

# Trademark Licensing Administrative Procedures

## Vendors

The Board seeks to protect its reputation, interest, and the public at large, by restricting the unauthorized use of names, trademarks, images, and logos that define and identify Miami-Dade County Public Schools (M-DCPS).

Members of the public seeking to use the Board's names, trademarks, or logos for commercial purposes must enter into a Licensing Agreement with the Board. The purpose of these procedures is to answer many of the questions that arise concerning the protection of a school's trademarks and logos from unauthorized use by outside entities. The procedures are written in a question and answer format to provide a more "user friendly" presentation of the issues.

The use of school trademarks, logos, names, and images by outside entities that define and identify Miami-Dade County Public Schools (MDCPS) is prohibited without prior written authorization. These procedures are intended to generate revenue that will support interscholastic athletics and activities at the secondary level and special programs and activities at the elementary level, and other Miami-Dade County Public Schools (MDCPS) programs. The use of school trademarks, logos, names, and images by outside entities are governed by the provisions in Board Policy 9701- TRADEMARK LICENSING, PROTECTION AND USE (**Attachment 1**).

## Questions & Answers

### *Which groups are permitted to use Board trademarks?*

Vendors seeking to use the Board's names, trademarks, or logos for commercial purposes in accordance with administrative procedures. Vendors must have an approved written licensing agreement with the Board (**Attachment 2**).

### *Which groups are prohibited from using Board trademarks?*

1. Members of the general public, other groups not previously listed, outside organizations, vendors, commercial manufacturers, commercial entities, wholesalers, and retailers are prohibited from using Board trademarks without a written licensing agreement with the Board in accordance with administrative procedures implementing this policy.

2. Production of any merchandise with Board trademarks for sale or distribution is prohibited unless the vendor has a written licensing agreement with the Board that may be subject to royalty payments.
3. The use of Board trademarks to promote a commercial entity, or which states or implies an endorsement, or approval of a product, service, or company, is prohibited unless the commercial entity has a licensing agreement with the Board.

***What uses of trademarks would be considered inappropriate and not permitted?***

Trademark(s) shall not be used in connection with the following products or in any other manner that would injure the reputation of the Board, M-DCPS or any school. Prohibited uses include, but are not limited to:

1. Alcoholic Beverages- distilled alcohol liquors, wines, beers, and malt liquors or the conveyance or distribution of these items.
2. Tobacco Products- all types.
3. Controlled Substances
4. Inherently Dangerous Products- firearms, weapons, explosives, knives, and fuels.
5. Obscene or Disparaging Products- including, but not limited to, nude photographs, caricature poster art or designs.
6. Religious products or designs
7. Political products or design
8. Gambling

***How much does the License Agreement cost?***

Vendors will need to submit an advance Royalty Payment (“the Advance”) set forth in the Royalty Fee Schedule in Trademark License Revenue Report (**Attachment 3**). To renew the License Agreement, vendors must complete and submit the Revenue Report prior to the expiration of the term of the License Agreement. The Advance and Royalty Payment should be made payable via money order or check to:

School Board of Miami-Dade County

1450 NE 2nd Ave. Room 615

Miami, FL 33132

***Who can utilize the funds received from use of trademarks?***

The written approved use of trademarks is intended to generate revenue that will support interscholastic athletics and activities at the secondary level and special programs and activities at the elementary level, and other Miami-Dade County Public Schools (M-DCPS) programs.

***Can a school enter into an agreement with the general public for the use of a Board trademark?***

No. Vendors will need to complete and submit a License Application, License Agreement, the Advance Royalty Payment, and all other necessary documents in accordance with administrative procedures, to enter into an agreement with the Board.

***What if another School Board Policy conflicts with the provisions in the Trademark Licensing and Use Board Policy?***

- According to the Board Policy 9701 – Trademark Licensing, Protection and Use, this policy supersedes any prior Board Policy.

