

# ATTACHMENT A

## Johnston Community School District STUDENT TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_th day of January, 2023, by and between Johnston Community School District, Johnston, Iowa, with its District Office at 6510 NW 62 Ave., Johnston, Iowa 50131, hereinafter called "District" and (NAME OF CONTRACTOR) with its local office at (LOCATION OF CONTRACTOR), hereinafter called "Contractor."

### WITNESSETH

WHEREAS, Johnston Community School District has a need for student transportation services to transport certain of its students served by District during the school year.

WHEREAS, Contractor agrees to operate a student transportation and school bus service within and about the service boundaries of District.

WHEREAS, pursuant to Iowa Code Chapter 285 and Iowa Administrative Code Section 281-43, the District solicited proposals for student transportation services and, after receiving and reviewing the proposals, the District selected Contractor to furnish student transportation services to certain District students in accordance with the terms defined herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions agreed to and contained herein, District and Contractor agree as follows:

### 1. SCOPE OF SERVICES REQUIRED

Contractor shall, during the term of this AGREEMENT, provide home to school and school to home transportation service for all regular education and special education students defined as eligible for receiving this service by the District. This may also, at the District's direction, include routing between schools and specific education programs before, during, or after the regular school day, and other supplemental services such as co-curricular and athletic trips. The Contractor shall provide such services, school buses, and personnel as required to fulfill District's needs for student transportation services as further described in the AGREEMENT.

- a. The District reserves the right at any time during the term of this AGREEMENT to alter rider eligibility policies and other parameters that may alter the volume or type of service to be provided in accordance with Section 5 of the AGREEMENT.
- b. For purposes of this AGREEMENT, the number of service vehicles required to provide home to school and school to home services is considered to be 55.
- c. For purposes of this AGREEMENT, operational days are considered to be 179.

- d. In addition to the home to school and school to home service, the Contractor will receive priority to provide field, activity, and athletic trips during the term of this AGREEMENT and in accordance with the following:
  - i. If the Contractor does not accept the trip or trips within a reasonable time after being notified by the District of the opportunity to provide such service, the District may, at its sole discretion, make all necessary arrangements with other service providers to complete the trip or trips.
- e. Nothing in this AGREEMENT shall limit District's rights or responsibilities or prohibit District from exercising such rights and responsibilities outlined in this AGREEMENT or state and federal law relative to student transportation services.
- f. In providing Student Transportation Services, Contractor shall comply with any and all applicable federal, state, county, and municipal laws, statutes, ordinances, District policies, regulations, and/or prohibitions currently in force or that may come into force during the term of this Agreement and that pertain to the provision of these services to the District.

## **2. TERM**

The term of this AGREEMENT shall commence July 1, 2023 and shall continue through June 30, 2026. For purposes of this AGREEMENT, the term "Contract Year" shall mean each one-year period commencing July 1 during the term of this AGREEMENT.

- a. Extension of Term: This AGREEMENT may be extended at the mutual written agreement of the Parties for up to two additional one (1) year periods upon such terms as identified and described in this AGREEMENT and EXHIBIT A, Rates of Compensation.
- b. The District will notify the Contractor by January 31, 2023, of its desire to extend the existing AGREEMENT.

## **3. COMPENSATION AND BILLING**

In consideration for services rendered hereunder, District shall pay to Contractor all sums due and owing and calculated in accordance with the rates for services set forth in the AGREEMENT and EXHIBIT A hereto, which may be adjusted from time to time as provided herein.

- a. The Contractor will work cooperatively with the District to establish a billing format and matrix for regular and special needs route services and other services, as identified and shown in EXHIBIT A.
  - i. Final approval of the billing format shall be at the sole discretion of the District.
- b. The Contractor shall submit invoice(s) for all services including routes, trips, midday, and other services to the District no later than the tenth day of the month following the month in which services have been provided. The invoice(s) shall be based on the actual number of days of service within the calendar month. After review, District will process payment, and submit vendor payment listing to the Board of Directors

for approval at its next regularly scheduled board meeting. All invoices for payment should be sent to the District's Chief Financial Officer.

#### **4. FUEL PROVISION**

District will pay for all diesel fuel and gasoline needed in the performance of the Contract (including delivery charges). However, calling for and coordination of fuel delivery is responsibility of the Contractor. Fuel provided by the District will be used only for the transportation, operations, and activities of the District. Using existing equipment, Contractor will provide monitoring information as to fuel use by the transportation fleet of District separate from any other school district client. Contractor will maintain an active miles-per-gallon program per vehicle suitable to the District. The Contractor will provide the Chief Financial Officer with a monthly report showing total number of gallons of gasoline and diesel fuel consumed along with the total number of miles driven. This will be calculated separately for routes and activities along with their corresponding number of gallons consumed. The invoices will be directly billed in the name of Johnston Community School District. Fuel usage related to trips outside of District utilization will be credited back monthly by Contractor on a per trip basis, using the consumption ratio of seven (7) miles per gallon of fuel burned. A trip log will be provided to the District noting all school related and non-District related trips on a monthly basis.

#### **5. SERVICE VOLUME CHANGES**

The number of service vehicles operated by the Contractor in accordance with this AGREEMENT may increase or decrease by up to five (5) percent per year at the prices established in this AGREEMENT. A change of more than five (5) percent per year will require the Contractor and the District to renegotiate prices for the balance of the AGREEMENT term.

The number of operational days provided by the Contractor in accordance with this AGREEMENT may increase or decrease by up to two (2) at the at the prices established in this AGREEMENT. A change of more than two (2) operational days per year will require the Contractor and the District to renegotiate prices for the balance of the AGREEMENT term.

