

## AGREEMENT FOR THIRD PARTY DRIVER EDUCATION SERVICES

This Agreement is dated as of the Effective Date as set forth in Section 4.S below, and is by and between the Board of Education of Township High School District No. 211, Cook County, Illinois (the "School District"), and Top Driver Acquisition, LLC, dba "Top Driver" (the "Contractor").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

### **SECTION 1. CONTRACTOR.**

A. **Scope of Services.** The School District retains Contractor to provide driver education behind the wheel instruction services (the "Services"), on an exclusive basis at James B. Conant, William Fremd, Palatine, Hoffman Estates and Schaumburg High Schools during the term hereof and as more fully described in the attached Request for Information Documents, in accordance with Contractor's proposal for the 2022-2023 and the 2023-2024 school years, including applicable summers and summer school programs, with an option for the Board, at its sole discretion, to renew the Agreement for the 2024-2025 and 2025-2026 school years, and Contractor agrees to provide the services and equipment specified in the Request for Information Documents. If Contractor will not provide Services for each of the high schools during the term of this Agreement, the School District may contract with other vendors providing similar services as necessary. For the purposes of this Agreement, the Request for Information Documents shall consist of the attached Request for Information-Driver Education Behind-the-Wheel Services, which is attached as Exhibit A to this Agreement, and the Contractor's proposal, which is attached as Exhibit B to this Agreement. When the term "Agreement" is used in this document, it shall include this document and the Request for Information Documents, unless the context otherwise requires. Further, if there is a conflict between the documents, this Agreement shall govern and control over the Exhibits. If there is a conflict between the Exhibits, the parties shall attempt to come to agreement regarding which term(s) controls; provided, however, that if the parties cannot agree, the School District shall have reasonable sole discretion regarding which provision controls.

B. **Representations of Contractor.** The Contractor represents that it is sufficiently experienced and competent to perform the Services in a manner consistent with the standards of professional practice by recognized Contractors providing services of a similar nature.

C. **Agreement Amount.** As compensation for administering the program, the School District will pay the Contractor the sum of \$575 per student (the "Per Student Fee") enrolled in the course after the end of the semester drop period (6<sup>th</sup> Day of Semester Roster). The Contractor will submit invoice to School District at/or near the mid-semester time frame. The School District shall pay all Per Student Fees in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

D. **Claim in Addition to Agreement Amount.** If the Contractor desires to make a claim for additional compensation because of action taken by the School District, the Contractor shall provide written notice to the School District of such claim within 15 days after occurrence of Contractor's knowledge of such action as provided by Section 4.F, Notice, of this Agreement, and no claim for additional compensation shall be valid unless made in accordance with this Section. Any changes in the Agreement amount shall be valid only upon written amendment pursuant to Section 4.D, Amendment, of this Agreement. Regardless of the decision of the School District relative to a claim submitted by the Contractor, the Contractor shall proceed with all the work required to complete the Services under this Agreement as determined by the School District without interruption.

E. **Taxes, Benefits, and Royalties.** Each payment by the School District to the Contractor includes all applicable federal, state, and municipal taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation because of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by the Contractor.

F. **Time of Performance.** The Contractor shall diligently and continuously prosecute the Services until the completion of the Services or upon the termination of this Agreement by the School District, as provided in Section 4.C.

G. **Communication and Reporting.** The School District and the Contractor shall meet prior to the beginning of each semester to align curriculum, discuss educational and logistical matters, and set a timetable for the reporting of student grades. Each semester, the Contractor shall regularly report to the School District's Superintendent, or the Superintendent's designee, regarding the progress of the Services during the term of this Agreement. Student grades will be reported by the Contractor on the timetable set at the beginning of the semester meeting.

H. **Criminal Background Check.** The Contractor shall not assign any employee or agent to instruct School District students who would be prohibited from being employed by the School District due to a conviction of a crime listed in 105 ILCS 5/10-21.9 or who is listed in the Illinois Sex Offender Registry or the Illinois Murderer and Violent Offender Against Youth Registry. The Contractor shall make every employee who instructs School District students under this Agreement available to the School District for submitting to a fingerprint-based criminal history records check and DCFS background check pursuant to 105 ILCS 5/10-21.9. The check shall be at the School District's cost and shall occur before any employee or agent instructs any School District students under this Agreement. The School District must provide a copy of the reports to the individual employee, but is not authorized to release them to the Contractor.

