**GUIDANCE FOR SCHOOL DISTRICTS**

This model amendment to the model agreement for transportation services is provided as a resource to address issues arising from the novel coronavirus with existing transportation services agreements and as a convenience to school districts in accordance with Idaho Code section 33-1510.

Use of this model amendment and the model agreement for transportation services is not a guarantee of reimbursement under Idaho Code section 33-1006 or any other state or federal funding program. Specifically, school districts should consider the impact of the alternative payment schedule on their costs in comparison to the statewide average reimbursable costs.

The provision of this model amendment does not constitute legal advice. SCHOOL DIstricts are strongly encouraged to contact THeir legal representatives for legal advice.

# *[first]* AMENDMENT TO AGREEMENT FOR TRANSPORTATION SERVICES BETWEEN *[school district]* AND *[contractor]*

This *[first]* Amendment to Agreement for transportation services (the “Amendment”) is entered into on *[date]* between the *[school district]*, *[county]* County, Idaho, referred to as the “Board” or “District,” and *[contractor]*, referred to as “Contractor.”

# *RECITALS*

1. The Board and Contractor entered into an Agreement for transportation services dated as of *[date]* (the “Agreement” or “Contract”).
2. The 2019 novel coronavirus (“COVID-19”) has resulted in a disruption of K through 12 education in Idaho and impacted the Agreement. Specifically, Governor Brad Little has declared an Extreme Emergency within the state arising from COVID-19, the Idaho Department of Health and Welfare has issued an Order to Self-Isolate, and the State Board of Education has issued COVID-19 School Operations Guidance including a “soft-closure” of in-person school operations.
3. The parties desire to amend the Agreement to address the disruptions arising from COVID-19 as set forth herein.

# AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated into this Amendment by this reference; the parties interest in avoiding litigation or arbitration, with respect to payment disputes caused by COVID-19; and the mutual promises set forth in this Amendment, the parties agree as follows:

1. Definitions. Terms, whether capitalized or not, in this Amendment shall have the meanings set forth in this Amendment and the Agreement unless the context requires otherwise. Section Two of the Agreement is amended by adding the following definitions:

“Base Compensation” shall mean the sum of all payments made to the Contractor pursuant to the regular payment schedule in Section Eleven of this Agreement for all elapsed Instructional Days in the current annual academic calendar.

“Closure” shall mean when more than fifty percent (50%) of all students enrolled at an educational facility served by Contractor are not physically attending class at the educational facility due to causes beyond the control and without the fault or negligence of either of the parties. Examples of such causes include, but are not limited to: acts of God or the public enemy, acts of the federal, state or local government in its sovereign capacity, fires, snow, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or mechanical failure of heating, cooling or other environmental systems. Closure includes a “soft closure,” which shall mean when students are not physically attending school or class, but instead are attending school remotely, using internet access, video links, or printed materials.

“Daily Mileage Rate” shall mean the Base Compensation divided by the number of elapsed Instructional Days in the current annual academic calendar for which the Board has paid the Contractor.

“Instructional Day” shall mean a day identified on the Board’s established annual academic calendar as a day when students are present at a facility or a day designated by the Board as a replacement or “make up” day for a day missed due to a Closure. An Instructional Day shall not include any Saturday, Sunday, or day identified on the Board’s academic calendar as a day when students are not present at a facility such as a holiday or teacher training day.

“Consecutive Instructional Days” shall mean adjoining calendar days identified on the Board’s academic calendar as a day when students are present at a facility. Consecutive Instructional Days include calendar days interrupted by one or more of the following: a Saturday; a Sunday; and calendar days identified as a holiday, break or teacher training day on the Board’s academic calendar.

1. Section Seven of the Agreement is hereby deleted and replaced in its entirety with the following:

**Section Seven – School Closing**

The Board or District shall inform Contractor as soon as reasonably possible of a Closure. Upon notice of a Closure, Contractor shall be paid under the Alternative Payment Schedule set forth under Section Eleven of this Agreement.

1. Section Eleven of the Agreement is hereby amended by adding the following:

**Alternative Payment Schedule**

1. On or before the *[xx]* day of each month after which a Closure on an Instructional Day occurs, the Contractor shall submit to the Board an invoice, which shall identify the request for payment under this Alternative Payment Schedule and include the date(s) of the Closure. On or before the *[xx]* day of the month in which the invoice is submitted, the Board shall pay the Contractor as follows:
2. If a Closure on five (5) or fewer Consecutive Instructional Days occurs, the Board shall pay the Contractor *[xx]* percent (*xx* %) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
3. If a Closure on more than five (5) Consecutive Instructional Days and fewer than twenty (20) consecutive Instructional Days occurs, the Board shall pay the Contractor *[xx]* percent (*xx* %) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
4. If a Closure on twenty (20) or more Consecutive Instructional Days occurs, the Board shall pay the Contractor *[xx]* percent (*xx* %) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
5. For the purposes of this Alternative Payment Schedule, the calculation of Consecutive Instructional Days shall begin anew or reset upon the occurrence of a day when fifty percent (50%) of all students enrolled at an educational facility served by the Contractor are physically attending class at the educational facility.
6. This Amendment shall be governed by, construed, and enforced in accordance with, the laws of the state of Idaho without regard to its conflicts of law principles.
7. The Agreement, as amended by this Amendment constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the Board and the Contractor. The Agreement may not be further amended in any manner except in a writing signed by the Board and the Contractor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives duly authorized so to do on the date and year written below.

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| *[school district]*:  By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *[contractor]*:  By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |