



**AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED]  
FOR THE TRANSIT ADVERTISING PROGRAM (RFP # TRN2122974P1)**

This Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and [REDACTED], a [REDACTED] corporation ("Contractor") (each a "Party" and collectively referred to as the "Parties").

**RECITALS**

**A.** Through a private vendor, Broward County Transportation Department ("BCT") generates revenue by offering commercial print and digital media advertising opportunities on the interior and exterior of its transit vehicles and at certain transit facilities (the "BCT Advertising Program").

**B.** Pursuant to Request for Proposals No. TRN2122974P1 ("RFP"), County conducted a competitive solicitation seeking proposals from qualified vendors to market and sell commercial advertising, develop marketing and advertising materials, install marketing and advertising materials on transit vehicles and at certain transit facilities, and other related services in connection with the BCT Advertising Program and in a manner acceptable to County.

**C.** Contractor responded to the RFP, and County elected to enter into negotiations with Contractor to perform the services specified by the RFP.

**D.** This Agreement reflects and memorializes the negotiations between the Parties.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2. **Advertisement and Advertising** (including any of their variants) mean the depiction or presentation on a sign, personal property, bench, fixed device or structure, publication, or electronic media of any name, work, statement, announcements, message, communication, drawing, picture, painting, mark, motto, symbol, or figure for the purpose of calling attention to a business, trade, organization, or activity or inducing, directly or indirectly, the purchase or use of any specific item of commerce.

- 1.3. **Advertising Materials** means Advertisements in print, electronic form, or other published form including, without limitation, the end product as well as draft, work in progress, or otherwise unfinished versions, and all materials incorporated therein or used or consumed in the performance of the Services.
- 1.4. **Advertising Space** means the physical or electronic locations available to Contractor to be used for Advertisements.
- 1.5. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.6. **Contract Administrator** means the Director of the Transportation Department, the Deputy Director of the Transportation Department, or such other person designated by the Director of the Transportation Department in writing.
- 1.7. **County Administrator** means the administrative head of Broward County, Florida appointed by the Board.
- 1.8. **Contract Year** means the twelve (12) month period commencing on the Effective Date; each subsequent twelve (12) month period during the Initial Term set forth in Section 4.1; and any Renewal Terms as set forth in Section 4.2.
- 1.9. **Eligible Bus Fleet** means the buses and other transit vehicles that County has determined are available to Contractor to perform the Services.
- 1.10. **Media Trade Options** means the media trade agreements, negotiated by Contractor for the benefit of BCT, for Advertising-related goods and services from public, nonprofit, and civic organizations and various for-profit and media outlets that include, without limitation, radio, television, print, digital, social media, and other electronic, digital, or web-based sources and platforms in exchange for specified Advertising Space on Eligible Bus Fleet and on Eligible Transit Facilities.
- 1.11. **Minimum Annual Guarantee** means the minimum annual payment guaranteed by Contractor to County for the applicable Contract Year of this Agreement as set forth in Exhibit B.
- 1.12. **Monthly Minimum Guarantee** means the amount due and owing from Contractor to County each month during the term of this Agreement, which amount is calculated by dividing the applicable Minimum Annual Guarantee for that Contract year by a factor of twelve (12).
- 1.13. **Net Collections** means gross Advertising revenues that are received by Contractor in connection with the Services less the cost of sales. "Cost of sales" for purposes of this Agreement is limited to production charges.

- 1.14. **Notice to Proceed** means the Contract Administrator's written authorization to proceed with the project, phase, or task.
- 1.15. **Annual Percentage Split** or **APS** means the additional share of Net Collections due to County based on tiered percentage rates of Net Collections as set forth in Exhibit B.
- 1.16. **Purchasing Director** means County's Director of Purchasing.
- 1.17. **Services** and **Scope of Services** means all Advertising services, work, and deliverables, required to be performed by Contractor under this Agreement, including, without limitation all deliverables, consulting, training, project management, or other services specified in Exhibit A.
- 1.18. **Software** means any software, technology, or application that County permits Contractor to access for the performance of the Services.
- 1.19. **Subcontractor** means any entity or individual, including without limitation subconsultants and suppliers, providing work, supplies, or services to County through Contractor for all or any portion of the Services under this Agreement.
- 1.20. **Transit Advertising Inventory** means the buses in the Eligible Bus Fleet, Eligible Transit Facilities, and any County location or device made available by County to Contractor for the placement of Advertising Materials as specified in Exhibit G.
- 1.21. **Eligible Transit Facilities** means the facilities, buildings, shelters, kiosks, or transit terminals that are owned or utilized by County to provide access to public transportation and that County has determined are available to Contractor to perform the Services.