#### **6. REQUIRED PERSONNEL**

##### **a. GENERAL**

- i. Contractor shall be responsible for hiring and discharging personnel employed by Contractor to perform its obligations hereunder. Contractor shall comply with all applicable state and/or federal laws in the hiring and discharge of its personnel.
- ii. The Superintendent or his/her designee, with written cause, may call for the removal from service under the Contract of an employee who in their opinion no longer is fit to provide service under the terms of the Contract. The Contractor, upon written notification by the Superintendent or his/her designee shall immediately cease to assign said employee to any work, direct or indirect, that relates to the AGREEMENT.

- iii. The use of tobacco products and possession of alcohol, controlled substances, illegal drugs, firearms, and weapons of any kind by employees of the Contractor are prohibited on school buses and school grounds at all times.
  - iv. District may require input on employment, along with the right to interview, certain personnel employed or who are being considered for employment by the Contractor for any positions or functions during the term of this AGREEMENT or any extensions thereof.
  - v. The Contractor is expected to provide staffing at a level that meets or exceeds industry standards for number of positions to include, but not limited to, dispatch personnel, fleet technicians, route planners, safety managers, and supervisors. Such standards shall be considered in a ratio of staff to the number of routes/buses in operation. Adequate staffing is a necessity to ensure safe, effective, and efficient service and to ensure compliance with the Minimum Standards of Service as described in Section 14.
- b. DRIVERS, REGULAR
- i. Each driver shall meet all state and federal, and Iowa Department of Education regulations that are specific to pupil transportation.
  - ii. The Contractor shall employ, train, and assign under Contract a sufficient number of licensed bus drivers and driver substitutes to meet all the service needs of this AGREEMENT. District-approved routes shall be serviced as designed and shall not be operated using management or other non-driver staff other than in the event of mutually agreed upon exceptional circumstances or emergencies.
- c. DRIVERS OF STUDENTS WITH SPECIAL NEEDS
- i. Drivers assigned to transport special education students, students with disabilities or other medical needs and early intervention program students shall be given special training concerning the techniques of managing such children.
- d. BUS ASSISTANTS
- i. The District reserves the right to place its own personnel on special education vehicles to assist these students for physical, emotional, or disciplinary reasons.
  - ii. Compensation for contracted bus assistants, if requested by the District, will be under the terms established under EXHIBIT A, Rates of Compensation.
- e. MECHANICS
- i. Mechanics assigned under Contract must be trained and certified for the work they are to perform.
  - ii. Mechanic staff must pass standard drug and background screening as required for school bus operators.

## **7. SAFETY AND TRAINING**

- a. Student, District employee, Contractor employee, and public safety is paramount and will be the highest priority consideration in the delivery of services under this AGREEMENT.
- b. Contractor shall immediately inform District of any District policies, regulations, procedures, or practices that may conflict with safety prioritization.
- c. Contractor shall not intentionally compromise safety to achieve any of the requirements of this AGREEMENT.
- d. Contractor shall not intentionally perform an unsafe act to achieve contractual or related performance criteria.
- e. Contractor shall immediately perform any service necessary to address a safety concern regardless of whether it is specifically required by this AGREEMENT.
- f. Contractor shall at all times adhere to a documented Safety Program acceptable in form and content to, and as explicitly approved by District. The Safety Program shall be documented and updated prior to the start of school in each school year covered by the term of this AGREEMENT.

## **8. ACCIDENTS**

For purposes of the AGREEMENT, an accident shall be defined as an unplanned event or incident that results in bodily injury, vehicle damage, or property damage as a result of a vehicle operating under the terms of this AGREEMENT coming in contact with any other object.

- a. Accidents that occur while students are on board, whether minor or serious causing bodily injury or damage to property, are to be reported to the Contract Manager or designee by the Authorized Company Representative within 15 minutes of the time he/she has knowledge of the accident. The contractor will also notify the parents of any student aboard a bus at the time of a serious accident.
- b. All accidents will be documented in writing and forwarded to the Contract Manager within twenty-four (24) hours of their occurrence. Both Contractor and District acknowledge and understand certain investigative materials may become available outside of the 24-hour timeframe.
- c. The Contractor will maintain a log of all accidents involving the school bus fleet. This log will contain the names of individuals involved in the accident, date, location, accident description, damage amount, police report, injury reports and whether the accident was preventable or not. The Superintendent or designee will be allowed to review this log, at any time, with or without advance notice.

## **9. STUDENT/PASSENGER BEHAVIOR**

Student behavior issues shall be documented in writing by the bus driver and/or bus assistant with the passenger's name and/or description of the situation, which will be forwarded to the appropriate District administrator via the Contract Manager. Per Section 14 of this

AGREEMENT, the District will designate a Contract Manager who will be responsible for the oversight and management of Contractor service.

- a. The District shall take appropriate steps to correct the situation and advise the Contract Manager in writing of the final outcome of their actions.
- b. Under no conditions shall the Contractor or his/her staff deny transportation to an eligible rider without a written statement to do so by the District.
- c. Contractor shall ensure good discipline aboard the school bus and enforce the District's disciplinary procedures fairly for all bus riders. It is understood that should a bus require an attendant for purposes of maintaining proper discipline, the Contractor shall make such provisions.

## **10.REPORTING REQUIREMENTS**

The Contractor shall provide for any and all reporting as required by District over the life of the Agreement. This includes but is not limited to reports and data to meet State required reports and to monitor Contractor performance as described in Section 14, Performance Management and Withholding.

