



## CHARTER BUS AGREEMENT

This Agreement, entered into by and between Shelby County Board of Education, operating as Memphis- Shelby County Schools (“MSCS”) and \_\_\_\_\_, DOT# \_\_\_\_\_ (“Contractor”), is executed pursuant to the terms and conditions set forth herein.

**WHEREAS**, MSCS wishes to retain Contractor for transportation of students, volunteers and staff of MSCS;

**WHEREAS**, Contractor provides motor coach and related services, is an independent contractor and is willing to perform hereunder in accordance with the terms and conditions hereinafter set forth (the “Services”); and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### 1. Contractor and MSCS Representatives, Warranties and Responsibilities.

#### A. Contractor represents and warrants the following:

- That all of the Services to be performed by the Contractor under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services under the same or similar circumstances.
- That the Contractor has all necessary, current and active corporate power and has received all necessary corporate approvals to execute and deliver this Agreement and the individual executing this Agreement on behalf of the Contractor has been duly authorized to, act for and bind the company.
- That, after the execution of this Agreement, no Services will be performed, and MSCS shall have no responsibility to pay for any Services, not authorized by a Purchase Order issued by MSCS for the performance of the Services.

#### B. MSCS shall have the following obligations:

- Inspect the motor coach upon arrival, and notify the driver of any damages;
- Pay for any damage to the motor coach(es) caused by any of MSCS’ occupants, up to the maximum limits of MSCS’ governmental tort liability;
- Prohibit the use of alcohol or tobacco by any of MSCS’ occupants on the motor coach;
- Pay for the Services the amount described in paragraph 2; and
- Cause its occupants to adhere to any other reasonable rules or regulations of the Contractor, as set out in Exhibit A, attached hereto and incorporated into this Agreement by reference.
- Allow the Contractor to request the ordering school or department to sign a confirmation of the trip in the form set forth in Exhibit B. No other document shall be binding on MSCS.

### 2. Compensation. In consideration of Contractor’s performance of the Services delineated above:

- #### A. MSCS will issue a Purchase Order for each school location requesting Contractor’s Services and authorizing the Contractor to perform the Services. Each Purchase Order will include the specifics of the Services to be performed, as well as the cost, location and duration of the Services. Each Purchase Order issued pursuant to

this Agreement will incorporate the terms and conditions of this Agreement. Effective from the date of this Agreement, MSCS shall have no obligation to pay for Services that are not authorized in a Purchase Order.

- B. MSCS agrees to pay Contractor the fee set out in a Purchase Order issued by the school or department ordering the Services (the "Fee"). The Fee shall include any and all expenses of transportation, including but not limited to, maintenance, motor oil, fuel, lubricants, drivers, mileage, cleaning, and miscellaneous costs. The Fee shall be paid in full, subject to any adjustments due under paragraph 10 of this Agreement, within fourteen (14) days of the completion of the trip.
- C. MSCS agrees to pay a cancellation fee indicated in a Purchase Order for any cancellation within forty-eight (48) hours prior to the scheduled date for in-town Services and within fourteen (14) days prior to the scheduled date for out-of-town Services.

**3. Driver Requirements.** Contractor will provide qualified drivers for vehicles used in the provision of the Services:

**A. All drivers will:**

- be competent, qualified and trained in the operation of the vehicles they drive;
- have a valid permanent Commercial Driver's license, with all required endorsements, and such other licenses and qualifications as required by law;
- have a certified safe driving record and with no felony convictions of any kind and meet all Federal Motor Carrier Safety Regulations and the State of Tennessee requirements;
- satisfactorily complete a pre-employment review of their criminal conviction record and driving record, which tests shall thereafter be performed on no less frequently than an annual basis;
- not have been adjudicated to be a registered sex offender, have committed any felony crime involving the physical neglect of a child, or physical injury or death of a child, sexual exploitation of a child, or sexual offenses where a minor is the victim, or violation of similar laws. The Contractor further agrees that a violation of this condition shall be considered a material breach and may result in cancellation of the Agreement;
- have a timepiece with them while on duty to ensure adherence to established schedule times;
- have a mobile communication device with them while on duty to facilitate communications of any delays or other issues in the performance of the Services.

- B. Contractor agrees to conduct a background check and a drug test of every employee or agent that provides Services to MSCS under this Agreement and provide MSCS with such documentation if requested. MSCS reserves the right, at its sole and absolute discretion, to reject any employee or agent of Contractor from providing Services under this Agreement.