## **ATTACHMENT 1**

### **The School Board of Miami-Dade County Bylaws & Policies**

Unless a specific policy has been amended and the date the policy was revised is noted at the bottom of that policy, the Bylaws and Policies of the Miami-Dade County Public Schools were adopted on May 11, 2011 and were in effect beginning July 1, 2011.

#### **9701 - TRADEMARK LICENSING, PROTECTION, AND USE**

The School Board (District) seeks to protect its reputation, interest, and the public at large, by prohibiting the unauthorized use of trademarks, images, logos, mascots, names, phrases, symbols or other indicia that are associated with the District (marks).

Many of the Board's marks are officially registered trademarks with the United States Patent and Trademark Office and/or the Florida Department of State in order to provide notice to the public of the Board's ownership of the mark, create a legal presumption of ownership nationwide and/or Statewide, and establish the exclusive right to use the marks on or in connection with the goods or services set forth in the registration. The Board also possesses unregistered common law rights in other marks.

Members of the public seeking to use Board marks must enter into a licensing agreement with the Board in accordance with administrative procedures developed by the Superintendent to implement this policy. The Superintendent is authorized and responsible for informing the public on how to conduct business with the Board under this policy.

#### **Definitions**

*License* - a limited term contract between the Board and an entity or individual granted permission to use Board marks in connection with providing goods or services. A fee may be charged for licenses. All goods or services must be approved by the Board in a manner that allows it to control the nature and quality of the goods and services in accordance with the administrative procedures that implement this policy.

*License Agreement* - an agreement which may include royalties to the Board if a vendor proposes to provide goods or services' using any of the Board's marks and that provides the Board with control over the manner in which the marks are used and the nature and quality of the goods or services offered under the agreement.

#### **District and School Non-Commercial Permitted Uses**

The Board's marks may be used as follows:

- A. District students, student organizations, and school groups may use District marks to promote a group of students, an activity or event, a school, or the District if the use is in connection with approved school-related activities and is for non-commercial, educational purposes. No charge, prior approval, or license agreement is required under this provision for such use. This permission may be revoked if the use is improper or does not conform to this policy and the administrative procedures implementing this policy.
  
- B. School principals may provide written permission to parent organizations, community groups, school affiliated organizations, booster clubs, and other District affiliated school support organizations, to use Board marks to promote a group of students, an activity or event, a school, or the District, if the use is in connection with approved school-related activities. While written permission is required to allow the Board to retain full right to control the manner in which the marks are used and to approve the nature and quality of any goods or services offered, no charge or fee is required under this provision for such non-commercial, educational use.
  - 1. At any time, the Principal may give written permission on the Board's behalf for each fiscal year for these organizations to use the Board's marks for that school. At the Principal's discretion, this authorization may be revoked at any time if the Principal determines that the organization has failed to comply with the terms of this policy. If such a determination is made, the Principal will notify the organization in writing of the reason for the revocation. The organization may appeal the revocation to the Superintendent whose decision will be final. The appeal must be filed in writing with the Superintendent no later than five (5) business days from the date of the Principal's letter. In the event of a revocation, the organization shall no longer be authorized to use Board marks.
  
  - 2. Schools and departments that contract with any individual or entity for commercial use of the Board's marks must ensure that there is a written agreement in a form approved by Board attorney's office that protects the Board marks from unauthorized use. Further assistance with such agreements may be provided by the Board attorney's office upon request.

### **Public and Commercial Permitted Uses- Licensing Agreements**

- A. Members of the general public, other groups not previously listed, outside organizations, vendors, commercial manufacturers, commercial entities, wholesalers, and retailers are prohibited from using Board marks without a written license agreement with the Board in accordance with this policy and the administrative procedures implementing this policy.

- B. Production of any merchandise with Board marks for sale or distribution is prohibited unless the vendor has a written license agreement with the Board that may be subject to the payment of royalties.
- C. The use of Board marks to promote a commercial entity, or which states or implies an endorsement, or approval of a product, service, or company, is prohibited unless the commercial entity has a license agreement with the Board.