## **11.TERMINAL – BUS GARAGE**

The District and Contractor agree to complete a separate lease agreement for the District bus terminal that allows for Contractor occupancy and use of the terminal with an annual lease cost of \$1.00 that will be deducted from the Contractor's first billing in each year of this AGREEMENT.

## **12.ROUTING AND SCHEDULING**

The Contractor shall be responsible for providing bus routes and bus stops for each school year during the term of the AGREEMENT. It is the responsibility of the Contractor to communicate bus route information to each student rider's family. Bus routes will be maintained in the most efficient way possible. New routes will not be added without approval of the Contract Manager, Chief Financial Officer, or other designee.

The Contractor shall review routes for improved efficiency and route reduction strategies. Additional requirements include:

- a. The District may request alterations, modifications, or amendments to the bus routes, timing and/or stops in order to meet changing conditions upon reasonable prior notice to Contractor. Rules and regulations for details incidental to the operation of bus routes, bus stops and other attendant matters which may arise shall be mutually agreed upon. If the parties cannot agree on the foregoing, the District's decision will be final.
- b. The Contractor shall require the drivers to adhere to routes and time schedules as established. Drivers who discover cause for route or time adjustment will report same to the Contractor, which will take the matter up with the District. The Contractor will be responsible for all routing and changes to routes following the initial start-up, subject to specific approval of each such change by the District.

- c. The Contractor will provide the route planning and management software and the personnel required to train staff ensuring continued competency.
- d. The Contractor shall ensure that drivers are familiar with their assigned routes. To facilitate this process, the Contractor shall, prior to the opening of school each year, have each regularly assigned route driver accomplish two complete dry runs (practice runs without students) of the driver's assigned route. The Contractor's price proposal should provide for this requirement
- e. In addition to regular bus routes scheduled hereunder, Contractor shall also provide all other student transportation services which are specifically requested by the District. The Contractor acknowledges that such other requested student transportation services must be requested in writing and signed by the District's Superintendent or his/her designee. Nothing in this paragraph shall preclude the District from contracting with any other transportation company or provider for out-of-District transportation needs as they deem necessary.
- f. The District shall have the sole responsibility of setting policy pertaining to the transportation for private or parochial schools and shall communicate said policy to Contractor.
- g. The District shall have the sole responsibility of altering, delaying or canceling bus service during inclement weather. The Contractor shall assist the District in any determination of whether runs should be canceled due to inclement weather. To this end, a specific person shall be designated by the Contractor, who shall remain available to the District for consultation on a daily basis. Contractor agrees to abide by the decision of the District to operate on the assigned schedules and routes.
- h. At dismissal time, buses shall arrive at the school prior to dismissal, and shall depart no later than the time set by the District.

### **13.DATA, SOFTWARE, HARDWARE, AND RELATED TECHNOLOGIES**

The Contractor agrees to abide by all terms and conditions as set forth in the Exhibit C, Data Security Agreement.

Additionally, the Contractor shall provide the hardware, software, and technical services necessary to:

- a. Connect to District's designated online data systems via cloud-based portals, as required.
- b. Develop, plan, and maintain pupil transportation service route data.
- c. View and store as required, data from functional digital video cameras.
- d. In addition to the requirements explicitly identified in this section, Contractor agrees to work cooperatively with District to identify and incorporate such other technologies as may become available or be required by District in furtherance of its objectives over the term of this AGREEMENT. District and Contractor furthermore agree that the incorporation of such technologies may result in additional costs requiring the renegotiation of rates of compensation under this AGREEMENT.

## **14. ANNUAL SERVICE PLAN**

Contractor shall provide the District on or before the 10th day of August of each Contract Year with a Service Plan for Student Transportation, which requires the approval of the District.

Contractor shall work with the District's Superintendent or his/her designee in planning the required services and otherwise performing this AGREEMENT. The service plan must include at a minimum the following:

- a. Planned routes including bus route numbering, route maps, and route times;
- b. List of drivers, both primary and substitutes, and the assigned routes and buses for the primary drivers;
- c. List of students assigned to each bus and route, together with grade levels;
- d. List of bus and van equipment that will be used in providing the contract services, along with make of equipment, year of manufacture, and mileage;
- e. Insurance information required as specified in SECTION 19 of this AGREEMENT; and
- f. Provision of services to students living within the areas not eligible for regular bus services as outlined in this AGREEMENT.

## **15. PERFORMANCE MANAGEMENT AND WITHHOLDING**

This AGREEMENT will be subject to a Contract Performance Management Program. District shall designate a Contract Manager for the duration of this AGREEMENT who shall be responsible for oversight of Contractor performance under this program.

- a. Responsibilities and Reporting
  - i. Contractor shall designate a Customer Manager for the duration of the AGREEMENT who shall be the counterparty to the Contract Manager and who shall serve as the District's primary point of contact for matters relating to Contractor's performance under this AGREEMENT. The Customer Manager must be delegated with the authority to act on behalf of Contractor in all matters related to Contractor's performance under this AGREEMENT.
  - ii. The Contract Performance Management Program shall be a non-punitive, joint, supportive program of contract compliance monitoring and performance measurement designed to enhance and improve Pupil Transportation Service delivery. Contractor shall be an active participant in and shall be responsive to the requirements of this program.
- b. Minimum Service Levels and Standards of Performance
  - i. The foundation for the Contract Performance Management Program will be Contractor compliance with a set of minimally acceptable service levels and standards of performance. Contractor will monitor, track, account for, and report to District the data and information required to determine Contractor's success in

meeting or exceeding the established standards. Reports will be sent to District on a weekly basis.