I. **Facility Use Agreement.** School District and Contractor shall enter into a separate facility use agreement (the "Facility Use Agreement"), in substantially the form of Exhibit C to this Agreement, where the Contractor shall be permitted to use classrooms and parking spaces during the term of this Agreement.

J. **Compliance with all Laws/Policies.** The Contractor shall comply with all applicable laws, regulations, rules, and policies promulgated by the federal, state, county, municipal and/or other government unit or regulatory body, including the School District, now in effect or which may be in effect during the performance of the Agreement. Included within the scope of the laws, regulations, and rules referred to in this Section, but in no way to operate as a limitation, are all forms of traffic regulations, public utility and Interstate Commerce Commission regulations, Workers' Compensation Laws, the Social Security Act, Occupational Safety and Health Act, the Consumer Product and Safety Act, the Illinois School Code and the Illinois Motor Vehicle Code. Contractor shall comply with all applicable federal, state, and local laws and regulations pertaining to wages and hours of employment of all personnel employed by the Contractor.

Vehicles and personnel must comply with all federal and state laws, rules, regulations, and statutes applicable to the performance of student driver education services, including, but not limited to, the Illinois School Code and the Illinois Vehicle Code, and all policies, rules and regulations of the School District, the State Board of Education, the Illinois Department of Transportation, and the local municipalities in which the vehicles will be operated.

Top Driver shall comply with all School District policies and procedures, including, without limitation, School District Policy KG, which the School District has provided.

K. **Vehicles.**

1. **Furnishing of Equipment and Personnel.** The Contractor shall furnish vehicles, equipment, and personnel sufficient to fulfill the Services. The School District will not be responsible for financing, holding title to, or licensing any vehicles.
2. **Condition of Vehicles.** All vehicles operated by the Contractor shall be kept clean and free from all mechanical, operational, and structural defects, and under no circumstance shall a vehicle with a reported mechanical or operational defect be used with students aboard. The vehicles shall have an average age of no more than four years with no vehicle being older than six years. All costs of equipment repair, maintenance, and operation, including fuel (as may be adjusted by Exhibit A or Exhibit B) shall be the sole financial responsibility of the Contractor.
3. **Required Information Related to Vehicles.** No later than July 1, 2022, and by July 1 of each year thereafter during the term of the Agreement, and as any vehicle is added or removed from service in the performance hereunder, the Contractor shall provide the School District with the

following information on all vehicles to be used in the transportation of students:

- a. Make, model, year and serial number.
- b. State license number, municipal vehicle sticker number and safety inspection sticker number.
- c. Capacity of vehicle.
- d. Ownership of vehicle.
- e. Vehicle maintenance history and past safety inspections upon request.

The Contractor shall provide the same information on any newly acquired vehicles, and shall update the information on state license, municipal vehicle, and safety inspection stickers whenever this information changes.

**L. Instructors.**

1. The Contractor shall be highly selective in the hiring of its instructors. Instructors should be individuals of ability, character, integrity, and fitness, who are acceptable to the School District. The School District reserves the right to require the removal or transfer of any instructor as reasonably determined by the School District in accordance with the law after discussion with Contractor.
2. Students shall not be instructed by any person other than a licensed instructor meeting all requirements for instructors as set forth by the Illinois State Board of Education and the Illinois Secretary of State and the Illinois Vehicle Code.
3. In the event of the removal or suspension of any instructor, the Contractor shall use good faith efforts to immediately replace the instructor without disruption in service and notify the School District.
4. The Contractor shall notify the School District if any instructor is cited for any reckless driving offense whether driving a vehicle used for the Services or personal vehicle. The Contractor shall not utilize any instructor who has ever been convicted of a DUI, reckless driving, or any criminal offense involving children.
5. Prior to the start of the school year, the Contractor shall provide the School District with a copy of its drug testing policy for instructors.
6. Each employee of the Contractor assigned to instruct School District students must always wear a School District issued identification badge while instructing School District students or on School District property

during school hours.

M. **Discipline.**

1. It shall be the instructor's responsibility for maintaining appropriate discipline. Incidents of inappropriate behaviors should immediately be reported in writing to the school principal at the respective building of the School District. Final authority in matters of discipline shall rest with the School District.
2. All problems dealing with student safety and discipline that are beyond the instructor's immediate ability to solve should be reported to the school principal.

N. **Accidents.** Should any accident occur involving a vehicle used by for the Services, with or without students on board, the Contractor will immediately notify the School District and follow the established School District accident procedures. It is the Contractor's responsibility to determine the road worthiness of any vehicle involved in an accident.