### **Prohibited Uses**

Mark(s) shall not be used in connection with the following products or in any other manner that would injure the reputation of the Board, District or any school or cause the Board to lose the ability to enforce its exclusive rights in the mark(s). Prohibited uses include, but are not limited to:

- A. alcoholic beverages - distilled alcohol liquors, wines, beers, and malt liquors or the conveyance or distribution of these items;
- B. tobacco, smoking, and vapor products - all types;
- C. controlled substances;
- D. inherently dangerous products - firearms, weapons, explosives, knives, and fuels;
- E. obscene or disparaging products - including, but not limited to, nude photographs, caricature poster art, or designs;
- F. religious products or designs;
- G. political products or design;
- H. gambling; or
- I. products that promote sexual conduct or contain sexually explicit materials.

### **Board Authority**

The Board has the sole right to approve or reject, in all cases, at any time, and at its sole discretion, any and all future license agreements, proposals, contracts, and/or to approve or reject any organization's use of Board marks.

Commercial licensees shall indemnify and hold the District harmless from any claims, including those for bodily injury and intellectual property right infringement, arising out of the use or licensing of Board marks.

## **School Site Responsibilities**

In accordance with administrative procedures implementing this policy, Principals shall:

- A. ensure that Board marks are only used with authorization from the District and in a manner that provides the Board with control over the manner in which they are used and the goods or services that are offered in connection with the marks;
- B. account for all funds received by the school from license agreements or associated with the use of Board marks;
- C. prohibit the commercial use of any Board marks unless the commercial entity has an approved and executed license agreement; and
- D. report any known violations of this policy.

## **Revenue Distribution**

- A. Revenues generated from licensing agreements negotiated by the Principal will be shared with the District at a ratio of sixty percent (60%) to the school and forty percent (40%) to the District, with the school's share retained for internal fund purposes.
- B. 100% of revenues generated from licensing agreements negotiated by the District may be retained by the District or distributed equitably to schools as stipulated in the agreement.

## **Enforcement**

Any unauthorized use of Board marks, whether registered or common law is a violation of Federal and/or State law governing trademark infringement and unfair competition. Violations are subject to injunctive relief restraining further infringement, money damages including profits derived from the wrongful sale or provision of trademarked goods or services and an order requiring destruction of any such counterfeit or imitations in the offender's possession.

The Board will take action to enforce its exclusive rights in Board marks where necessary. Employees are subject to disciplinary action for violations of this policy.

15 U.S.C. 1051 et seq.

Adopted 3/9/16

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## ATTACHMENT 2

### LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, (the "Effective Date"), by and between The School Board of Miami-Dade County, Florida, a political subdivision of the State of Florida, with a principal address of 1450 NE 2 Avenue, Miami, Florida 33132, hereinafter referred to as "Licensor" and \_\_\_\_\_, a \_\_\_\_\_, with a principal address of \_\_\_\_\_ hereinafter referred to as "Licensee".

WHEREAS, Licensor is the owner of or has the right to license the trademarks, service marks, symbols, logos, colors, characters, artwork, designs, names, copyrighted materials and/or other identifying features of Licensor listed on Exhibit A attached hereto and incorporated herein (hereinafter "Marks");

WHEREAS, Licensee desires to use one or more of the Marks in connection with apparel.

WHEREAS, in consideration of the Payments (as hereinafter defined), Licensor has agreed to grant to Licensee a non-exclusive, limited license to use the Marks, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee hereby agree as follows:

#### 1. Grant of License.

A. Licensor hereby grants to Licensee a non-exclusive license to use, exploit and affix the Marks in connection with the offering, marketing, promotion, provision, manufacturing, distribution and/or sale of the types of merchandise approved by Licensor pursuant to the terms of this Agreement (collectively, the "Products"). The Marks attached hereto and incorporated herein as Exhibit A are the only form of the Marks available for use by Licensee pursuant to this Agreement. Licensor may amend Exhibit A from time to time. The approved Products are set forth on Exhibit B attached hereto and incorporated herein. Except for the approved Products set forth on Exhibit B, the Marks may not be used in connection with any other product, service, promotion or merchandise.

