

AGREEMENT

THIS AGREEMENT, dated as of this 6 day of December, 2010, is by and between School Media, Inc., a Minnesota corporation 8560 Cottonwood Street NW, Coon Rapids, Minnesota, 55433 (hereinafter "School Media") and SCHOOL (hereinafter "School").

WHEREAS, School Media contracts with local, regional and national organizations and corporations (hereinafter "Advertisers") to advertise their products and services that have a positive educational and/or nutritional value in schools (hereinafter "Ads");

WHEREAS, School Media contracts with the Advertisers to provide, place and maintain advertisements for these Advertisers in schools;

WHEREAS, School desires to contract with School Media to provide space within the School, to be defined in more detail in this Agreement, for School Media to place the above-described Ads under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

1. **ADVERTISEMENT**. School shall provide space within the School, as will be defined in more detail below, to School Media for the placement of Ads.

2. **SPACE**. For purposes of this Agreement, School and School Media agree that School Media will place advertisements on School lockers by "wrapping" the lockers with the Advertisers advertisements. One advertisement will occupy a 5 foot by 10 foot space. (hereinafter "Advertising Unit"). School agrees to provide to School Media 12 Advertising Units. Minimum space requirement is ten percent. Maximum allocated space will not exceed twenty percent unless authorized by both parties.

3. **DURATION**. The duration of this Agreement shall be for a period of 36 months. The Parties agree that the Ads on the various Advertising Units can be changed by School Media once every 3 months.

4. **CONTENT**. School shall own no right to the content of the Ads. The School shall have no editorial control over the Ads. The School shall have the right to accept or reject an Ad in its entirety if the School reasonably believes the content of the Ad is not of high educational or nutritional value.

5. **MAINTENANCE**. School hereby acknowledges the importance to the Advertisers to have their Ads be maintained in a "like new" manner, free from damage, defacement or destruction.

School Media agrees to maintain the Ads in a manner such that Ads appear "like new" and are free from damage, defacement or destruction. School Media agrees to provide School access to School Media's web page specifically designed for School to inform School Media of damaged, defaced or destroyed Ads. School agrees that it will use School Media's web page to inform School Media of damaged, defaced or destroyed Ads within one business day of discovery of the damaged, defaced or destroyed Ad. School Media will respond to and repair or replace damaged, defaced or destroyed Ads within 3-5 business days of notice given by School. School shall coordinate and cooperate with School Media and its repair technicians to schedule the repair or replacement of any damaged, defaced or destroyed Ads.

6. **FEE.** School Media agrees that it shall pay School \$ 162 for each Advertising Unit provided by School under the terms of this Agreement (hereinafter "Unit Fee").

7. **CONTRACTS WITH ADVERTISERS.** Despite the foregoing, School shall have no input or control regarding School Media Inc. contracts with the Advertisers. In addition, School agrees not to contract directly with any of School Media's Advertisers for the placement of advertisements within the School for a period of three years following the expiration of this Agreement.

8. **NON-COMPETE.** School agrees not to contract with any entity other than School Media for the sale of private advertisements within the School for a period of one year following the expiration of this Agreement.

9. **TERMINATION BY SCHOOL MEDIA OR SCHOOL.** In the event of a material default by either party of its obligations hereunder and the continuation of such default for ninety (90) days after notice of such default has been given to the defaulting party, the aggrieved party may terminate this Agreement by written notice to the defaulting party.

10. **CONFIDENTIALITY.** It is anticipated that both parties will want to publicize the fact that the School has agreed to provide Advertising Units to School Media, however, School Media and School agree to hold in strict confidence all information relating to this Agreement and/or School or School Media Inc. business supplied in connection herewith which is received by either School or School Media from the other.

11. **INDEMNIFICATION.**

a. **School Media Indemnification Obligation.** School Media shall defend, indemnify and hold harmless School from any and all claims, demands, actions, liabilities, losses, damages, judgments, awards, costs, disbursements and expenses (including reasonable attorney's fees and allocable costs of in-house counsel) which arises out of, is in connection with, is based upon or is in any manner related to (1) School Media performance of this Agreement or (2) School Media

liability or other fault owed to persons or entities not party to this Agreement which is caused by School Media's performance of or failure to perform this Agreement. Notwithstanding School Media's obligations set forth in this subparagraph, if School's direction of School Media causes School Media's failure to perform any aspect of this Agreement, or causes School Media's liability or other fault to any third person, then School Media will not be required to defend, indemnify or hold harmless School.