- ii. Contractor will comply with three (3) minimally acceptable standards of performance. For the purposes of this section a bus route is defined as either the morning, midday or afternoon component of a daily route package as developed by Contractor, approved for service by District, and defined in the Basis for Contractor Compensation section of this AGREEMENT.
  - iii. No more than two (2) percent of all bus routes operated by Contractor in each week of any service month shall be delayed or missed because of Contractor's inability to provide an adequate number of qualified vehicle drivers or monitors as defined within this AGREEMENT, or for any other operational issue under the direct control of Contractor that prevents the timely operation of the bus routes as designed and approved. A delayed or missed route is defined as any route component that begins operation more than five (5) minutes after its scheduled time, or that must be serviced by another means. A delayed route due to circumstances beyond the Contractor's control (such as an accident along a designated bus route) would be documented in the weekly report to District but would not be included in the calculation of delayed or missed bus routes.
  - iv. No more than two (2) percent of all bus routes operated by Contractor in each week of any service month shall be delayed or missed because of a mechanical problem with Contractor's assigned vehicle. A delayed or missed route is defined as any route component that begins operation more than five (5) minutes after its scheduled time or is delayed more than five (5) minutes over the course of its route because of a mechanical problem with the assigned vehicle.
  - v. Contractor shall report every incident of delay as defined in this section, as well as all other incidents involving bus accidents, mechanical breakdowns, or injuries to students to District within fifteen (15) minutes of occurrence and in a format and content acceptable to District. This is a zero-tolerance standard of performance
  - vi. Contractor shall be responsible for recording and tracking all data and information required to calculate compliance with the minimally acceptable standards of performance. These data shall be provided to District in a form and with content verifiable by and acceptable to District not later than the 15th of each month for service completed in the prior month over the entire term of this AGREEMENT.
  - vii. If a non-compliance situation occurs Contractor shall be considered to be immediately in notice whether or not District provides formal written notice of non-compliance.
  - viii. Contractor shall comply with District directives to improve operations and outcomes that fall below established standards.
- c. Performance Withholding
- i. District may impose a Minimum Service Level Performance Withholding factor for Contractor non-compliance with Minimum Service Levels and Standards of Performance.

- ii. District may defer payment of up to one (1) percent of Contractor's next regular monthly invoice for any single weekly instance of non-compliance.
- iii. District may defer up to three (3) percent of Contractor's next regular monthly invoice should non-compliance continue for two (2) consecutive service weeks.
- iv. District may defer up to seven (7) percent of Contractor's next regular monthly invoice should non-compliance continue for three (3) consecutive service weeks
- v. District may defer up to ten (10) percent of Contractor's next regular monthly invoice should non-compliance continue for four (4) consecutive service weeks.
- vi. The number of withholding instances is unlimited and may be repeated for each instance on non-compliance with Minimum Service Levels and Standards of Performance.
- vii. The withholding shall be paid in full to Contractor if the non-compliance factor resulting in the withholding is cured to the satisfaction of District following the deferral decision.
- viii. If the non-compliance factor is not cured to the satisfaction of District following the deferral decision, District may retain the withholding without obligation to pay Contractor the withheld amounts.
- ix. Withholding payments for non-compliance areas that have not been cured prior to the end of the fiscal year, will not be paid.
- x. District will notify Contractor in a formal letter delivered via a traceable method to the Contractor address of record for this AGREEMENT should a decision to retain a withheld amount be reached.

## **16.DISPUTE RESOLUTION**

The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this AGREEMENT. Disputes that cannot be resolved by negotiation may, upon mutual AGREEMENT, be submitted to mediation, pursuant to Iowa Code Chapter 679C, using a mutually agreed upon mediator. In the absence of an AGREEMENT on a mediator, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. If mediation is not successful, the parties may pursue their remedies as they choose. Nothing in this Contract shall be deemed to prevent the parties from agreeing in the future to submit a dispute to arbitration. Any litigation arising between the parties related in any way to this AGREEMENT shall be initiated and maintained only in the appropriate state or federal court for Polk County, Iowa. In the event that it shall become necessary for either party to institute legal proceedings against the other party for recovery of any amounts due and owing under this AGREEMENT, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs related to such collection, including reasonable attorney's fees. The provisions of this paragraph shall survive termination of this AGREEMENT.

## **17.OTHER PROVISIONS**

Contractor agrees to comply with the following:

- a. **Governing Law:** This AGREEMENT shall be deemed to be made in and shall be construed in accordance with the laws of the State of Iowa. All references in this AGREEMENT to "State" shall mean the State of Iowa.
- b. **Student Records/Confidentiality:** Pursuant to Family Educational Rights and Privacy (FERPA) regulations at 34 CFR 99.31, the District, as an educational institution, is permitted to disclose; without the prior consent of a student' s parent (or an eligible student over 18 years of age), personally identifiable information from education records to 1) a party to whom the District has outsourced institutional services or functions it would normally be required to perform with District employees and 2) a party whose employees, acting in the course of their employment and performance of services pursuant to a contracted AGREEMENT with the District are deemed to have a legitimate educational interest or need to access student educational records.

The District has outsourced its school transportation obligations to Contractor and has determined that Contractor is an entity with a legitimate educational interest or need to access certain educational records related to student transportation needs, specifically special education students subject to the requirements of the IDEA and served by Individualized Educational Plans (IEPs). Accordingly, the parties agree that it is in the best interests of all parties for the District to disclose to Contractor such information from student education records, including IEPs, as may be necessary for Contractor to provide accurate and complete transportation services to all eligible students under the AGREEMENT. Any eligible student's IEP will be used by Contractor for routing purposes only and for no other reason. District information acquired as a result of these services is confidential and shall not be disclosed unless required by law. The only person at Contractor to have direct access to this confidential information will be the router.