O. **Scheduling.** Contractor shall be responsible for the scheduling of Behind-the-Wheel instruction sessions with School District students, including any make-up or other sessions outside of regular school hours.

**SECTION 2. CONFIDENTIAL INFORMATION-TRADEMARKS.**

A. **Confidential Information.** The term "*Confidential Information*" shall mean information in the possession or under the control of the School District relating to the educational, employee, student record, technical, business, or corporate affairs of the School District; School District students, School District property; user information, including, without limitation, any information pertaining to usage of the School District's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement, except as contemplated and as necessary to perform hereunder, including reasonable signage on vehicles used hereunder.

B. **No Disclosure of Confidential Information by the Contractor.** The Contractor acknowledges that it shall, in performing the Services for the School District under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Contractor shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the School District. The

Contractor may disclose Confidential Information if consented to in writing by the School District, or if required pursuant to any judicial or administrative proceeding, but only after providing written notice to the School District of such potential release.

In addition, the Contractor shall comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 *et seq.*), regarding the confidentiality of student "education records" as defined in FERPA and "school student records" as defined in ISSRA. Any use of information contained in student education records to be released must be approved by the School District. To protect the confidentiality of student education records, the School District will limit access to student education records to those employees who reasonably need access to them to perform their responsibilities under this Agreement. The District will provide Contractor a copy of all applicable policies and requirements.

C. **Return of Confidential Information and School District Property.** Upon the termination of this Agreement, the Contractor shall return all Confidential Information and other property, documentation, or records belonging to the School District to the Superintendent.

D. **FOIA.** As an independent contractor of the School District, records in the possession of the Contractor related to this Agreement may be subject to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/5-1 *et seq.*; 5 ILCS 140/7(2). The Contractor, at the Contractor's reasonable cost, shall immediately provide the School District with any such records requested by the School District to timely respond to any FOIA request received by the School District. The School District will review all such records to determine whether FOIA exemptions apply before disclosing the records, such that information properly exempt as proprietary or prohibited from release by other laws or exempt for other reasons will not be released. If the Contractor refuses to provide a record that is the subject of a FOIA request to the School District and the Attorney General or a court of competent jurisdiction subsequently requires the release of the record or penalizes the School District in any way, the Contractor shall reimburse the School District for all reasonable costs, including attorneys' fees, incurred by the School District related to the FOIA request and records at issue.

### **SECTION 3. INDEMNIFICATION AND INSURANCE.**

**Hold Harmless and Indemnification.** To the extent permitted by law, the Contractor shall assume all liability for, and shall protect, defend, indemnify, and hold harmless the School District and its Board members, employees, and agents from and against all claims, actions, suits, judgments, costs, losses, expenses, and liabilities of whatsoever kind or nature including reasonable legal fees incurred by the School District arising out of bodily injury, including death, to any person or persons (including Contractor's employees and agents) or damage to or destruction of any property, including the loss of use thereof caused solely by any act, error, or omissions by the Contractor. Contractor's indemnification obligation set forth in this Section

shall not be limited by the amount of any insurance maintained by Contractor, or by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefits acts, or other employee benefit acts. The covenants of this Section shall survive the expiration or termination of this Agreement.

B. **Insurance.** Top Driver shall carry and maintain insurance in the amounts and forms described in Exhibit A, Request for Information-Driver Education Behind-the-Wheel Services.

C. **No Personal Liability.** No elected or appointed official or employee of the School District or member, officer or employee of Contractor shall be personally liable, in law or in contract, to the Contractor as the result of the execution of this Agreement.

D. **No Waiver of Tort Immunity Defenses.** Nothing contained in this Agreement, or in any other provision of this Agreement, is intended to constitute nor shall constitute a waiver of the defenses available to the School District under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, with respect to claims by third parties.

#### **SECTION 4. GENERAL PROVISIONS.**

A. **Relationship of the Parties.** The Contractor shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the School District and the Contractor.

B. **Conflict of Interest.** The Contractor represents and certifies that, to the best of its knowledge, (1) no School District employee or agent is interested in the business of the Contractor or this Agreement; (2) as of the date of this Agreement, the Contractor does not have any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Contractor nor any member, manager or officer of Contractor shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. **Termination/Suspension.**

1. **Termination of Agreement for Cause.** In the event of default in any of Contractor's or School District's covenants in this Agreement or the Facility Use Agreement and such default is not cured within 30 days after written notice of such default is delivered to Contractor or the School District, as the case may be, (or such longer period as may be reasonably necessary to cure such default so long as Contractor or the School District has commenced and is diligently prosecuting a cure of such default; provided that such longer period shall not exceed 60 days), the School

District or Contractor, as the case may be, may terminate the Agreement.