## **ARTICLE 2. EXHIBITS**

- Exhibit A** Scope of Services
- Exhibit B** Revenue Sharing
- Exhibit C** Advertising Price Sheet
- Exhibit D** Minimum Insurance Coverages
- Exhibit E** Enterprise Technology Services Security Requirements
- Exhibit F** Federally Funded Contracts Requirements
- Exhibit G** Transit Advertising Inventory
- Exhibit H** Broward County Advantage Marketing Program

## **ARTICLE 3. SCOPE OF SERVICES**

- 3.1. Description of Services. Upon issuance by County of a Notice to Proceed, County grants Contractor the right to sell, install, display, maintain, change, and remove Advertising, approved by County, on the Transit Advertising Inventory.

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3.2. Scope of Services. Contractor shall perform all Services required under this Agreement including, without limitation, the work specified in Exhibit A (the “Scope of Services”). The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the Services described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

#### **ARTICLE 4. TERM AND TIME OF PERFORMANCE**

4.1. Term. The initial term of this Agreement shall begin on the date this Agreement is fully executed by the Parties (“Effective Date”) and shall end on the last day of the 36<sup>th</sup> month after the Effective Date (“Initial Term”), unless otherwise terminated as provided in this Agreement. The Initial Term, Extension Term(s), and any additional extension as described in this article are collectively referred to as the “Term.”

4.2. Renewal Options. County may renew this Agreement for up to two (2) additional one (1) year terms by sending notice (the “Renewal Notice”) to Contractor at least thirty (30) days prior to the expiration of the then-current term (each a “Renewal Term”). The Purchasing Director is authorized to exercise this renewal option.

4.3. Additional Extension. If unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of a Renewal Term not practicable, or if no renewal option is available and expiration of this Agreement would, as determined by the Purchasing Director, result in a gap in the provision of Services, then the Purchasing Director may extend this Agreement on the same terms and conditions for period(s) not to exceed three (3) months in the aggregate, provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board (“Additional Extension”). The Purchasing Director may exercise this option by written notice to Contractor stating the duration of the extended period, at least thirty (30) days prior to the end of the then-current term.

4.4. Renewal and Extension Rates and Terms. For any renewal or extension beyond the Initial Term, County shall be compensated at the rates in effect on the date of the Renewal Notice or the date the Additional Extension was invoked by County, and as applicable, unless otherwise expressly stated in Section 5.1 or agreed to by both Contractor and County in a written amendment to this Agreement. Prior to the expiration of the then-current contract term, Contractor and County may enter into negotiations to determine the Minimum Annual Guarantee, Media Trade Bank credit, and other issues relating to the Parties’ compensation for the applicable Renewal Term(s) or Additional Extension period, as applicable. Any agreements reached as a result of such negotiations shall be formalized by the Parties in an amendment to this Agreement. Unless otherwise agreed to in an amendment to this Agreement, Contractor shall continue to provide the Services upon the same terms and conditions set forth in this

Agreement (as amended from time to time) for such Renewal Term or Additional Extension period.

4.5. Time of the Essence. All duties, obligations, and responsibilities of Contractor required by this Agreement shall be completed no later than the time periods required by the Contract Administrator. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

## **ARTICLE 5. COMPENSATION TO COUNTY**

5.1. Minimum Annual Guarantee and Minimum Monthly Guarantee. In consideration of the right to display Advertising upon the Transit Advertising Inventory, Contractor shall pay County a Minimum Annual Guarantee as set forth in Exhibit B. The Minimum Annual Guarantee shall be paid by Contractor to County in twelve (12) monthly installments (the "Minimum Monthly Guarantee"), within twenty (20) calendar days after the last day of each month, and in accordance with the schedule set forth in Exhibit B, subject to adjustment for each Renewal Term or Additional Extension Period.

5.2. Revenue Sharing in Excess of Minimum Annual Guarantee. In addition to the Minimum Annual Guarantee, if the Net Collections for the Contract Year exceeds the applicable Minimum Annual Guarantee, Contractor shall pay County the amount by which the Annual Percentage Split (calculated using the tiered percentage rates in Exhibit B) exceeds the Minimum Annual Guarantee, with such payment due no later than thirty (30) days after the end of the applicable Contract Year. The Annual Percentage Split shall be calculated as illustrated in Exhibit B. Notwithstanding the foregoing, there will be no set off or deduction in the compensation paid to County if the Net Collections in any Contract Year is less than the Minimum Annual Guarantee paid to County.