In the event that any disclosure of any documentation/information acquired by Contractor under this AGREEMENT is required by law, Contractor will notify the District of such obligation prior 1:0 such disclosure. Notwithstanding the above, Contractor shall be in full compliance with all nondisclosure and other requirements of FERPA and the IDEA, as required by the District and with HIPAA and its respective rules and regulations as well as laws of the State of Iowa regarding student records. Further, any documentation or information obtained pursuant to this AGREEMENT will only be used for the limited purpose in which it was disclosed and will be destroyed or returned to the District, at the sole discretion of the District, upon termination of this AGREEMENT.

## **18.FORCE MAJEURE**

In the event the Contractor is unable to provide the Transportation Services as described in this AGREEMENT or if the Contractor does not provide services to the District due to the District closing school(s) for these or other reasons, the District may excuse in whole or in

part the Contractor from performance as specified. Examples of occurrences that may be considered shall include:

- a. Acts of nature or man-made events such as fires, chemical spills, loss of essential infrastructure e.g., electric, water or gas utilities.
- b. Flooding or other substantial severe weather events impacting the safe travel of students and staff.
- c. Civil disturbance and subsequent governmental action.
- d. Work stoppage or strike, picketing, or lockout by District employees.
- e. Governmental or District action in response to a national or locally recognized health and safety issue such as an epidemic or pandemic.
- f. Other events that are beyond the control of the District.

In the event of another pandemic, epidemic, or some other significant event which renders Contractor unable to provide Transportation Services or substantially diminishes Contractor's ability to provide such services, District and Contractor would mutually agree to problem solve for resolution to unforeseen issues. In such event, upon request by one of the parties, the parties agree to meet within 10 days to discuss a mutually agreeable solution to address such unforeseen issues. If a solution cannot be mutually agreed upon within a reasonable time frame determined by the parties, either party may exercise their rights to terminate the AGREEMENT for convenience pursuant to Section 23 of this AGREEMENT.

For the reasons identified, the District shall also have the right to terminate this AGREEMENT or assume responsibility for providing the services required under this AGREEMENT. The District shall also have the right to operate the buses provided by the Contractor under this AGREEMENT and employ such employees as the District deems appropriate and necessary to provide the regular services and operations contemplated by this AGREEMENT. Under the latter circumstance above, District shall pay the Contractor for the use of such buses used by the District consistent with the rates and provisions in this AGREEMENT that applied to the Contractor and the District minus all expenses and costs incurred by the District as reasonably necessary to secure the services of drivers and other hourly employees to provide the services. The District deduction of reasonable expenses and costs shall not exceed the difference between the total compensation paid the Contractor for such buses less the Contractor's fixed costs of operation for this AGREEMENT. If the District agrees to use and operate the Contractor's buses, the District will provide the Contractor with a lease AGREEMENT, along with insurance and compliance matters, consistent with that required of the Contractor under this AGREEMENT.

## **19. INDEPENDENT CONTRACTOR AND INDEMNITY**

The Contractor shall be an independent contractor, and as such, is not and shall not be construed to be an agent or employee of the District. The Contractor shall agree to indemnify, hold harmless and defend the District from and against any and all liabilities, expenses, losses, or damages, including but not limited to judgment, interest, costs and

attorney's fees, which the District may suffer or for which the District may be held liable as a result of claims, suits, causes of action or demands, made by any person or entity, whether related to injury, including death, property damage, or otherwise, in any way arising out of to any extent the negligent or careless acts or any other acts or omissions of Contractor or Contractor's drivers, employees, agents, and independent contractors, in the performance of services under this AGREEMENT. Contractor shall also indemnify and hold the District harmless against claims, demands or causes of action as a result of injury to Contractor's employees while in the course and scope of their employment under this AGREEMENT.

## **20.INSURANCE**

The Contractor awarded a "full service" Contract shall be required to maintain insurance coverage which is satisfactory to the Board of Education. The selected Contractor shall name the District as an additional insured per the following terms and conditions:

- a. Minimum limits for said coverage shall be:
  - i. Automobile Liability combined single limit for bodily injury and/or property damage shall equal ten million dollars (\$10,000,000).
  - ii. Commercial General Liability combined limit for bodily and/or property damage shall equal ten million dollars (\$ 10,000,000) per occurrence.
  - iii. Worker's Compensation coverage to be statutory and include all employees of the Contractor.
    - i. Contractor's Workers Compensation coverage shall be endorsed to provide a waiver of subrogation in favor of the Johnston Community School District.
  - iv. Contractual liability coverage.
  - v. Catastrophic Umbrella Liability- The limits specified in this SECTION may be satisfied with a combination of primary and Excess/Umbrella policies.
- b. Conditions of coverage are to include the following:
  - i. All certificates must contain thirty (30) day notice of cancellation to the District.
  - ii. All insurance policies and/or bonds will be written with insurance companies licensed to do business in the state of Iowa and subject to the approval of the District.
  - iii. Commercial General Liability and automobile liability must include the District as an additional insured. The policy shall be primary and non-contributory.
  - iv. Commercial General Liability insurance shall include Broad form Comprehensive General Liability Endorsement including sexual abuse or molestation coverage equal to the per occurrence limit.
  - v. All liability policies of the contractor shall be endorsed to provide a governmental immunities endorsement pursuant Iowa Code Section 670.4. (The company and the insured agree and state that the purchase of this policy of insurance by the insured does not waive any of the defenses of governmental immunity available to

the insured under Iowa Code 670.4 as it now exists and as it may be amended from time to time. The company and the insured further agree that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Iowa Code 670.4 as it now exists and may be amended from time to time).

