weather, about road conditions and the potential of delaying or closing school. The CONTRACTOR shall be responsible for providing the regularly scheduled buses in the event that schools are closed early in any school day due to weather conditions or other emergency declared by the Superintendent of Schools. It is understood that time is of the essence in providing such buses, and that such buses will be provided as soon as possible, but in no event will the arrival of the buses at the designated locations within the DISTRICT be more than one (1) hour after notification is given to the CONTRACTOR by the DISTRICT.

CONTRACTOR'S Monthly Reports: The CONTRACTOR shall deliver to the DISTRICT written reports of operations on a monthly basis, or more frequently as required by the DISTRICT. Said reports shall include matters such as: actual performance related to scheduled performance, student discipline matters, specific driver and attendant training programs, driver discipline matters and related documentation, regular and activity driver hours and trips, accidents, and other items related to the performance of the Agreement. A sample format is included as Appendix B. The CONTRACTOR and the DISTRICT shall meet prior to August 1st of each school year to finalize the monthly report information to be included. Reporting may be in electronic or written formats, as required by the DISTRICT, to be submitted via email or web-based applications. Methodology utilized for measuring performance may be any combined usage of available technologies, such as GPS tracking devices, student ID cards, and proprietary scoring systems.

Accidents: The CONTRACTOR will follow all practices that have been established in the DISTRICT for procedural response to school bus accidents and incidents. In the event of any accident or incident involving the operation of a school bus, and/or injury to students while on the bus, or while loading or unloading the bus, the CONTRACTOR must immediately (not to exceed one hour from time of accident/incident) notify the Superintendent of Schools or his designee, and the State Department of Transportation, the Motor Vehicles Department, local Police authorities, and any other appropriate agencies as required. All other written reports are to be filed immediately with the appropriate agencies and copies forwarded to the DISTRICT'S Transportation on Coordinator. The DISTRICT reserves the right to participate actively in any accident review of a vehicle in which its students are being transported. Failure to immediately report any accident/incident to the DISTRICT may result in termination of this contract. The Contractor will adhere to the drug and alcohol testing policy and procedures for MCS drivers, provided that they do not conflict with any state requirements.

**Student Discipline Matters:** In addition to monthly reports, in the event of any student discipline matter involving DISTRICT students, the CONTRACTOR shall immediately notify the DISTRICT in the manner as prescribed by DISTRICT policy and procedure. The CONTRACTOR shall follow the discipline operating procedures as defined by the DISTRICT. Violation of good conduct, and improper behavior on the part of students, shall be handled strictly according to the procedures in effect in the DISTRICT during the term of the contract. It is of paramount importance that drivers and monitors maintain good order on the school buses. Drivers and/or monitors may be required to attend suspension or corrective hearings in relation to the poor bus conduct of student(s) that were or are in their charge. If requested by the DISTRICT, attendance is mandatory and failure to attend may cause withdrawal of the DISTRICT'S certification of any driver or monitor who fails to do so. The CONTRACTOR shall be responsible for the cost of such attendance.

**Driver's Daily Reports:** Each bus driver shall be responsible for filing a daily report form each day that includes the mechanical condition of the bus and their pre-trip verification. Said forms are to be kept on file by the CONTRACTOR and made available to the Superintendent or his designee as requested.

**Rights to Property:** As a condition of this Agreement, the CONTRACTOR agrees to allow School DISTRICT Administrative personnel on any property connected with the service provided to the School DISTRICT for the purpose of inspection at any time. Furthermore, it is agreed that if it is deemed necessary by the DISTRICT, due to inadequate service or poor performance, Dispatch or Management personnel may be supplied by the School DISTRICT to work directly with the CONTRACTOR'S management or dispatching personnel at the CONTRACTOR'S location(s) connected with this Agreement. The cost of such personnel will be deducted from payments due the CONTRACTOR. The CONTRACTOR shall also make the garage facility available for inspection of equipment by school personnel.

**Cooperative Transportation:** Only those children, adults or other person(s) authorized by the DISTRICT to be transported shall be transported under the Agreement. The CONTRACTOR shall agree to secure the prior written approval of the DISTRICT before agreeing to undertake the transportation of pupils for other districts, schools or individuals in conjunction with the trips specified in this Agreement, and to furnish the DISTRICT with copies of each such related Agreement with another school, district or individual for such transportation. The DISTRICT reserves the right to assign students from other school districts to buses/routes. Should such assignment result in increased route time, the CONTRACTOR shall be compensated upon approval of the Transportation Manager, according to the prices submitted in the response, and the terms and conditions as specified herein.

#### **ARTICLE 14 DISPUTES**

**Section 14.01.** The DISTRICT must be notified within 3 business days of discovery of any changes in operating requirements that will result in a change in Agreement compensation. Failure by the CONTRACTOR to notify the DISTRICT of such changes will result in the loss of any additional compensation that may be due to the CONTRACTOR pursuant to these specifications.

**Section 14.02.** The parties shall deal in good faith and attempt to resolve potential disputes informally. All disputes, for which Tennessee law does not otherwise specify a dispute resolution process, shall immediately be brought to the attention of the parties' respective representatives. If the dispute persists, and the representatives are not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute initially became known to each party, then either party may submit the dispute to a leadership group consisting of DISTRICT and CONTRACTOR Senior Management for resolution. This leadership group will convene in person or by telephone within three (3) business days after the dispute is submitted to the leadership group.

If the dispute persists, and the leadership group is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the leadership group, then CONTRACTOR shall submit the dispute to an executive committee consisting of DISTRICT'S executive management, and CONTRACTOR'S designated executive management for resolution. This executive committee will convene in person or by telephone within three (3) business days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the executive committee, then CONTRACTOR shall submit to the Superintendent of DISTRICT a written demand for a Final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless DISTRICT, on its own initiative, has already rendered such a final decision.

CONTRACTOR'S written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Agreement adjustment for which CONTRACTOR believes DISTRICT is liable.

**Section 14.03.** Pending the final resolution of any dispute arising under, related to or involving this Contract, for which Tennessee law does not otherwise specify a dispute resolution process, both parties agree to diligently proceed with the performance of this Agreement, including DISTRICT'S payment for and CONTRACTOR'S provision of Services in accordance with this Agreement. The failure to diligently proceed in accordance with this Agreement shall be considered a material breach of this Agreement.

**Section 14.04.** Any final decision of DISTRICT shall be expressly identified as such in writing, and shall be signed by the Superintendent of DISTRICT. DISTRICT'S final decision shall be conclusive and binding regarding the dispute unless CONTRACTOR commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**ARTICLE 15  
COMPLIANCE WITH LAWS**

**Section 15.01.** In compliance with Title IX, Education Amendments of 1972 (prohibiting sex discrimination in education), the DISTRICT requires *any person*, organization, group or other entity with which it contracts, sub-contracts, or otherwise arranges to provide services or benefits (including responses) to comply fully with Title IX.

TITLE IX STATES: NO PERSON SHALL, ON THE BASIS OF SEX, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY EDUCATION PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

**Section 15.02.** COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973. CONTRACTOR agrees that it, and its employees, agents and subcontractors, will comply at all times during the term of this Agreement with the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination against any person who is qualified with a disability).

**ARTICLE 16  
NON-PERFORMANCE DAMAGES**

**Section 16.01.** Contractor shall perform the Services at the levels of quality, completeness, accuracy, timeliness, responsiveness and efficiency that are consistent with the service levels set out in Exhibit D (the "Data Dashboard").

**Section 16.02.** In addition to the annual cost increase at risk under Section 16.01, the DISTRICT *may* subtract liquidated damages from CONTRACTOR'S invoice in accordance with the provisions of Exhibit B.

**ARTICLE 17  
INSURANCE/INDEMNIFICATION/ACCIDENTS/INCIDENTS**

**Section 17.01.** Contractor must provide a certificate of insurance signed by an employee of the insurer(s) providing coverage, with the authority to bind the insurer(s) stating that no less than the minimum limits of insurance required in this Agreement will be met. The insurance carrier must be a Tennessee admitted carrier, and must be rated in A.M. Best's Insurance Guide as a "secured" carrier or better.

**Section 17.02.** Minimum amounts for each bus or vehicle operated shall be for claims arising under the contract:

Automobile insurance. Symbol "1 ", covering all automobiles and buses, including hired and non-owned vehicles is preferred. However, at the DISTRICT'S discretion, alternative symbols will be considered. The DISTRICT and/or its representatives retain the right to make inquiries to the Contractor, its agents or broker and insurer directly. Limits shall be \$5,000,000 combined single limit (bodily injury and property damage), and \$2,000,000 products aggregate. Coverage at least equal to ISO form #CA 00 01 12 93.



Commercial General Liability with limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate to apply per location. Coverage for bodily injury, property damage, sexual misconduct, products/completed operation, personal injury and advertising injury. Coverage at least equal to ISO form #CG 0001 10 93.

\$10,000,000 umbrella or excess liability coverage. No aggregate limit to apply to automobile liability coverage. Must at least follow form of underlying coverage. The liability limits can be accomplished by a combination of primary and excess policies, if needed.

Workers' Compensation and Unemployment Insurance coverage covering all employees in amounts as required by Tennessee State Law.

Public liability insurance coverage of not less than two million dollars (\$2,000,000.00) per school bus covering any one accident or occurrence for the protection of DISTRICT and CONTRACTOR for all liability arising out of the ownership, maintenance and use of the school buses used by CONTRACTOR in performing this Agreement.

**Section 17.03.** Said policy or policies shall be primary to any policies of insurance available to the DISTRICT and must contain thirty (30) days prior notice to the Board of Education of cancellation or content change. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to effectuate the naming of the DISTRICT as an unrestricted additional insured on the Contractor's insurance policies, with the exception of Worker's Compensation. The policy naming the DISTRICT as an additional insured shall state that the Contractor's coverage shall be primary coverage for the DISTRICT, its Board of Education, employees, and volunteers. Contractor shall self-insure any applicable deductibles, and the Contractor shall also agree to indemnify the DISTRICT for any applicable deductibles. Additional insured status shall be granted by ISO endorsement CO 2026, CG 20 10 11 85 or its equivalent.