5.3. Contractor shall be responsible for the collection of all money and compensation due from or paid by any advertiser for Advertisements and Advertising Space sold pursuant to this Agreement. Contractor shall demonstrate to County's satisfaction that Contractor has made good faith efforts to collect all unpaid accounts, including but not limited to pursuing legal collection remedies against any nonpaying parties. Uncollected or discharged debts shall not reduce the Minimum Annual Guarantee owed to County.

5.4. Contractor shall make all payments to County on or before the date due and in the form specified by County, as well as using the payment method specified by County. The County may specify any method including, without limitation, bank draft, cashier's check, company check, electronic funds transfer (EFT), and wire transfers. No in-kind payments or trade agreements will be accepted as payment for compensation owed to County.

All funds shall be remitted to County as follows:

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Broward County  
c/o Transportation Department  
Attention: Cashier  
One North University Drive, Suite 3100A  
Plantation, Florida 33324

#### **ARTICLE 6. PERFORMANCE GUARANTEE**

6.1. Prior to issuance of the Notice to Proceed, and no later than thirty (30) days prior to the commencement of each Contract Year or Extension Term, Contractor shall provide to County a performance bond or an irrevocable letter of credit, in a form and from a bank or surety satisfactory to County, in the amount of one hundred percent (100%) of the Minimum Annual Guarantee for the applicable Contract Year.

6.2. Neither nonrenewal of an annually issued bond by the surety, nor failure or inability of Contractor to file a replacement bond in the event the surety exercises its right not to renew the bond, shall itself constitute a loss to County recoverable under the bond or any extension thereof. The foregoing notwithstanding, Contractor shall remain obligated to provide the annual performance bond or an irrevocable letter of credit as required in Section 6.1 above.

6.3. Qualification of Surety. Bonds shall be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least five (5) years.

6.3.1. The surety company shall hold a current Certificate of Authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify as a proper surety herein, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised (31 C.F.R. §§ 223.10, 223.11). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

6.3.2. The surety company shall hold a current Certificate of Authority with the Florida Office of Insurance Regulation.

6.3.3. The surety company shall have the following minimum ratings according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Inc., Oldwick, New Jersey:

### Minimum Surety Ratings

Amount of Bond	Surety Ratings	Financial Size Category
500,001 to 1,000,000	A, A-	Class I
1,000,001 to 2,000,000	A, A-	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
Over 50,000,001	A	Class VII

### ARTICLE 7. PERFORMANCE

7.1. Commencement of Services. No later than the date of issuance of the Notice to Proceed, County shall provide to Contractor a list of the Transit Advertising Inventory that shall include: (i) a list of Eligible Bus Fleet that includes a brief description of each bus, including the size of the bus and its unique vehicle identification number; and (ii) a list of the Eligible Transit Facilities. Within sixty (60) days after issuance of the Notice to Proceed, Contractor shall submit a detailed Sales Plan to County as specified in the Scope of Services attached as Exhibit A.

7.2. Available Transit Advertising Inventory. Availability of Advertising Space and Transit Advertising Inventory may change or fluctuate during the term of this Agreement for reasons including, but not limited to, mechanical failure, collisions, the procurement of new buses or other vehicles, the retiring of old buses or other vehicles, the need to refurbish or add improvements, and County's implementation of new, novel, or additional Advertising opportunities.

7.2.1. Subject to 7.2.2 below, County reserves the right, without limitation and at all times during this Agreement and any extensions and renewals thereof, to add, remove, change, modify, or refurbish any part of the Transit Advertising Inventory, including, without limitation the Eligible Bus Fleet and Eligible Transit Facilities.

7.2.2. In the event the Transit Advertising Inventory is reduced or increased by more than twenty percent (20%), Contractor and County will renegotiate the compensation terms of the Agreement for the affected Advertising Spaces.

Contractor's Advertising rights under this Agreement are only incidental to the business of County. Contractor shall have no right to request or include as part of any agreement the transferring or reassignment of BCT buses between routes and/or Eligible Transit Facilities.

Contractor shall have no claim against County, including without limitation adjustments to the Minimum Annual Guarantee and/or Eligible Bus Fleet, or adjustments to any other agreed upon inventory caused by changes to bus routes, including assignment of buses to different routes,

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Eligible Transit Facilities, and/or garages or terminals; the temporary or permanent removal of buses from service due to mechanical failure or damage caused by accidents, or any other changes in the operation of County's transportation system.