- vi. Insurance shall be provided by a company with a current Best's rating of "A+" or better.
- c. The Contractor shall hold the Board of Education harmless and indemnify the District, the Superintendent, and District employees from every claim or demand by reason of injury to the Contractor, or to its employees and to third parties and injury to the extent caused by the Contractor or by direct employees of the Contractor.
- d. The selected Contractor shall name the District as an additional insured.

## **21.PERMITS AND LICENSES**

The Contractor shall provide and maintain in effect all licenses, permits or certifications which are or may be required by properly constituted authorities for the performance of the service to the District, and shall pay taxes assessed on vehicles. The Company shall procure and maintain all licenses, permits or certificates required on other property owned by it and used in connection with the furnishing of service to the District.

## **22.ASSIGNMENT**

The services contemplated under this AGREEMENT are deemed to be in the nature of personal services. The Contractor, without the prior written consent of the District, shall not assign this AGREEMENT. The Parties agree that assignment by Contractor of any sums due and owing

Contractor under this AGREEMENT shall not constitute an assignment of the AGREEMENT.

## **23.SUBCONTRACT**

The Contractor shall not subcontract any of the services required to be performed in this AGREEMENT, unless the Contractor has received the full prior written consent of District.

## **24.TERMINATION**

If either party shall violate any of the covenants or duties imposed upon it by this AGREEMENT, such violation shall entitle the other party to terminate this AGREEMENT. The party desiring to terminate for such cause shall give the offending party thirty (30) days written notice to remedy the violation. If at the end of such time the party notified has not removed the cause of complaint, remedied the purported violation, or made substantial progress {as reasonably determined by the non-breaching party) towards removing the cause of complaint or remedying the purported violation, then this AGREEMENT shall be deemed immediately terminated without further notice.

This AGREEMENT may be terminated by the District or Contractor at any time for convenience and without cause, upon ninety (90) days written notice in conformity with Iowa Code Section 285.5. During any termination notice period outlined above, the District reserves the right, without waive of any other rights against the Contractor, to arrange for the transportation of students itself, or to enter into a contract with any other person, firm or company, or to do any other act or thing necessary to assure continuity of transportation operations.

**25. 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.

**26. MODIFICATION**

District and Contactor may modify the terms of this AGREEMENT in whole or in part as circumstances may justify by mutual written AGREEMENT executed by the duly authorized representatives of the Parties. All other terms and conditions will remain as described in this AGREEMENT.

**27. SURVIVAL**

The mutual obligations described in this AGREEMENT shall survive the termination or expiration of this AGREEMENT.

**28. COMPLIANCE WITH LAW AND DISTRICT POLICY**

The Contractor will be familiar with and will comply with all applicable federal and state laws and regulations, as well as District policies and procedures, including the District's crisis management policy and plans, where applicable.

**29. 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 Postal Service, postage prepaid, registered, or certified mail.

Notices to District shall be addressed to:

Laura Kacer Superintendent  
Johnston Community School District  
6510 NW 62 Ave.

Notices to Contractor shall be addressed to: \_\_\_\_\_

Either District or Contractor may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

**30.ENTIRE AGREEMENT**

This AGREEMENT sets the entire AGREEMENT between District and Contractor concerning the subject matter hereof. There are no representations, either oral or written, between District and Contractor other than those contained in this AGREEMENT.

In WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT this 24th day of January, 2022

Johnston Community School District

(CONTRACTOR NAME)

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDICES**

Exhibit A: Rates of Compensation

Exhibit B: Data Security Agreement

**Johnston Community School District**  
**STUDENT TRANSPORTATION SERVICES AGREEMENT**  
**Exhibit A – Rates of Compensation**

*Note: To be included following, and based on the contractor's proposal submission.*

**Johnston Community School District**  
**STUDENT TRANSPORTATION SERVICES AGREEMENT**  
**Exhibit B – Data Security Agreement**

DATA SECURITY AGREEMENT

This Data Security Agreement is agreed upon effective \_\_\_\_\_(Date)

by and between:

Johnston Community School District

and \_\_\_\_ (Third Party Vendor)

**1. Disclosure of Johnston Community School District Data**

Third Party Vendor shall not disclose Johnston Community School District Data in any manner that would constitute a violation of state or federal law or the terms of this agreement including, without limitation, by means of outsourcing, sharing, retransfer, or access, to any person or entity, except:

- a. Employees or agents who actually and legitimately need to access or use Johnston Community School District Data in the performance of Third Party Vendor's duties to Johnston Community School District;
- b. Such third parties, such as but not limited to, subcontractors, but only after such third party has agreed in writing and in advance of any disclosure, to be bound by confidentiality terms at least as stringent as the terms of this Agreement; or
- c. Any other third party approved by the Johnston Community School District in writing and in advance of any disclosure, but only to the extent of such approval.

Third Party Vendor may also store Johnston Community School District Data on servers housed in datacenters owned and operated by third parties, provided the third parties have executed confidentiality agreements with Third Party Vendor at least as stringent as the terms of this agreement.