**Section 17.04.** The limits outlined above are strictly minimum amounts. The DISTRICT encourages the use of higher limits and assumes no liability in the event that claims are presented against the Contractor for amounts in excess of these minimum limits.

**Section 17.05.** The CONTRACTOR shall deposit with the DISTRICT satisfactory evidence of insurance (including renewals) showing minimum coverage as required above with proof of premiums paid up-to-date. Annual binders evidencing insurance coverage shall be provided to the DISTRICT no later than thirty (30) days prior to the start of each contract year. It is the CONTRACTOR'S responsibility to initiate this submission, and the lack of any specific request from the DISTRICT does not eliminate the mandate.

**Section 17.06.** All insurance certificates shall state that the policy will not be cancelled nor coverage thereunder be reduced or limited without thirty (30) days written notice to the DISTRICT. It shall further state that a similar thirty (30) days written notice will be given to the DISTRICT prior to the expiration of the policy if renewal coverage is to be refused or such coverage is to be reduced on renewal. Such certificates shall show the name and address of the insured CONTRACTOR, the

policy number, the type of coverage, the inception and expiration dates, and it shall clearly state what, if any, coverages are excluded by special or manuscript endorsement or otherwise excepting such-as appear in standard ISO policies as they relate to this contract. The DISTRICT reserves the right to make direct inquiry to the insurance carrier for an explanation of coverage's and the CONTRACTOR agrees to assist in obtaining any such desired information. CONTRACTOR acknowledges that failure to provide the mandated insurance on behalf of the DISTRICT constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the DISTRICT.

**Section 17.07.** The CONTRACTOR shall provide proof of insurance coverage on the leased facilities, as well as garage keeper's coverage.

**Section 17.08.** DISTRICT shall be furnished a Certificate of insurance for such liability insurance coverage. The Certificate shall state such coverage shall not be canceled before giving DISTRICT thirty (30) days' notice by certified mail or registered letter. Any injury or accident involving pupils shall be reported to the DISTRICT by the fastest means and confirmed in writing as soon as possible.

**Section 17.09.** CONTRACTOR agrees to indemnify, defend and hold harmless DISTRICT, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of CONTRACTOR or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation providing the Services except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of District, its agents or employees. The following shall apply with respect to such claims:

DISTRICT will notify CONTRACTOR of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify CONTRACTOR shall relieve it of its obligations under this Agreement except to the extent that CONTRACTOR has suffered actual prejudice by such delay or failure); and CONTRACTOR will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (A) when substantial principles of government or public law are involved, when litigation might create precedent affecting future DISTRICT operations or liability, or when involvement of DISTRICT is otherwise mandated by law, DISTRICT may participate in such action at CONTRACTOR's expense;

DISTRICT will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and

DISTRICT will reasonably cooperate in the defense and in any related settlement negotiations.

**Section 17.10.** In fulfilling the obligations of this Agreement, care must be exercised by the CONTRACTOR to avoid damage to or disfigurement of the buildings, equipment, driveways, or other property of the DISTRICT. The CONTRACTOR shall

be required to make the necessary repairs at its expense, as soon as possible after the damage occurs, for any property damaged by the CONTRACTOR or its employees.

## **ARTICLE 18 RECORDS AND REPORTS/RIGHT TO AUDIT**

**Section 18.01.** CONTRACTOR shall provide those reports and records which may be reasonably requested by DISTRICT, necessary for proper payment, necessary for evaluation of the transportation services provided to DISTRICT and/or to meet all Board of Education or state requirements. All such records shall be open to inspection by DISTRICT or its representative during regular business hours in CONTRACTOR'S office.

**Section 18.02.** CONTRACTOR shall maintain an acceptable record of timely pickups and delivery of students.

**Section 18.03.** Without limiting any examination or audit rights, or other rights of DISTRICT set forth in the Agreement, CONTRACTOR agrees that DISTRICT, or its designated representative, shall have the right to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Agreement and to audit the practices and facilities used by CONTRACTOR to provide the Services and related operational matters.

CONTRACTOR agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated or required by law. CONTRACTOR agrees to allow the auditor(s) access to such records and facilities during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include an equivalent right of DISTRICT to audit records and facilities and interview staff in any subcontract related to performance of and invoicing under this Agreement. DISTRICT agrees to take all reasonable steps to ensure that such information is not disclosed to third parties.

**Section 18.04.** For avoidance of doubt, audits may include those conducted by personnel of DISTRICT, or its designated representative, in the performance of Agreement oversight responsibilities in reviewing invoices, monthly fiscal management and/or other required reports. If an audit reveals that CONTRACTOR has overcharged DISTRICT for Services during the period to which the audit relates, then CONTRACTOR shall promptly refund such overcharges to DISTRICT as appropriate, and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of CONTRACTOR'S charges to DISTRICT for such Services for such period, the reasonable cost of such audit (including any imputed costs of DISTRICT for audits performed by DISTRICT itself) shall be borne by CONTRACTOR.

**Section 18.05.** If any audit reveals an inadequacy or insufficiency of CONTRACTOR'S performance, including performance in connection with any security obligations of CONTRACTOR as set forth in this Agreement, CONTRACTOR shall promptly develop and provide to DISTRICT, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such

audit, and subsequent related audits or audit activity, shall be borne by CONTRACTOR in the event that: (i) DISTRICT specifically identifies a particular deficiency with respect to CONTRACTOR'S performance of the Services; and (ii) CONTRACTOR either denies or fails to cure such identified deficiency within fifteen (15) calendar days.

Notwithstanding anything to the contrary in this Article 18, DISTRICT or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in Section 18.03 above for purposes of conducting an enterprise-wide audit of CONTRACTOR'S performance under this Agreement more than once per calendar year; however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and from time to time.

**Section 18.06.** Where CONTRACTOR conducts an internal audit of CONTRACTOR'S performance under this Agreement which shows any significant failures by CONTRACTOR to meet its obligations hereunder, CONTRACTOR shall provide to DISTRICT a written summary describing in reasonable detail such findings of such internal audit. If CONTRACTOR determines at any time that it has overcharged DISTRICT, then CONTRACTOR shall promptly provide to DISTRICT a credit equal to the amount of such overcharge.

**Section 18.07.** CONTRACTOR agrees that (i) DISTRICT or its delegate will have the right to obtain, copy and review all CONTRACTOR billing records related to the Deliverables and Services provided hereunder, and (ii) DISTRICT may forward audit results showing billing or rate discrepancies to any applicable governmental authority, including, without limitation, the State of Tennessee's Comptroller's office.

## **ARTICLE 19 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

**Section 19.01.** CONTRACTOR understands that this Contract is subject to appropriation of funding by local, state, and/or federal sources, and the SCS Board of Education. In the event that the funds are not appropriated or are otherwise unavailable or insufficient, DISTRICT reserves the right to terminate this Contract upon written notice to CONTRACTOR on or before May 1 of termination for the next school year. Said termination shall not be deemed a breach of this Contract by DISTRICT. In the event of termination, the CONTRACTOR shall only be entitled to compensation for all satisfactory and authorized Services completed as of the termination date. Upon such termination, the CONTRACTOR shall have no right to recover from the DISTRICT any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

## **ARTICLE 20 TERMINATION FOR THE CONVENIENCE OF DISTRICT**

**Section 20.01.** DISTRICT may terminate the performance of the Services under this Agreement for its convenience in whole or, from time to time, in part, if DISTRICT determines that a termination is in DISTRICT'S interest. DISTRICT shall terminate

this Agreement by delivering to CONTRACTOR a written Notice of Termination at least thirty (30) days in advance of the termination date specifying the extent of termination and the effective date thereof.

**Section 20.02.** After receipt of a Notice of Termination, and except as directed by DISTRICT, CONTRACTOR shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. CONTRACTOR shall: Stop work as specified in the Notice of Termination (except as required by any Disentanglement Services). Place no further subcontracts for materials, Services, Equipment, or facilities, except as necessary to complete the continuing portion of the Agreement. Terminate all subcontracts to the extent they relate to the work terminated. Settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.

**Section 20.03.** CONTRACTOR and DISTRICT agree that DISTRICT shall have no obligation to pay any amount to CONTRACTOR upon the termination for convenience, other than, and in accordance with the terms of this Agreement (i) the Contract Price for Services rendered by CONTRACTOR and accepted by DISTRICT and not previously paid for, or (ii) the termination cost or Contract Price, whichever is less, for Services subject to commitment by CONTRACTOR but not yet delivered to DISTRICT, adjusted for any savings on freight and other charges, plus (iii) any unrecovered amortized capital costs originally identified in writing by CONTRACTOR and approved in advance by DISTRICT, calculated using Generally Accepted Accounting Principles (GAAP). CONTRACTOR shall submit a final termination settlement proposal within ninety (90) calendar days from the effective date of termination.

## **ARTICLE 21 TERMINATION FOR DEFAULT**

**Section 21.01.** Either party may, subject to the provisions of Article 6 titled "Force Majeure," by written notice of default to the other party, terminate this Agreement in whole or in part if the other party fails to: Perform the Services within the time specified in the Agreement or any amendment thereto; Make progress toward an effective cure, so that the lack of progress endangers performance of this Agreement; or Perform in accordance with any of the other provisions of this Agreement.