**4. Vehicle Requirements.** Motor coaches to be used under this Agreement shall:

- be constructed to Tennessee State and U.S. Federal standards and must meet all applicable Federal Motor Vehicle Safety Standards;
- have valid Tennessee Department of Transportation operating certificates and be maintained in safe and suitable condition for operation. Each vehicle must meet or exceed any and all inspections and tests required by the State of Tennessee;
- for all interstate travel and intrastate travel outside the borders of Shelby County be restricted to forty-seven (47) or more passenger motor coaches with restroom(s) onboard;
- be thoroughly cleaned and restrooms, where applicable, sanitized and stocked with toilet paper and soap prior to boarding;
- be equipped with operable cellular telephones or two-way radios capable of communication with the Contractor's dispatch office or maintenance facility; and
- have operable heating and air conditioning; and
- be equipped with the necessary storage space for band instruments, sports equipment, uniforms, luggage

and other supplies. This should include but not limited to any overhead storage space

The following are types of buses that may be used in the performance of the Services:

- Deluxe Motor Coach (44-60 passengers with restrooms, DVD/TV, capable of long trips)
- Large School Buses (72-84 passengers, equipment storage compartments)
- Medium School Buses (50-66 passengers, equipment storage compartments)
- Small School Buses (36-48 passengers, equipment storage compartments)
- Wheel Chair Accessible Buses (36-48 passengers, equipment storage compartments).

5. **Subcontractors.** The Contractor will not use any subcontractors for the performance of the Services without the express written consent of MSCS. Any approved subcontractor must meet the requirements of the Contractor, including drivers, vehicles and insurance required of Contractor under this Agreement. Proof of compliance must be provided with any request for consent.

6. **Assignment.** The Contractor shall not assign or subcontract the whole or any part of this Agreement without MSCS' prior written consent.

7. **Indemnity.** It is expressly agreed that MSCS will not assume liability for any injury (including death) to any persons or damage to any property arising out of the acts or omissions of the agents or employees of the Contractor. Further, to the extent permitted by law, Contractor will defend, indemnify and hold Shelby County Board of Education harmless from any and all demands, claims, suits, actions and legal proceedings brought against it, its board members, officers, employees or agents arising out of alleged acts or omissions by Contractor or its agents or employees in the course of performing Services to MSCS pursuant to this Agreement. This indemnity shall extend from the Contractor regardless of whether the Contractor believes that its agent or employee was acting within the scope of their employment. The foregoing provisions shall include, but not be limited to, any judgments, awards, settlements, reasonable attorney fees, and costs and expenses incurred by MSCS in connection with the defense of any actual or threatened action, proceeding or claim.

8. **Insurance.** During the term of this Agreement and any Purchase Order issued under this Agreement, Contractor shall maintain in full force and effect the insurance coverages and limits set forth in Exhibit C to this Agreement. All insurance policies shall name Shelby County Board of Education on the policy as additional insured. The Contractor shall furnish applicable certificates of insurance to MSCS prior to the commencement of this Agreement and Purchase Order issued. The Contractor's insurance shall be primary. Any insurance MSCS may purchase will be excess and noncontributory. The Contractor's Commercial General Liability Insurance shall be written to cover claims incurred, discovered, manifested or made during or after expiration of this Agreement.

9. **Non-Discrimination.** The Contractor agrees, warrants and assures compliance with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 503/504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and 38 USC Section 4212, along with the related regulations and reporting requirements of each. Contractor shall not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam era veteran. Further, to the extent applicable to Contractor, the Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam Era veteran. Such action includes, but not be limited to, the following: employment, promotion, upgrading, demotion or transfer, recruitment, advertising, layoff or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeship. To the extent required, Contractor shall, upon request, show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

10. **Nonperformance.** Buses shall arrive at the school (or other designated pick-up location) at least thirty (30) minutes prior to scheduled departure. If a trip is late due to poor Contractor scheduling or interrupted due to mechanical

or fuel problems, or for any other reason for which the Contractor is responsible, which causes up to 25% of the scheduled performance to be missed, the Contractor shall forfeit that percentage of the charter fee. For delays of more than 30 minutes caused by circumstances within the Contractor's reasonable control, regardless of whether all or part of a scheduled performance is missed, the Contractor shall provide the transportation and credit MSCS, as liquidated damages and not as a penalty, the following amounts:

30-59 minutes	an amount equal to 25% of the charter fee
60-90 minute	an amount equal to 50% of the charter fee
90+ minutes	an amount equal to 100% of the charter fee

11. **Performance Bond.** The Contractor agrees to furnish MSCS with a performance bond in the amount of \$25,000 to be maintained at all times throughout the term of this Agreement to secure Contractor's performance under this Agreement.