B. Licensee agrees that it will not at any time do or cause to be done any actor thing, directly or indirectly, which contests or in any way impairs or tends to impair or dilutes or tends to dilute any part of Licensor's right, title and interest in the Marks.

Licensee shall have no right to assign its interest in the Marks created as a result of its use hereunder; provided, however, that Licensee may sublicense the Marks pursuant to, and in accordance with the provisions of Section 5 of this Agreement. Upon termination of this Agreement, Licensee shall immediately terminate all such use of the Marks and its rights and privileges hereunder shall terminate, subject to the terms of Section 3.B.

C. Subject to the terms of this Agreement, Licensee shall have the right to use the license granted hereunder for distribution of the Products throughout **Miami-Dade County**.

D. Licensee acknowledges that the license granted herein is non-exclusive, and that nothing in this Agreement shall prevent Licensor or any of its bookstores, booster clubs, concessionaires, or other entities from purchasing, selling, marketing or distributing products of any kind that use or otherwise exploit the Marks.

## 2. Royalty Payment.

A. In consideration of the rights granted by Licensor to Licensee hereunder, Licensee shall pay to Licensor the below listed payment fee and/or percentage of the Gross Revenue sum of all merchandise of all marks set forth in Exhibit A. For the purposes of this Agreement, "Gross Revenue" shall mean the total revenue arising from all sales of the Products or any exploitation or use of the license granted to Licensee hereunder, excluding sales taxes, if any. Gross Revenue shall not be reduced by any costs of Licensee or any third party, including, without limitation, any costs or expenses for commissions, freight, uncollectable accounts, manufacturing, costs associated with the sale, advertisement or distribution of the Products, or any indirect or overhead expenses of any kind.

Annual Sales of:

Up to \$1,000 in merchandise sales - royalty payment of \$100

More than \$1,001, but up to \$2,500 in merchandise sales -royalty payment of \$250

More than \$2,501, but up to \$5,000 in merchandise sales - royalty payment of \$450

More than \$5,001 up to \$10,000 in merchandise sales - royalty payment of \$800

More than \$10,001 but up to \$15,000 in merchandise sales royalty payment of \$900

More than \$15,001, but up to \$20,000 in merchandise sales royalty payment of \$1,000

Above \$20,000 and up to \$100,000 in merchandise sales – royalty payment shall equal 5% of gross revenues

B. Licensee shall pay the Royalty Payment to Licensor, made payable to School Board of Miami-Dade County, Florida, in advance prior to procuring a License. At the end of the one year Contract term Licensee shall remit a Trademark Annual Revenue Report, a detailed report setting forth all Gross Revenue, Products sales figures and other uses of the license granted hereunder, if any. Should the Royalty

Payment made in advance fall below the required amount, as set forth above, Licensee shall remit the difference along with the Trademark Annual Revenue Report.

C. On the annual Effective Date, Licensee shall pay to Licensor a nonrefundable advance Royalty Payment (the "Advance") as set forth in the above Schedule. The Advance shall apply as the Royalty Payment during the Initial Contract Term.

### 3. Term; Termination.

A. This Licensee shall commence performance of this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and shall complete performance no later than the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Term"). The Agreement may be extended for up to two (2) additional one (1) year terms upon mutual written Agreement of the Parties.

B. Prior to the expiration of the then current Term. The extensions shall not be granted unless the Licensee has met all requirements set forth in this Agreement including but limited to the submission of the Trademark Annual Revenue Report, satisfaction of pending Royalty Payment Fees, and the Royalty Payment Fee for the one (1) year extension period.