**Section 21.02.** The right to terminate this Agreement under Section 21.01 above, may be exercised if (i) the failure constitutes a material breach of this Agreement and if the defaulted party does not cure such failure within the time frame stated in the cure notice, which in no event will be less than fifteen (15) calendar days, unless a shorter period is specifically set forth elsewhere under this Agreement; or (ii) there are repeated or numerous failures by a party for which the other has provided notice, which repeated failures collectively constitute a material breach of this Agreement. Notwithstanding the foregoing, the Parties hereby agree that each of the following events shall be deemed a material breach by CONTRACTOR, subject to immediate termination without the benefit of a cure period:

Any act or omission by the CONTRACTOR in the performance of the Services evidencing a clear disregard for the safety or well-being of a student or other rider;

Misconduct resulting in the submission of inaccurate reports or invoices that result in a material adverse financial impact on DISTRICT;  
Failure to report within the timelines established by DISTRICT any accidents, any incidents involving weapons, assault or injury, or in any instance that students are required to offload and transfer to another bus;

Any modifications or alterations to a Purchase Order by CONTRACTOR that were not authorized or approved by DISTRICT; and CONTRACTOR'S refusal to provide the Services requested for reasons other than safety or emergencies.

**Section 21.03.** If DISTRICT terminates this Agreement in whole or in part pursuant to this Section, it may acquire from an alternative provider, under terms and in the manner DISTRICT considers appropriate, Services similar to those terminated, and CONTRACTOR will be liable to DISTRICT for DISTRICT'S cost to cover. However, CONTRACTOR shall continue to provide all Services not expressly terminated by DISTRICT.

**Section 21.04.** If the agreement is terminated for default, upon direction of DISTRICT, CONTRACTOR shall protect and preserve property in its possession in which DISTRICT has an interest.

**Section 21.05.** DISTRICT shall pay the agreed upon Contract Price for completed and partially completed Services.

**Section 21.06.** If, after termination, it is determined by a final ruling in accordance with any dispute resolution process agreed to or pursued by the parties, that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of DISTRICT. The rights and remedies of DISTRICT and CONTRACTOR in this clause are in addition to any other rights and remedies provided by Law or under this Agreement.

**Section 21.07.** Except as may be permitted by the terms of this Agreement (specifically termination for cause above) or required under the United States Bankruptcy Code, CONTRACTOR may not, for any reason whatsoever, terminate this Agreement or otherwise repudiate this Agreement or refuse to perform its obligations hereunder.

## **ARTICLE 22 DISENTANGLEMENT (TRANSITION OUT)**

**Section 22.01.** CONTRACTOR will cooperate with the DISTRICT in formulating and executing a disentanglement plan.

**Section 22.02.** CONTRACTOR shall provide to DISTRICT all DISTRICT data and documentation and other information reasonably requested by DISTRICT in connection with the transition that is sufficient to enable DISTRICT, or another reasonably competent service provider, to fully assume the provision of any terminated Services. Except as CONTRACTOR is otherwise required to retain such data under this Agreement or by law, CONTRACTOR shall destroy all copies of DISTRICT data not turned over to DISTRICT.

**ARTICLE 23  
DISASTER RECOVERY AND SECURITY PLAN**

**Section 23.01.** CONTRACTOR and DISTRICT shall jointly develop a detailed disaster recovery and security plan applicable to all of the Services ("Disaster Recovery and Security Plan"). Except where agreed to by DISTRICT, such detailed Disaster Recovery and Security Plan shall be consistent in all respects with the requirements (if any) set forth in this Agreement and the CONTRACTOR'S then current protocols for service emergencies. Immediately upon DISTRICT'S approval of the Disaster Recovery and Security Plan, CONTRACTOR shall implement the same in accordance with its provisions.

CONTRACTOR shall ensure that the Disaster Recovery and Security Plan, and the corresponding disaster recovery and security Services provided by CONTRACTOR, shall be consistent with any limitations imposed by law and shall be appropriate and comprehensive, using industry best practice and methods and state-of-the-art technology, to at all times ensure the availability, security, integrity and confidentiality of the Services. At least thirty (30) calendar days prior to each anniversary date of this Agreement, CONTRACTOR and DISTRICT shall review and revise the Disaster Recovery and Security Plan as appropriate to reflect any changes to DISTRICT'S operating environment or requirements and submit it to DISTRICT for review, comment, and approval.

**ARTICLE 24  
CONFIDENTIALITY OF DATA**

**Section 24.01.** "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) (i) of CONTRACTOR, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, (ii) of DISTRICT, that DISTRICT makes available to CONTRACTOR in order to carry out this Agreement, or which becomes available to CONTRACTOR in carrying out this Agreement, including all financial, statistical, personal, student, technical and other data and information relating to DISTRICT'S operation, or (iii) of either disclosing party, designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Neither party shall use for its own account or the account of any third party, nor disclose to any third party, any of the other party's Confidential Information. This Agreement is intended to cover Confidential Information received by the receiving party both prior and subsequent to the date hereof.

**Section 24.02.** Notwithstanding the above, the term "Confidential Information" does not include any information that is either: available from public sources or in the public domain, through no fault of the receiving party; or received at any time from any third party without breach of a non-disclosure obligation to the disclosing party; or readily discernible from publicly available products or

literature; or approved for disclosure by prior written permission of a corporate officer of the disclosing party.

**Section 24.03.** Notwithstanding Section 24.01 above, the receiving party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, including the Tennessee Open Records Act, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and allows the disclosing party to use commercially reasonable efforts to obtain confidential treatment for any Confidential Information requested for disclosure.

**Section 24.04.** The Tennessee Open Records Act, T.C.A. §10-7-503, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a state or local agency regardless of the physical form or character. ALL OR MOST OF THE INFORMATION CONTAINED IN THIS CONTRACT WILL BE A PUBLIC RECORD SUBJECT TO DISCLOSURE UNDER THE OPEN RECORDS ACT. PRICES QUOTED IN THIS CONTRACT ARE NOT A TRADE SECRET. If CONTRACTOR considers any provision of this Agreement to be exempt from disclosure as a trade secret or otherwise, the burden is on CONTRACTOR to specifically identify such provision. DISTRICT, to the extent allowed by law and in accordance with these terms and conditions, will honor a designation of nondisclosure. CONTRACTOR will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to DISTRICT'S nondisclosure.

## **ARTICLE 25 SUBCONTRACTORS**

**Section 25.01.** CONTRACTOR shall not subcontract all or any part of the Services without the prior written consent of DISTRICT, which will not be unreasonably withheld. Each subcontractor will perform only the specific Services described with regard to such subcontractor in a written request submitted by CONTRACTOR to DISTRICT when seeking such consent; and no change may be made to the specific Services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of DISTRICT, which will not be unreasonably withheld. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Agreement.

CONTRACTOR covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with DISTRICT. DISTRICT'S consent with respect to CONTRACTOR'S use of a particular proposed subcontractor, shall be given or withheld in writing within CONTRACTOR'S reasonably requested timeframe, and, if such consent is withheld, DISTRICT'S notice thereof to CONTRACTOR shall set forth the reasons for such withholding of consent.



If DISTRICT determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, DISTRICT may notify CONTRACTOR of its determination in writing, indicating the reasons therefor, in which event CONTRACTOR shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by CONTRACTOR personnel.

CONTRACTOR shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. CONTRACTOR and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide the Services under this Agreement. Notwithstanding the fact that a subcontractor may be the party actually performing particular Services hereunder, CONTRACTOR shall at all times: (i) constitute the primary obligor for all of CONTRACTOR'S duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of CONTRACTOR hereunder that CONTRACTOR may elect to subcontract to any of its subcontractors or to any other third party.

## **ARTICLE 26 CONTRACTOR COMPENSATION**

**Section 26.01.** DISTRICT agrees to pay CONTRACTOR the rates set forth on Exhibit C for pupil transportation services rendered during the term of the Agreement. A minimum of 180 days per school year is to be used in applying the daily rate.

BASIC TRANSPORTATION: See Exhibit C

SUPPLEMENTAL TRANSPORTATION: See Exhibit C

**Section 26.02. TIME MEASUREMENTS OF ROUTES:** Routes will be based on 4.5 hours and 7 hours for Regular routes and 5.5 hours and 7 hours for Special Education routes. A route time will be determined based on Edulog. CONTRACTOR and DISTRICT will review the routes before the start of each school year and summer school. If there is a dispute in a route time exceeding or being less than the Edulog schedule, the routes will be identified in writing to the other party and the daily count log of pupils by route and by stop for the pickup and delivery of pupils would be provided to the DISTRICT'S Transportation Division for review. In 5-working days, the DISTRICTS' transportation division will review the route and, if necessary, drive the route and/or follow the bus on the route, and render its findings.

No reviews will be submitted during the first (4) weeks of school. No weather disputes will be submitted or reviewed. No road construction will be submitted or reviewed unless the road construction is a safety hazard or the time of construction shall exceed one (1) month based on the City of Memphis. Any route deviation due to road construction will automatically end based on the projected end date provided by the City of Memphis. If the dates is earlier or later than the date originally projected by the City of Memphis the appropriate adjustment will be made to the end date.

**Section 26.03. ROUTES EXTENDING PAST THE SET HOURLY RATES:** If routes extending past the 4.5 or 7 hours Regular Routes and 5.5 or 7 hours Special

Education and Routes based on the TIME MEASUREMENT OF ROUTES, shall be billed based on the actual minutes of overage incurred on the route, per Edulog. Whenever a route has a consistent "overage," the DISTRICT and the CONTRACTOR may mutually agree upon a new route time for such route.

**ARTICLE 27  
MISCELLANEOUS**

**Section 27.01. ASSIGNMENT.** The Services contemplated under this AGREEMENT are deemed to be in the nature of personal services and shall not be assigned by CONTRACTOR without prior written consent of the DISTRICT. The Contractor may assign this Agreement if the assignment is made to a parent, subsidiary, related or affiliated company.