12. **Term.** The term of this Agreement shall commence upon the execution of this Agreement (the "Effective Date") and shall continue until one (1) year from its date of execution. Upon mutual agreement, Contractor and MSCS may renew this Agreement for additional terms of one year each

13. **Termination.** This Agreement shall commence upon the execution by both parties and shall continue until terminated. Either party may terminate this Agreement, for any reason, upon the delivery to the other party of a Termination Notice at least 7 days prior to the termination effective date, except that Contractor will be required to complete any trip for which a purchase order has been issued prior to the date of termination. The Contractor shall be compensated for Services properly rendered for any trip obligated prior to the effective date of termination.

14. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of Tennessee and a suit to enforce this agreement, if any, must be brought in an appropriate court of jurisdiction of Shelby County, Tennessee.

15. **Entire Agreement.** This Agreement, together with any MSCS Purchase Order document that may be executed pursuant to this Agreement and incorporated herein, constitutes the entire agreement between the parties. This Agreement expressly revokes any prior understandings, agreements, or representations, oral or written, of the parties. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties and approved by the MSCS Office of the General Counsel.

16. **Precedence.** Any preprinted or additional contract terms on Contractor's order forms shall be inapplicable and of no force and effect except to confirm the date, time, cost and location of the Services.

17. **Notice.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

***Notice to MSCS shall be sent to the following:***

Office of Risk Management  
Shelby County Schools  
160 South Hollywood Street  
Memphis, TN 38112

***Notice to Contractor shall be sent to the following (please print):***

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18. **Attorneys' Fees.** Should MSCS employ attorneys to enforce any of the provisions hereof, Contractor agrees to pay MSCS all reasonable costs, charges, and expenses, including attorneys' fees and costs, expended or incurred in connection therewith, as long as Contractor is the party against whom any final judgment is entered.

19. **Conflict of Interest.** Contractor warrants that no part of the compensation payable hereunder shall be paid directly or indirectly to an employee or official of MSCS as wages, compensation, or gifts in exchange in connection with the Services contemplated or performed relative to this Agreement. Contractor shall disclose in writing to MSCS' Office of the General Counsel any financial or beneficial interests that it, or its principals or officers, has in services, products, or companies recommended to MSCS in the performance of this Agreement. Failure to disclose any such interests shall be deemed a violation of this Agreement and will result in the forfeiture of all monies previously paid by MSCS to Contractor pursuant to this Agreement.

20. **Severability.** The invalidity of any provision of this Agreement shall not affect the validity of the remaining sections, clauses, or provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties, through their authorized representatives, have affixed their signatures below.

**CONTRACTOR**

**SHELBY COUNTY BOARD OF EDUCATION**

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

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

Name: \_\_\_\_\_

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

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

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

**Exhibit A**  
**Contractor's Rules and Regulations**

**Exhibit B**  
**Contractor's Form of Trip Confirmation**

## Exhibit C

### INSURANCE REQUIREMENTS FOR TOUR COMPANIES

The company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the Shelby County Board of Education and licensed in the state of Tennessee with a Best Insurance Rating of A and Class VII or better and authorized to do business in the state where the work is performed.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the Shelby County Board of Education, the Shelby County Board of Education may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the Shelby County Board of Education, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of the Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the Shelby County Board of Education, its officers, employees and agents. Contracts for third party service providers should include indemnity provisions that protect the Shelby County Board of Education from any liability arising out of the Company's loss of sensitive information.

Each certificate or policy shall require and state in writing the following clauses:

**Company shall provide notice to the Shelby County School Board of Education within three (3) business days following receipt of any notice of cancellation or material change in Company's insurance policy from Company's insurer. Such notice shall be provided to Shelby County Board of Education by registered mail, to the following addresses:**

Shelby County Board of Education  
Attn: Office of Risk Management  
160 S. Hollywood, Room #152  
Memphis, TN 38112

The Certificate of Insurance shall state the following: "The Shelby County Board of Education, its officials, agents, employees and representatives shall be named as additional insured on liability policies."

The additional insured endorsement shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

**WORKERS COMPENSATION:**

The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employer’s Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

**AUTOMOBILE LIABILITY:**

Covering owned, non-owned and hired vehicles with Minimum Limits of:

\$5,000,000 Each Occurrence Combined Single Limits

**COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage with Minimum Limits of:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

**UMBRELLA LIABILITY:** Minimum Limits of:

\$2,000,000 Each Occurrence Combined Single Limit

**PROPERTY INSURANCE:**

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by Company.

Any questions regarding these requirements should be directed to the Office of Risk Management please contact [RiskManagement@scsk12.org](mailto:RiskManagement@scsk12.org)

**Any approved provider that has not provided insurance coverage renewal by the expiration date will forfeit its approval, and the Contractor will be removed from SCS' approved vendor listing.**