C. The parties hereto acknowledge and agree that Licensor shall have the right to terminate this Agreement at any time, for any reason or no reason, upon no less than ten (10) days prior written notice to Licensee. Upon termination of this Agreement, Licensee shall immediately discontinue all use of the Marks, provided that Licensee may sell its remaining and existing inventory of Products for up to ninety (90) days (the "Sell Off Period"). Licensee shall provide the Trademark Annual Revenue Report and make all annual applicable Royalty Payment Fees to Licensor no later than thirty (30) days following the termination or expiration of this Agreement. In the event Licensee sells its remaining Product inventory during any Sell off Period, Licensee will make all applicable Royalty Payment Fees to Licensor no later than thirty (30) days following the expiration of the Sell Off Period.

### 4. Review; Standards of Quality.

A. Licensee understands and agrees that an essential condition of this Agreement is the protection of the high reputation enjoyed by Licensor and that, in keeping with that condition, the Products and designs sold, promoted, or advertised in association with any of the Marks shall be of high and consistent quality which are subject, as requested by Licensor, to submission for review and approval.

B. Licensee shall cause the Product to meet and conform to high standards of style, quality and appearance acceptable to Licensor and consistent with the high standards of products previously produced under the Marks. To assure Licensor that

Licensee is meeting such standards and other provisions of this Agreement, Licensee may request generic samples of these products.

(i) If requested by Licensor, within thirty (30) days, Licensee shall at no charge to Licensor furnish Licensor all preliminary and proposed final artwork and pre-production samples of such Product, including all styles, colors and variations with five (5) actual samples of the Product from the first production run of each manufacturer of such Product, together with all labels, cartons and containers (including packaging and wrapping materials). If such samples do not conform to all aspects of such Product approved by Licensor, or if the quality of such sample does not meet the requirements of this Section, Licensor shall notify Licensee and Licensee shall take all steps as are reasonably necessary to bring the Products into compliance with Licensor's requirements before selling or otherwise distributing the Products.

C. Both before and after a Product is put on the market, Licensee shall follow reasonable and proper procedures for regularly testing such Product for compliance with the standards established by the Licensor and with all applicable laws, regulations, School Board policies, standards and procedures, and shall permit Licensor (upon request and reasonable notice) to inspect the testing, manufacturing and quality control records, procedures and facilities of Licensee and its authorized manufacturer and to test or sample such Product for compliance with this Section and the other terms and conditions of this Agreement. Products found by Licensor at any time not to comply with the standards established by the Licensor or with any applicable laws, regulations, School Board policies, standards and procedures shall be deemed disapproved, even if previously approved, and shall not be shipped unless and until Licensee can demonstrate to Licensor's satisfaction that such Product has been brought into full compliance.

D. In the event that: (i) the quality, appearance or style of a Product ceases to be acceptable to Licensor, (ii) Licensee uses the Marks improperly or violates any term of this Section, or (iii) Licensor becomes aware of something relating to a Product or Licensee which, in the opinion of Licensor, reflects unfavorably upon the professional, business or personal reputation of Licensor, then, in any such event, Licensor shall have the right, in its sole discretion, to withdraw its approval of such Product and terminate this Agreement. In the event of such withdrawal, Licensor shall provide immediate written notice to Licensee and Licensee shall cease the use of the Marks in connection with the sale, distribution, advertisement or use of such Product and the Product shall immediately be withdrawn from the market and destroyed; provided, however, that in the event of a revocation of approval pursuant to subsection 3(B) above, Licensor and Licensee shall negotiate in good faith to provide for a reasonable sell-off period for such Product.

5. Sublicensing. Licensor acknowledges that Licensee may need to enter into sublicenses concerning the Marks in connection with the manufacture or distribution of Products authorized pursuant to this Agreement. In the event Licensee intends to enter

into a sublicense of its rights hereunder or enter into any other agreement that has the effect of sublicensing any of its rights hereunder to a third party, Licensee may enter into such an agreement so long as such agreement (a) is, by its terms, subordinate to the license granted by Licensor hereunder, (b) automatically terminates upon the termination of this Agreement, (c) does not permit the sub-licensee to take any action that Licensee is prohibited from taking hereunder and (d) shall be in writing. Licensee shall promptly provide Licensor with a copy of any such agreement entered into by Licensee.