**Section 27.02. STATUS OF CONTRACTOR.** CONTRACTOR shall be construed as, being an independent contractor employed to provide transportation services only. Neither CONTRACTOR nor any of its employees shall be held or deemed in any way to be an agent, employee or official of DISTRICT. CONTRACTOR shall be responsible for, and hold DISTRICT harmless from any liability for unemployment taxes or contributions, payroll taxes or other federal or state employment taxes.

**Section 27.03. PLACE OF AGREEMENT/GOVERNING LAW.** This AGREEMENT shall be deemed to be presented in and shall be construed in accordance with the laws of the State of Tennessee. All references in this request to "this State" shall mean the State of Tennessee.

**Section 27.04. SEVERABILITY.** In the event any provision specified herein is held or determined by a court of competent jurisdiction to be illegal, void or in contravention of any applicable law, the remainder of this AGREEMENT shall remain in full force and effect.

**Section 27.05. NOTICES TO PARTIES.** All notices to be given by the parties to this AGREEMENT shall be in writing and served by depositing same in the United States mail, postage prepaid, registered or certified mail.

Notices to DISTRICT shall be addressed to:

ATTENTION: Chief of Business Operations  
Shelby County Schools  
160 South Hollywood St  
Memphis, TN 38112

COPIED TO:

ATTENTION: Office of the General Counsel  
Shelby County Schools  
160 South Hollywood, COE 115  
Memphis, TN 38112

Notices to CONTRACTOR shall be addressed to:

ATTENTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 27.06. SUPPLIER DIVERSITY.** CONTRACTOR acknowledges that it is aware of DISTRICT'S Local Preference Purchasing Policy, Minority, Women and Disadvantaged Business Enterprise Participation Policy, and Fair Business Program (collectively known as the "Supplier Diversity Program"). CONTRACTOR agrees to promote the goals of the DISTRICT'S Supplier Diversity Program in the performance of the Services hereunder to the fullest extent possible, and to report to DISTRICT, on a quarterly basis, its use of suppliers meeting the goals of the program in the performance of the Services. CONTRACTOR hereby commits, and the DISTRICT hereby consents, to CONTRACTOR's subcontracting up to thirty (30) of the routes to a local minority, woman, or disadvantaged business enterprise. The CONTRACTOR will mentor the subcontractor in support of the subcontractor's growth in the pupil transportation industry.

**Section 27.08. ENTIRE AGREEMENT.** This Agreement sets forth all of the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings between DISTRICT and CONTRACTOR concerning the transportation services to be rendered during the term of the Agreement. There are no representations, either oral or written, between DISTRICT and CONTRACTOR other than those contained in this Agreement. No modification of this AGREEMENT shall be binding upon the parties unless evidenced by an agreement, in writing, signed by the duly authorized representatives of DISTRICT and CONTRACTOR after the date hereof.

**Section 27.09. PIGGYBACKING.** CONTRACTOR agrees that District Charter Schools may enter into a contract with it for the purchase of transportation services on substantially the same terms and conditions of this Agreement. CONTRACTOR shall enter into a separate agreement with the Piggybacking Entities and DISTRICT shall have no liability to CONTRACTOR or the Piggybacking Entities arising out of the operation of this piggybacking clause."

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement  
in duplicate the day and year first herein above written.**

**CONTRACTOR**

**SHELBY COUNTY BOARD OF EDUCATION**

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

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

**Name:**

**Name: Dr. Joris Ray**

**Title:**

**Title: Superintendent**

**Date: \_\_\_\_\_**

**Date: \_\_\_\_\_**

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

**Name: Miska Clay-Bibbs**

**Title: Board Chairperson**

**Date: \_\_\_\_\_**

## **EXHIBIT B**

District shall have the right to assess liquidated damages for each failure of services as outlined below. The amount of liquidated damages for each such failure shall be assessed on a per occurrence basis.

District must inform Contractor in writing within 5 days of a listed violation and of its intent to assess liquidated damages for such event. Failure to notify Contractor within 5 days will relieve Contractor of its obligation to pay the liquidated damages. Each monthly invoice will be credited for liquidated damages if any.

Liquidated damages will not be assessed prior to September 1st. New routes or routes affected by material changes will have a 30 calendar day grace period prior to liquidated damages being assessed. Liquidated damages will not be assessed until route(s) has been reviewed and accepted by Contractor. Liquidated damages associated with children being left unattended will go into effect the first day of each school year.

Liquidated damages will not be assessed if lateness or no-show is due to "force- majeure."

The following liquidated damages may be assessed by the District:

1. Driver transporting students(s) prior to return of background check results: \$500 per day per bus.
2. Employing driver personnel with unsatisfactory background history: \$1000 per day per driver.
3. Student left on unattended bus: \$1000 per incident.
4. Driver not possessing a current CDL: \$1000 per incident
5. Failure to comply with vehicle operation laws (including failure to wear seat belt, verifiable speeding and failure to stop at railroad crossings): \$500 per incident.
6. Failure to provide weekly up to date drivers' list: \$500 per incident.
7. Failure to provide Monthly Summary Report including HB322 reports: \$250 per incident.
8. Failure to provide daily reports including bus substitution and state required safety reports: \$150 per day.
9. Failure to Conduct Annual Customer Satisfaction Survey: \$500.
10. Failure to inspect and maintain vehicle per Tennessee Department of Safety (TDOS) requirements: \$1000 per incident.
11. Driver improperly uniformed: \$150 per day.
12. Failure to adhere to approved route: \$1000 per incident.
13. Route required to be doubled due to the absence of the regular driver and non-availability of a sub driver: equals cost of incident bus type per day.

