



THIRD PARTY ADVERTISING AGREEMENT

This **Third Party Advertising Agreement** is made and entered into on this ____ day of _____, 20____, between The School Board of Miami-Dade County, Florida (“School Board”) and _____ (“Third Party Advertiser” or TPA).

WHEREAS, the School Board has established Board Rules to allow advertising on Board property in accordance with law; and,

WHEREAS, Third Party Advertiser desires to purchase advertising space on School Board property to provide financial support for school district programs, activities and athletics;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Scope of Advertisement**

Third Party Advertiser agrees to advertise on School Board property as detailed in the “Application for Advertising” attached hereto and incorporated herein. Third Party Advertiser grants School Board the authority to print, copy, distribute, publicly display and modify any material submitted by Third Party Advertiser.

2. **Authority**

Third Party Advertiser represents and warrants that it has the full right and authority to bind the individuals or entities in the advertising transactions as described herein and that all legal obligations arising out of the placement of the advertisement will be binding on both Third Party Advertiser and such individual or other entity it represents. The rights of the School Board shall in no way be affected by any dispute or claim between Third Party Advertiser and the individuals, individual advertisers it represents or any entity it represents.

3. **Content**

School Board reserves the right to reject, alter or refuse any material in its sole discretion in accordance with laws and School Board Rules as currently in effect and as they may be amended from time to time. School Board may, at its sole discretion, change or relocate advertisements in another position without Third Party Advertiser’s approval. Third Party Advertiser understands and agrees that School Board is not in any way restricted from granting advertising rights to others, including competitors of Third Party Advertiser. However, the Board may grant a TPA a restriction on having any competing medium within a certain number of feet from TPA’s equipment. Anything to the contrary notwithstanding, this agreement in no way grants any exclusivity rights to a TPA with respect to installation of its equipment or advertising at any specific a location or school site. For instance, one TPA may be permitted to display wall mounted ads at a school, while another TPA may be granted the sole right to display ads through the use of LCD screens.

School Board reserves the right to refuse to place any advertisement deemed to be in violation of the law or School Board Rule 6Gx13- 1A-1.151, Communication with the Public, **ADVERTISING ON SCHOOL BOARD PROPERTY**. School Board also reserves the absolute right to have Third Party Advertiser remove any advertisement for

which approval has been granted, whether or not the advertisement has been placed on display if, at any time during the term of this Agreement, that advertisement is deemed undesirable by the School Board, the School Board's designee or the school site administrator. In such event, Third Party Advertiser will be allowed to utilize a replacement advertisement so long as that replacement is deemed acceptable by the School Board's designee or the school site administrator and otherwise meets the laws and School Board Rules in effect at that time or as they may be amended from time to time.

Third Party Advertiser understands and agrees that the advertising is being permitted at the discretion of the School Board and in certain specified instances, at the discretion of the school site administrator, and such does not and is not intended to create an open or limited public forum.

4. Payment for Advertising

Third Party Advertiser agrees to remit the Advertising Fees as determined on the "Schedule of Fees," which will be negotiated at the time of contract. All payments must be made payable to the order of The School Board of Miami-Dade County, Florida. Payment shall be made on a monthly basis. The first monthly payment must be submitted to the School Board within 30 days of certification by the School Board of deployment (i.e., installation of advertising equipment or media) at the first school site. Monthly payments shall continue thereafter until the termination of the contract.

5. Most Favored Nation

If the Third Party Advertiser agrees to pay a higher price and/or to provide any additional benefit to any other school district, any other school site, or any other party for the same or essentially similar advertising materials or services, then Third Party Advertiser, without the requirement of any notice, shall pay such higher price and or additional benefits to all sites of the School Board of Miami-Dade County, Florida with whom the Third Party Advertiser has an agreement.

6. Duty to Remove and Restore - Security Deposit

Third Party Advertiser shall be responsible for the installation and removal of its advertising material and for the restoration of the installation location to the condition prior to the installation. All installations shall be done only under the supervision and with the advance approval, in writing, of the school principal or his/her designee. Third Party Advertiser is fully responsible for any and all damage done to any school property resulting from or related to the advertisement, installation, and removal of the advertisement or the of the medium transmitting the advertisements (e.g., placards, wallmounts, TV or LCD screens, etc.).

If the advertising material requires more than an easily removable mechanical attachment to a school fence or wall, the Third Party Advertiser shall deposit with the school a security deposit equal to one month's advertising fee or the reasonable estimate of the cost of removal and restoration of the property on which the advertisement was installed. At the sole discretion of the School Board or Site Administrator, as appropriate, this provision may be waived or amended for agreements that extend beyond a one (1) year period or of longer duration, upon the written approval of the School Board's designee or the Site Administrator.

Within thirty (30) days of written notice of the termination of this agreement or at the expiration of the Agreement term, Third Party Advertiser must remove all advertising material and related equipment from the School Board property.

7. Independent Contractor

School Board and Third Party Advertiser shall be and act as independent contractors under this agreement. The parties understand and agree that this agreement shall not be construed as, nor shall it create an agency, joint venture, partnership or employment relationship between the parties.