6. Ownership. Licensee expressly recognizes that the Marks are the unique, valid and exclusive property of Licensor. Licensee agrees that it shall not, either during the term or thereafter, directly or indirectly, contest the validity of the Marks or any of the registrations pertaining thereto, in the United States, Florida or elsewhere, nor adopt the Marks or any term, word, mark or designation, which is in any aspect confusingly similar to the Marks. Licensee specifically acknowledges that any use of the Marks pursuant to this Agreement shall not create for Licensee any right, title or interest in the Marks. If by operation of law or otherwise, Licensee obtains any rights in the Marks, Licensee shall assign all rights to the Marks to Licensor. Licensee further agrees that it will not at any time do or cause to be done any act or thing, directly or indirectly, which contests or in any way impairs or tends to impair any part of the right, title and interest of Licensor in the Marks; and Licensee shall not, in any manner, represent that it has any ownership interest in the Marks or the registrations therefor. All rights in and to the Marks other than those specifically granted herein to Licensee are reserved to Licensor.

7. Infringement. Licensee agrees to promptly notify Licensor if Licensee becomes aware of: (a) any uses of, or applications or registrations for, a trademark, service mark, internet domain or other designation that conflicts with the Marks; (b) any act of infringement or unfair competition involving the Marks, or (c) any allegations or claims, whether or not made in a lawsuit, that the use of any of the Marks infringes any trademark or service mark or other right of another entity. Licensor shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or imitations. Licensee shall not institute any suit or take any action on account of any such infringements or imitations without first obtaining the written consent of Licensor to do so. Licensee agrees that it is not entitled to share in any proceeds received by Licensor (by settlement or otherwise) in connection with any formal or informal action brought by Licensor, or any other entity. Licensee agrees to assist Licensor in the protection of the Marks and shall provide, at reasonable cost to be borne by Licensor and approved in advance, any evidence, documents, and testimony concerning the use by Licensee of any one or more of the Marks, which Licensor may request for use in obtaining, defending, or enforcing rights in any Marks or related application or registration.

8. Compliance with Law. Licensee shall comply with all laws, regulations and standards relating or pertaining to the manufacture, sale, distribution, packaging, advertising or use of any Products and shall maintain the highest quality and standards for the Products. Licensee shall also comply with the requirements of any regulatory agencies

that may have jurisdiction over any Products. Licensee shall also comply with all applicable policies of Licensor. In addition, Licensee undertakes and agrees to obtain and maintain all required permits and licenses at Licensee's sole expense. Licensee shall pay all federal, state and local taxes due on or by reason of the manufacture, distribution or sale of the Products.

9. Indemnification. To the fullest extent permitted by law, Licensee shall indemnify and hold harmless Licensor and its members, officers, agents, contractors and employees (collectively "Indemnitees") from and against any and all claims, suits, liabilities, actions, losses, damages, costs and expenses, including legal expenses and attorneys' fees, whether incurred as the result of a third party claim or otherwise, or resulting from Licensor enforcing this indemnification clause against Licensee, arising out of or relating to: (a) Licensee's breach of any of its representations, warranties, covenants or agreements contained in this Agreement, (b) Licensee's use of any of the Marks, (c) Licensee's infringement of any patent, process, trade secret, copyright, trademark or service mark, or violation of any law or third party rights, (d) any alleged defects or deficiencies in any Product, or (e) Licensee's ownership or operation of its business. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. This indemnification obligation shall not be diminished or limited in any way to any insurance maintained pursuant to the Agreement otherwise available to Licensee. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. The provisions of this Section shall specifically survive the termination of this Agreement. The provisions of this Section are intended to require Licensee to furnish the greatest amount of indemnification allowed under Florida law. To the extent any indemnification requirement contained in this Agreement is deemed to be in violation of any law, that provision shall be deemed modified so that Licensee shall be required to furnish the indemnification to the Indemnitees that is as close as possible to the indemnification intended by the parties hereto.