2. Termination of Agreement without Cause. The School District or Contractor may terminate the Agreement without cause by providing written notice to the Contractor or the School District, as the case may be, by March 1 or earlier in any school year and such termination shall take effect in the next school year; provided Contractor may exercise such termination right only in the event of (i) a twenty five percent (25%) drop in student enrollment in behind the wheel instruction services, (ii) changes in laws making performance by Contractor unreasonable or materially more expensive, (iii) changes in the cost of insurance required hereunder making performance unreasonable or materially more expensive, or (iv) the per gallon price of regular gasoline exceeding one hundred fifty percent (150%) of the per gallon price of gasoline as it exists on the Effective Date and the School District and Contractor not agreeing on a reasonable expense reimbursement adjustment payable to Contractor after good faith negotiation. For example, if the School District provides written notice to the Contractor on March 1, 2023, the termination will take effect on July 1, 2023.
3. Suspension Related to Safety. In the event of emergency, safety issue, or failure to maintain insurance, or any other condition that constitutes a substantial threat to the health or safety of students, employees, or others at the School District, as determined by the School District in its sole and reasonable discretion, the School District may immediately suspend Top Driver's activities hereunder until such condition has been remedied to the School District's satisfaction.
4. Suspension Related to Force Majeure. If the School District's schools are closed or will be closed for twenty consecutive student attendance days or more due to a cause beyond the School District's reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, pandemic, governmental act, or failure of the Internet, the School District may suspend Top Driver's activities hereunder during such period of closure. The parties agree to work in good faith to amend the Agreement to account for appropriate payment for services which may still be available to be provided by Top Driver during or after such suspension, including related to any services which might be actually provided by Contractor of premises during the school closure.

D. **Amendment.** No amendment or modification to this Agreement shall be effective unless and until the amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by School District and by Contractor.

E. **Assignment.** This Agreement may not be assigned by the School District or by the Contractor without the prior written consent of the other party.

F. **Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt.

Notices and communications to the School District shall be addressed to, and delivered at, the following address:

Township High School District No. 211  
1750 South Roselle Road  
Palatine, IL 60067  
Attention: Superintendent

Notices and communications to the Contractor shall be addressed to, and delivered at, the following address:

Top Driver  
200 W. 22<sup>nd</sup> Street, Suite 251  
Lombard, IL 60148  
Attention: Paul R. Zalatoris

G. **Third Party Beneficiary.** No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the School District or Contractor.

H. **Provisions Severable.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

I. **Time.** Time is of the essence in the performance of this Agreement.

J. **Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation,

under this Agreement falls on a Saturday, Sunday, federal, State, or School District holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal, State, or School District holiday.

K. **Governing Laws.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

L. **No Waiver.** The failure of either party to insist upon the performance of any of its terms and conditions, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no waiver had occurred.

M. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral relating to the subject matter of this Agreement.

N. **Authority to Execute.** Everyone signing this Agreement on behalf of the entity that constitutes the School District and the Contractor, represents and warrants that the individual is duly authorized to execute and deliver this Agreement on behalf of the entity, and that this Agreement is binding on the School District and the Contractor, as the case may be, in accordance with its terms.

O. **Survival of Terms.** Sections 2, 3, and any provisions of this Agreement which by their very nature are intended to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement and will inure to the benefit of and be binding upon the parties to this Agreement.

P. **Exhibit.** Exhibits A, B, and C are incorporated into and made part of this Agreement.

Q. **Captions.** The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the contents, but are not part of the context.

R. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

S. **Effective Date.** This Agreement shall be deemed dated and become effective on the date the last of the parties executes the Agreement as set forth below.

T.

BOARD OF EDUCATION OF  
TOWNSHIP HIGH SCHOOL DISTRICT  
NO. 211

By: Lauren C. Hummel  
Its: Chief Operating Officer

Attest: Barbara Peterson

Date: 8-10-2022

TOP DRIVER ACQUISITION, LLC

By: [Signature]  
Its: Manager

Attest: [Signature]

Date: 8-12-2022

**Exhibit A**  
**Request for Information-Driver Education Behind-the-Wheel Services**

(Exhibit A begins on the following page)

**Exhibit B**  
**Contractor Proposal**

(Exhibit B begins on the following page)

**Exhibit C**  
**Facility Use Agreement**

(Exhibit C begins on the following page)