8. Limitation of Liability and Remedies

- A. School Board shall not be liable for errors in any advertisement. Third Party Advertiser herein agrees to be solely responsible for any errors or omissions related to content or to the placement or non-placement of its clients' ads.
- B. In the event the School Board terminates the agreement due to a breach of this agreement, the School Board shall not be required to refund any funds to Third Party Advertiser.
- C. Third Party Advertiser assumes full responsibility and liability for all materials, all advertisements displayed or transmitted in any medium, or printed and published pursuant to this agreement and shall indemnify the School Board and hold the School Board, its agents, representatives, and assigns harmless against all demands, claims or liability related to or arising from such materials or advertising media, or to any allegation that the content of any advertisements infringes on the intellectual property rights of a third party.
- D. Third Party Advertiser assumes full responsibility and liability for all of its materials and related advertising content and shall indemnify School Board and hold School Board harmless against all demands, claims or liability related to or arising from this advertising contract including but not limited to any claims or liabilities arising from personal injury or property damage suffered by School Board, any invitee, any student, its agents, its employees, or any third party.
- E. Third Party Advertiser recognizes and acknowledges that the advertising material will be located in a public place and that the school and School Board cannot and will not be responsible for any damage suffered to the advertisement or any of Third Party Advertiser's property and/or equipment. Third Party Advertiser expressly waives any and all rights to assert any claim for damages against the School Board or the school, including claims of negligence, gross negligence and/or intentional acts on the part of students and/or employees of the School Board and employee's of the school where the advertisements are being displayed. Accordingly, Third Party Advertiser expressly accepts the risk of and agrees to be solely responsible for any damage suffered by the advertising material, or equipment used to transmit any advertisements, no matter the cause.
- F. Third Party Advertiser shall retain sole ownership of any equipment used for the transmission or display of the advertising, and will be wholly responsible for its upkeep, maintenance and removal of same and for any costs related thereto. Third Party Advertiser shall bear sole responsibility for payment of costs of all equipment installed at any school facility, inclusive of hardware, software and requisite licenses and applicable fees. This provision is not intended to provide

any rights of ownership to the Third party Advertiser of any equipment or peripherals that may be owned by the School Board at any school facility where the Third Party Advertiser installs its equipment (e.g., electrical outlets, high speed internet lines, etc.).

9. No Third Party Beneficiaries

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this or any contract.

10. Modification; Non-Assignment

This agreement may not be modified unless approved in writing by both parties. Third Party Advertiser shall not assign this agreement without prior written approval from School Board.

11. Termination

School Board may terminate this agreement immediately without prior notice in the event Third Party Advertiser breaches any term or condition hereof, and Third Party Advertiser shall forfeit any unused portion of the fee. At its sole discretion, and at any time within the term of this agreement, without the necessity of cause, School Board may terminate this agreement for convenience upon ten (10) days written notice to the Third Party Advertiser. In the event of such termination for convenience and upon the removal of the advertising in accordance with the requirements of this agreement, School Board shall repay to Third Party Advertiser any unused portion of the fee.

12. Governing Law & Venue

This agreement shall be construed in accordance with the laws of the State of Florida without regard to any of its conflict rules. Any dispute with respect to this agreement is subject to the laws of Florida, with venue exclusively in a court of competent jurisdiction sitting in Miami-Dade County. Each party shall be responsible for its own attorneys' fees and costs incurred as a result of any action or proceeding under this agreement.

13. Indemnification and Insurance

In consideration of this Contract, if awarded, the Vendor agrees without reservation to the indemnification and insurance clauses contained herein

INDEMNIFICATION

The Vendor shall hold harmless, indemnify and defend the indemnitees (as hereinafter defined) against any claim, action, loss, damage, injury, liability, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons including death, or damage to tangible property arising out of or incidental to the performance of this Contract (including goods and services provided thereto) by or on behalf of the Vendor, whether or not due to or caused in part by the negligence or other culpability of the indemnitee, excluding only the sole negligence or culpability of the indemnitee. The following shall be deemed to be indemnitees: The School Board of Miami-Dade County, Florida and its members, officers, representatives, agents, and employees.

INSURANCE

The insurance coverages and limits shall meet, at a minimum, the following requirements:

1. Commercial General Liability Insurance in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage.
2. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the operations of the Vendor, in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage.
3. Workers' Compensation Insurance for all employees of the Vendor as required by Florida Statutes.
4. Professional Liability Insurance, arising out of or the rendering or failure to render professional services in the performance of this agreement, including all provisions of indemnification which is part of this agreement. The insurance shall be subject to a maximum deductible not to exceed \$25,000. The minimum limits to be maintained by the Provider(s) (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1 million per claim/annual aggregate.

"The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be an additional insured on all liability coverages except Workers' Compensation insurance. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Vendor.

This is the entire agreement between the parties. No other promises or agreements have been made other than those in this agreement. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the provisions of this contract, shall not be construed as a waiver or relinquishment for the failure of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless in writing and signed by the parties. This Agreement will not be binding on the School Board until approved and executed by its designee hereinbelow.

The undersigned agree to the terms stated above:

THIRD PARTY ADVERTISER:

(Name of Individual or Entity)

(Name of Individual signing on behalf of self or entity)

By: _____
(Signature of Individual signing on behalf of self or entity)

Title: _____

Date: _____

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By: _____
(Superintendent of Schools/ Principal)

(Name of School)

Date: _____