- b. **Sponsor Indemnification Obligation.** School shall defend, indemnify and hold harmless School Media from any and all claims, demands, actions, liabilities, losses, damages, judgments, awards, costs, disbursements and expenses (including reasonable attorney's fees and allocable costs of in-house counsel) which arises out of, is in connection with, is based upon or is in any manner related to (1) School's performance of this Agreement or (2) School's liability or other fault owed to persons or entities not party to this Agreement which is caused by School's performance of or failure to perform this Agreement. Notwithstanding School's obligations set forth in this subparagraph, if School Media's direction of School causes School's failure to perform any aspect of this Agreement, or causes School's liability or other fault to any third person, then School will not be required to defend, indemnify or hold harmless School Media.

12. **INSURANCE.** School Media agrees to maintain, during the times this Agreement is in effect, a commercial general liability insurance policy or policies which includes coverage for bodily injury and property damage relating to premises and ongoing operations, and that School shall be identified as an additional insured under the policy or policies for liabilities for bodily injury and property damage caused in whole or in part by School Media's acts or omissions or the acts or omissions of those acting on School Media's behalf in the performance of ongoing operations related to this Agreement. School Media agrees to provide School with a certificate of insurance evidencing this commercial general liability insurance and School's identification as an additional insured.

13. **SUCCESSORS AND ASSIGNS.** This Agreement may not be assigned without the written consent of the other party which consent shall not be unreasonably withheld.

14. **SEVERABILITY.** In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable, the validity, legality and

enforceability of the remaining provisions or obligations, or of such provision or obligation shall not in any way be affected or impaired thereby.

15. **NO WAIVER; REMEDIES CUMULATIVE.** With the exception of the provisions outlined in Paragraph 11 above, no failure or delay on the part of the parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies, which the parties would otherwise have.

16. **CONSTRUED ACCORDING TO MINNESOTA LAW.** This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Minnesota.

17. **MEDIATION.** The parties will attempt in good faith to promptly resolve any dispute arising out of this Agreement by negotiations between representatives who have authority to settle the controversy. If unsuccessful, the parties shall engage in non-binding third-party mediation, with fees and expenses of such mediation apportioned equally to each side; provided, however, that no party is required to mediate any dispute in case of irreparable harm or if there is a threat to public health or safety by continuing performance under the Agreement. The party seeking relief under the Agreement shall compile a list of three (3) mediators and send it to the other party. Within five (5) business days, the other party shall either select one of these three (3) mediators or send a new list of three (3) mediators to the first party. If the parties cannot agree on a mediator, then the mediation shall be conducted by two (2) mediators, with one (1) being chosen by each party. Any dispute not resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms of this Agreement.

18. **INDEPENDENT CONTRACTOR.** School Media agrees that its services are provided as an independent contractor and that individuals who work with School shall not be deemed employees of School for any reason. Further, neither party shall have the authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. This Agreement is not intended to be a distributorship or franchisee agreement, and does not render School Media a distributor or dealer on behalf of School for any purpose whatsoever.

21. **INTELLECTUAL PROPERTY.** School Media warrants that its activities and trademarks do not violate the trademark, patent, copyright, trade secret, or any other intellectual property rights of any person or entity, and School Media will defend Associated School and hold it harmless in any litigation for misappropriation of trade secrets, unfair competition and

trademark, patent, copyright infringement, or any other intellectual property claim which may arise out of School Media's use of such intellectual property.

22. **NEGOTIATED TERMS.** This Agreement has been the result of negotiations between the parties, and therefore the parties agree neither the Agreement nor portions of the Agreement's language are to be construed against any party as a drafter of the Agreement or any portions thereof.

23. **ENTIRE AGREEMENT.** This instrument constitutes the entire Agreement between the parties concerning the subject matter herein. No other agreements, representations or promises or amendments shall apply unless made in writing and expressly made a part of this Agreement.

SCHOOL MEDIA, INC.

SCHOOL

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____