**2. Use of, Storage of, or Access to, Johnston Community School District Data**

Third Party Vendor shall only use, store, or access Johnston Community School District Data:

- a. In accordance with, and only to the extent permissible under this Agreement and the Contract. Third Party Vendor shall not utilize any form of data mining or scanning for marketing or advertising purposes; and
- b. In full compliance with any and all applicable laws and regulations, including but not limited to: Family Educational Rights and Privacy Act (FERPA) and, Health Insurance Portability and Accountability Act (HIPAA),

- c. Any transmission, transportation, or storage of Johnston Community School District Data outside the United States is prohibited except on prior written authorization by the Johnston Community School District.

### **3. Safeguarding Johnston Community School District Data**

Third Party Vendor agrees that use, storage, and access to Johnston Community School District Data shall be performed with that degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices. Third Party Vendor shall implement and maintain safeguards necessary to ensure the confidentiality, availability, and integrity of Johnston Community School District Data. Third Party Vendor shall also implement and maintain any safeguards required to be implemented by applicable state and federal laws and regulations. Such safeguards shall include as appropriate, and without limitation, the following:

- a. System Security. A System that is owned or operated by Third Party Vendor and contains Johnston Community School District Data shall be secured as follows:
  - i. Third Party Vendor shall implement controls reasonably necessary to prevent a breach.
  - ii. The System shall use secure protocols and encryption to safeguard Johnston Community School District Data in transit and storage.
  - iii. Third Party Vendor understands the System may be placed on a public network and shall implement safeguards reasonably necessary to protect its System from compromises and attacks. Third Party Vendor will protect the System with firewalls.
  - iv. Third Party Vendor shall:
    - Limit administrative access to the System,
    - Limit remote access to the System,
    - Limit account access and privileges to the least necessary for the proper functioning of the System
    - Remove or disable applications and services that are not necessary for the proper functioning of the System,
    - Use named user accounts and not generic or shared accounts,
    - Use Federated Single Sign On, Kerberos, or other industry compliant services for authentication and authorization, and
    - Enable an appropriate level of auditing and logging for the operating system and applications.
  - v. The System shall allow the changing of System and user passwords.
- b. Product Maintenance and Support
  - i. Third Party Vendor shall have an industry standard process for the timely review, testing, and installation of patches essential for safeguarding the confidentiality, integrity, or availability of the System or Johnston Community School District Data.
  - ii. Industry standard change management procedures shall be followed.
  - iii. Third Party Vendor shall ensure that the product is supported, provided that Johnston Community School District maintains the requisite subscriptions. Third Party Vendor shall provide Johnston Community School District with notice 12 months before the product becomes unsupported.

- iv. If necessary, and provided that Johnston Community School District maintains the requisite subscriptions, Third Party Vendor shall provide remote support via a secure connection method that includes an audit log of events. Remote access shall be limited to an as needed or as requested basis.
  - v. Third Party Vendor, to the extent applicable, shall guarantee at least 99% uptime of all services under the Contract, with the exception of scheduled maintenance, to be calculated on a monthly basis. Third Party Vendor shall provide a credit prorated to the amount of the downtime on the invoice following any month which did not meet the 99% uptime requirement.
- c. **Data Protections**
- i. Third Party Vendor shall only use, store, disclose, or access Johnston Community School District Data:
    - In accordance with, and only to the extent needed to provide services to Johnston Community School District; and
    - In full compliance with any and all applicable laws, and regulations
  - ii. Third Party Vendor shall implement controls reasonably necessary to prevent unauthorized use, disclosure, loss, acquisition of, or access to Johnston Community School District Data. This includes, but is not limited to personnel security measures, such as background checks.
  - iii. All transmissions of Johnston Community School District Data by Third Party Vendor shall be performed using a secure transfer method
- d. Third Party Vendor access to Johnston Community School District systems Johnston Community School District login credentials may be given to Third Party Vendors requiring access to secured computer equipment located on-site at the Johnston Community School District for the purposes of scheduled troubleshooting, maintenance, or updates to software provided or supplied by Third Party Vendor and installed on Johnston Community School District-owned computer equipment. In this case, the Johnston Community School District will provide the Third Party Vendor with credentials for logging in locally or through our secured Virtual Private Network (VPN), if required. Credentials will be created upon request approval by the Johnston Community School District's Technology department for which the Third Party Vendor will be working. As a condition of the Third Party Vendor's access to Johnston Community School District computing equipment the Third Party Vendor represents that they will not attempt to access any system(s) other than the one(s) designated in the request nor will the Third Party Vendor use any computer equipment for any purpose that is unlawful. All work performed by the Third Party Vendor while connected to Johnston Community School District computing equipment is subject to monitoring by Johnston Community School District staff and verification by the Johnston Community School District Department or Division requesting the access.

#### **4. Oversight**

The Johnston Community School District reserves the right to request security information reasonably necessary to ascertain Johnston Community School District's own compliance with state and federal data privacy laws. Upon the Johnston Community School District's request, Third Party Vendor shall provide a copy of its most recent SOC 2 audit report, and that of any data center in which Johnston Community School District's Data is stored.

## **5. Data Breach**

If Third Party Vendor becomes aware that Johnston Community School District Data may have been accessed, disclosed, or acquired without proper authorization and/or contrary to the terms of this Agreement or the Contract, Third Party Vendor shall use reasonable efforts to alert the Johnston Community School District of any Data Breach within two business days, and shall immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the Data Breach. Third Party Vendor shall give highest priority to immediately correcting any Data Breach and shall devote such resources as may be required to accomplish that goal. Third Party Vendor shall provide the Johnston Community School District information necessary to enable the Johnston Community School District to fully understand the nature and scope of the Data Breach. If required by applicable law, Third Party Vendor shall provide notice and credit monitoring to parties affected by any Data Breach. Upon request, Third Party Vendor shall provide Johnston Community School District information about what Third Party Vendor has done or plans to do to mitigate any deleterious effect of the unauthorized use or disclosure of, or access to, Johnston Community School District Data. In the event that a Data Breach requires Third Party Vendor's assistance in reinstalling software, such assistance shall be provided at no cost to the Johnston Community School District. The Johnston Community School District may discontinue payment for any services or products provided by Third Party Vendor until the Johnston Community School District, in its sole discretion, determines that the cause of the Data Breach has been sufficiently mitigated.