10. Insurance. Licensee shall provide evidence of insurance, if requested, as may be required by the Licensor's Office of Risk and Benefit Management, which may include, without limitation, professional liability, general liability, worker's compensation and auto liability insurance coverages. "The School Board of Miami-Dade County, Florida, its officers, directors and employees" shall be named as additional insured. Licensee shall be responsible for maintaining insurance coverage; and at any time the School Board/Licensor may request that Licensee provide the School Board with (a) certificate(s) of insurance and (b) policy endorsement(s) as proof of said coverage. If the Agreement is pursuant to a Request for Proposal or Invitation to Bid, then Licensee shall also comply with insurance requirements set forth therein. Licensee shall maintain insurance coverage in effect for the entire term of the Agreement. Cancellation or modification of terms, without the prior written consent of Licensor, shall constitute a material default under the Agreement.

11. Duty to Defend. Licensee agrees, at its own expense, and upon written request by

Licensor, to defend any suit, action or demand brought against Licensor on any claim or demand arising out of, resulting from or incidental to Licensor's performance under this Agreement.

12. Audit Rights. During the Term and for a period of five (5) years after the expiration or termination of this Agreement Licensor and its duly authorized representatives will have the right to inspect and audit all books of account and records for Licensee, including, without limitation, invoices, correspondence, inventory accounting and financial records (collectively, "Records"), Licensor shall have the right to conduct special audits whenever Licensor has reliable and substantiated information which indicates the Trademark Annual Revenue Reports provided by Licensee to Licensor hereunder are not accurate or if Licensee fails to provide a Trademark Annual Revenue Report as required by this Agreement thirty (30) days or more beyond the applicable due date of such Trademark Annual Revenue Report. Trademark Annual Revenue Report is attached hereto and incorporated herein as Exhibit C. Licensor shall provide Licensee with no less than five (5) business days' written notice prior to such inspection, audit or examination. Licensee represents that it will fully cooperate with the inspection, audit or examination, including any reasonable information requested by Licensor and/or its duly authorized representatives, and will not cause or permit any interference with Licensor or its representatives during any inspection, audit or examination. During an inspection, audit or examination, Licensor shall have the right to make copies or extracts of any Records, subject to reasonable confidentiality and nondisclosure terms. Each party shall be responsible for its own costs of any inspection, audit or examination hereunder; provided, however, that Licensee shall pay Licensor for the cost of any audit that discloses a Royalty Payment deficiency between the amount due to Licensor pursuant to the audit and the amount Licensee actually paid or reported to Licensor. Licensee shall pay Licensor any such deficiency amount together with interest equal to five percent (5%) per month on the deficiency amount within ten (10) days of invoicing by Licensor.

13. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida. In the event of litigation, venue for any claim shall lie exclusively in a court of competent jurisdiction in Miami-Dade County, and the parties hereto waive any objection based on inconvenient forum or lack of personal jurisdiction for such courts. For any dispute arising out of or relating to this Agreement, all parties shall be responsible for their own attorneys' fees.

14. No Joint Venture. Nothing herein contained shall be construed to place Licensor and Licensee in the relationship of partners, joint venturers or agents. Licensee shall have no power to obligate or bind Licensor in any manner whatsoever and shall not represent itself to any third parties as having such power. Licensor is not in any way a guarantor of the quality of any product produced by Licensee. Licensee shall neither state nor imply, directly or indirectly, that the Licensee or its activities, other than under this Agreement, are supported, endorsed or sponsored by Licensor. Each party hereto shall be an independent contractor with respect to the other, and nothing in this Agreement

constitutes or appoints one party as an agent, legal representative, partner, employee or servant of the other for any purpose whatsoever.

15. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement or understanding relating to the subject matter hereof between Licensee and Licensor. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

16. Access to Records/Florida's Public Records Laws. Licensee understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The Licensee shall keep and maintain public records required by the School Board to perform the service. The Licensee shall keep records to show its compliance with program requirements. Licensee must make available, upon request of the School Board, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the Licensee which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. Licensee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Licensee does not transfer the records to the public agency. The Licensee shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of the Licensee or keep and maintain public records required by the School Board to perform the service. If the Licensee transfers all public records to the School Board upon completion of the contract, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensee keeps and maintains public records upon completion of the contract, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN

OF PUBLIC RECORDS AT 305-995-1128, prr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

17. Assignment. Neither this Agreement nor any of Licensee's rights hereunder shall be sold, transferred or assigned by Licensee without Licensor's prior written approval. Any attempted transfer in violation of this Section shall be null and void. Subject to the foregoing, this Agreement shall be binding upon any approved assignee or successor of Licensee and shall inure to the benefit of Licensor, its successors and assigns; provided, however, that any such approved transfer shall not relieve Licensee of its obligations hereunder to Licensor. Licensor may freely assign this Agreement to any successor owner of the Marks.

18. Written Notice Delivery. Any notice required or permitted to be given under this agreement by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this section or on the date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

Licensee:

Licensor:

The School Board of Miami-Dade County, Florida  
Attn: Alberto M. Carvalho, Superintendent  
1450 N.E. Second Avenue, Suite 912  
Miami, Florida 33132

With a copy to:

The School Board of Miami-Dade County, Florida  
Department: \_\_\_\_\_  
Department Director: Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

And a copy to:

The School Board of Miami-Dade County, Florida  
Attn: Walter J. Harvey, School Board Attorney  
1450 N.E. Second Avenue, Suite 430

Miami, Florida 33132

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties hereto and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

20. Compliance with Licensor Policies. I Licensee certifies its agreement with the following Policies: 9701 Trademark Licensing, Protection, and Use; 6460 Business Code of Ethics; 6325 Cone of Silence; 6320 Purchasing; 6320.01 Outside Vendors Selling; and 6320.02 Minority/Women Business Enterprise Certification Procedures, and agree to comply with these and any other applicable Licensor's contracting and procurement policies and procedures.

21. Conflict of Interest. Former Miami-Dade County Public Schools employees, classified as Managerial Exempt Personnel, Pay Grade 22 and above, Miami-Dade County Schools Administrators Association, Pay Grade 47 and above, and other equivalent positions, are prohibited from personally representing another person or entity or acting as an agent or attorney for compensation in connection with any matter in which The School Board of Miami-Dade County, Florida, is interested, for a period of two (2) years following vacation of office. This provision is pursuant to School Board Policies 1129, 3129 and 4129 and §112.313(9) Florida Statutes.

22. Counterparts. This Agreement may be executed in any number of original or facsimile, PDF or other electronic counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

*{Signatures on following page}*

The following signatures represent the parties have read this Agreement in its entirety and by their execution below, the parties have agreed to all the terms and conditions of this Agreement.

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA	LICENSEE
<p><b>BY:</b> _____  <b>Signature</b>  <b>(Superintendent of Schools or Designee)</b></p> <p>_____</p> <p><b>(Name Typed)</b></p> <p><b>Date:</b> _____</p>	<p>BY: _____  <b>Signature</b></p> <p>Name: _____</p> <p><b>(Name Typed)      (Title)      (Date)</b></p> <p>Address: _____</p> <p>_____</p> <p>F.E.I.N. (If organization) _____</p> <p>School Board Employee: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>M-DCPS Employee No. _____</p>
<p>_____            Risk Management    Signature            Date</p>	

EXHIBIT A

MARKS

**[To be attached]**

Exhibit B

[Products]

Exhibit C

[Trademark Annual Revenue Report]