14. Number of students riding bus exceeds safe capacity per manufacturer's specifications: \$150 per day per bus.
15. Failure to pick up or deliver a student with disabilities: \$150 per incident.
16. Bus late because of a need to refuel, or because it runs out of fuel in route: \$150 per incident.
17. Early departure of a bus from a scheduled stop: \$100 per incident.
18. Driver misses a stop on a route or fails to pick up student: \$100 per incident.
19. Failure of a driver to keep an up-to-date route sheet on board and on file with Contractor: \$100 per day.
20. Bus without a two-way radio as required or a two-way radio not in proper working condition for any reason for three (3) working days: \$100 per incident.
21. Buses without an operable GPS tracking device: \$100.00 per day per bus.
22. Failure by dispatcher to immediately notify the District of an accident: \$1000 per incident.
23. Failure to clean bus interior and exterior after two days' notice: \$100 per incident.
24. Improper usage of cell phone in the operation of a school bus as defined by Tennessee Code Annotated (TCA): \$1000 per incident.
25. Failure to stop and use proper procedures at a railroad crossing as defined by Tennessee Code Annotated (TCA): \$1000 per incident.
26. School possesses documentation which indicates confirmation of a field trip was received but no bus(es) arrived. Students were unable to attend the event: \$500 per bus per incident.
27. Co-curricular and extra-curricular transportation is an important element of the District's educational program. Therefore, it is expected that the Contractor will meet the District's needs given that the District duly informs the Contractor of any trip at least 24 hours ahead of said trip. Late arrival (15 minutes) of field trip bus(es): \$100.00 per bus per incident.
28. In the event a strike or other occurrence causes an interruption of services for more than 24 hours, the District shall have the right to secure such other transportation as may be necessary and charge the cost of same to the account of the Contractor. There will be no payment to Contractor for days no service is provided, and Contractor is responsible for financial liability to the District.
29. If at any time the Contractor fails to provide the approved personnel (supervisors, drivers, mechanics) as required by the Contract, the District shall deduct from its monthly payment \$200.00 per day per/bus, or per person per/day, for each occurrence that such personnel are not supplied, plus there will be no payment for the services that were not provided.
30. All buses must have on board at all times proper vehicle registration and certificates of insurance. Buses are also required to carry proper identification signs, pursuant to these specifications. This

identification is essential for the school staffs and pupils to identify the buses. Buses displaying no identification at all or more than one identification, or the wrong identification, generates confusion, inefficiency, and is sometimes costly in duplicating transportation. In order to enforce the requirements to display the prescribed identification, the District reserves the right to levy a fine of \$50.00 per day as liquidated damages for each bus run operating in violation of these requirements.

31. Buses provided by the Contractor to service the needs of the District are expected to be in good working order at all times. This includes regular and special needs buses. Should any bus utilized be found to be deficient in any way (doors not opening properly, inoperable lift, insufficient number of tie-downs, broken wipers, etc.), the District reserves the right to levy a fine of \$150.00 per infraction, per day, until such deficiencies are corrected.
32. Failure to provide a requested bus video recording within 36 hours of the request shall result in a fine of \$250.00 per incident.
33. In the event a student is left on a bus after the end of a route, the District will assess liquidated damages of \$25,000.00 per infraction.

## EXHIBIT C

### Daily and Hourly Costs (including A/C, GPS and camera)

REGULAR and SUMMER SCHOOL Home-to-School Services		2020-2021	
Capacity	4.5 Hour Day	7.0 Hour Day	
47/48	\$	\$	
71/72	\$	\$	
90	\$	\$	
84	\$	\$	
SPECIAL NEEDS Home-to-Schools Services		5.5 Hour Day	7.0 Hour Day
37/38			
37/38 w/WC			
47/48			
47/48 W/wc			
Up to 20			
Up to 20 w/WC			
Daily Rate for Contractor Bus Monitor			
SPECIALIZED Exceptional Children		Hourly Rate	
37/38	\$		
37/38 w/WC			
47/48			
47/48 w/WC			
Up to 20			
Up to 20 w/WC			
OTHER COSTS			
Activity Trips/Field Trips per hour	\$		
Activity Trips/Field Trips Minimum Trip Rate	\$		
OTHER COSTS			
Vo-tech/Midday/Special Request per hour	\$		
Excess Rate Home to School per hour	\$		
Excess Rate Monitors per hour	\$		
WI-FI Service Per Bus Per Month	\$		