## **6. No Surreptitious Code**

Third Party Vendor warrants that, to the best of its knowledge, the System is free of and does not contain any code or mechanism that collects personal information or asserts control of the System without Johnston Community School District's consent, or which may restrict Johnston Community School District's access to or use of Johnston Community School District Data. Third Party Vendor further warrants that it will not knowingly introduce, via any means, spyware, adware, ransomware, rootkit, keylogger, virus, trojan, worm, or other code or mechanism designed to permit unauthorized access to Johnston Community School District Data, or which may restrict Johnston Community School District's access to or use of Johnston Community School District Data.

## **7. Compelled Disclosure**

If Third Party Vendor is served with any subpoena, discovery request, court order, or other legal request or command that calls for disclosure of any Johnston Community School District Data, Third Party Vendor shall promptly notify the Johnston Community School District in writing and provide the Johnston Community School District sufficient time to obtain a court order or take any other action the Johnston Community School District deems necessary to prevent disclosure or otherwise protect Johnston Community School District Data. In such event, Third Party Vendor shall provide Johnston Community School District prompt and full assistance in Johnston Community School District's efforts to protect Johnston Community School District Data. Where Third Party Vendor is prohibited by law from notifying the Johnston Community School District of a legal request for Johnston Community School District Data, Third Party Vendor will comply with all applicable laws and regulations with respect to the requested Johnston Community School District Data.

**8. Termination Procedures**

Upon expiration or termination of the Contract, Third Party Vendor shall ensure that no Data Breach occurs and shall follow the Johnston Community School District’s instructions as to the preservation, transfer, or destruction of Johnston Community School District Data. The method of destruction shall be accomplished by “purging” or “physical destruction”, in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88. Upon request by the Johnston Community School District, Third Party Vendor shall certify in writing to Johnston Community School District that return or destruction of data has been completed. Prior to such return or destruction, Third Party Vendor shall continue to protect Johnston Community School District Data in accordance with this Agreement.

**9. Survival; Order of Precedence**

This Agreement shall survive the expiration or earlier termination of the Contract. In the event the provisions of this Agreement conflict with any provision of the Contract, or Third Party Vendors’ warranties, support contract, service level agreement, or other agreement that the District or individual users must accept for use of any services under the Contract, the provisions of this Agreement shall prevail.

**10. Indemnification**

Third Party Vendor shall indemnify and hold harmless the District, its directors, employees, agents, and attorneys from and against any and all losses suffered by the District as a result of Third Party Vendor’s breach of this Agreement or Contract, or arising out of or in connection with Vendor’s provision of services, including any losses due to an inappropriate data disclosure or data breach. Vendor also shall defend, indemnify, and hold harmless the District, its directors, employees, agents, and attorneys from and against any and all claim, demand, challenge, suit, loss, cost, damage, or liability based on any assertion that any component of the services to be provided infringes, misappropriates, or violates any patent right, copyright, trade secret, or other proprietary right of any third party. The District can neither agree to hold Third Party Vendor harmless nor agree to indemnify Third Party Vendor as a matter of law and any provisions to the contrary are void.

**11. Applicable Law and Conflict Resolution**

- a. This Agreement and Contract shall be construed in accordance with and governed by the laws of the State of Iowa. Third Party Vendor consents to personal jurisdiction in the state and federal courts located in Polk County, Iowa for any lawsuit arising from or relating to this Agreement or Contract.
- b. If either party institutes legal action in connection with any controversy arising out of this Agreement or Contract or to interpret or enforce any rights thereunder, the prevailing party shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees and litigation expenses incurred by the prevailing party, including those incurred on appeal.

**12. Definitions**

- a. **Johnston Community School District Data:** Johnston Community School District Data is any and all data that the Johnston Community School District has disclosed to Third Party Vendor. For the purposes of this Agreement, Johnston Community School District Data does not cease to be Johnston Community School District Data solely because it is transferred or transmitted beyond the Johnston Community School District’s immediate possession, custody, or control.
- b. **Data Breach:** The unauthorized access and acquisition of computerized data that materially compromises the security or confidentiality of confidential or sensitive personal information maintained by the Johnston Community School District as part of a database of personal information regarding multiple individuals and that causes or the Johnston Community School District reasonably believes has caused or will cause loss or injury to any Johnston Community School District constituent.
- c. **System:** An assembly of components that supports an operational role or accomplishes a specific objective. This may include a discrete set of information resources (network, server, computer, software, application, operating system or storage devices) organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- d. **Change Management:** A formal process used to ensure that changes to a system are introduced in a controlled and coordinated manner. This reduces the possibility that unnecessary changes will be introduced to a system, that faults or vulnerabilities are introduced to the system, or that changes made by other users are undone.
- e. **Contract.** Shall mean Third Party Vendors terms and conditions of sale and service.

	<b>Johnston CSD</b>	<b>Third Party Vendor</b>
Signature:		
Printed Name:		
Job Title:		
Date:		