Contractor shall not resell or subdivide to any parties, other than Contractor and its designated sales agents, Advertising Space or contracts without the express written consent of County, which may be withheld at the sole and absolute discretion of County.

7.3. Competence and Professionalism. Contractor shall provide the Services in a competent and professional manner satisfactory to County in accordance with the terms and conditions of this Agreement. Contractor shall comply with generally accepted industry standards with respect to good taste, applicable laws, and regulations, including, without limitation, regulations regarding truth in advertising, copyrights, and trademarks. Contractor and its agents, employees, and Subcontractors may be granted access to the Transit Advertising Inventory and other designated County property to perform the Services in accordance with this Agreement, provided that Contractor and its agents, employees, and Subcontractors shall:

7.3.1. Use and access Transit Advertising Inventory only to install, maintain, inspect, and remove, at Contractor's sole cost, Advertising Materials;

7.3.2. Not, without prior written consent of County, use the Transit Advertising Inventory and any other County property for any purpose other than to perform the Services;

7.3.3. Perform the Services in a safe and consistent manner that meets or exceeds prevailing industry and professional standards for such services;

7.3.4. Perform the Services in such a manner as to minimize interference with the operation of County's transportation system and BCT's passengers;

7.3.5. Obtain, prior to commencement of the Services, any necessary copyrights, or other property rights, licenses, or approvals and any necessary federal, state, or municipal permits, licenses, or approvals;

7.3.6. Not without County's prior written consent, permit County's property to be used or accessed by any person, firm, entity, or corporation other than Contractor and its agents, employees, Subcontractors, and suppliers disclosed to and approved by County; and

7.3.7. Not (i) commit any waste, nuisance, or hazardous trade or occupation on, in, or upon County's property; (ii) take any action, or keep anything in or about County's property that will increase the risk of any hazard, fire, or catastrophe; (iii) damage



County's property; and (iv) use or occupy County's property in any manner that will violate any applicable laws.

7.4. Advertising Restrictions. Prior approval from the Contract Administrator is required for all Advertisements to be installed, displayed and/or exhibited on Transit Advertising Inventory. The following Advertisements are expressly prohibited in or on the Transit Advertising Inventory and all other County property whether leased, owned, or managed by County:

7.4.1. Advertisements that are defamatory, libelous, slanderous, obscene, religious, or political; Advertisements for tobacco, alcohol, human reproduction/sexuality products or services;

7.4.2. Advertisements for adult-oriented goods or services or that include nudity;

7.4.3. Advertisements that include profanity or demeaning or disparaging words;

7.4.4. Advertisements for firearms;

7.4.5. Advertisements that depict or include violence, unlawful goods or services, and unlawful conduct;

7.4.6. Advertisements that pose a potential danger including, but not limited to, Advertisements containing the words "stop," "danger," or any other words, phrases, symbols, devices, or any components thereof, or representation likely to interfere with or mislead pedestrians or vehicular traffic;

7.4.7. Advertisements that fail to meet County's standards, as may be specified by the County, including those set forth in Broward County's Advantage Marketing Program attached as Exhibit H (and as updated from time to time by the County's Office of Public Communications or the Board; and

7.4.8. Advertisements that have not been reviewed in advance and approved in writing by the Contract Administrator (or their designee).

Within twenty-four (24) hours of County's written notice to Contractor, Contractor shall remove at Contractor's sole expense, any Advertisements that are posted without County's prior approval or deemed prohibited by County. Final determination about prohibited Advertising shall be at the sole discretion of the County Administrator or their designee. Contractor shall incorporate in writing the provisions in this Section 7.4 in all of its contracts for Advertising and Services under this Agreement including, without limitation, agreements with Subcontractors.

7.5. Designated Point of Contact. Contractor shall designate at least one representative as the County's point of contact to answer inquiries, troubleshoot problems, resolve issues, and serve

as the general liaison for any communication between County and Contractor. Such representative must be accessible during County's regular business hours and at a minimum from 8:30am to 5:00pm EST each business day. Contractor shall provide to County at least two (2) reliable telephone numbers and a valid email address for any such representative. The representative shall be responsible for submitting all proposed Advertising to the Contract Administrator (or their designee) for County's review and prior approval or disapproval. Within ten (10) business days, the Contract Administrator shall review such Advertising and provide its approval, disapproval, or feedback to Contractor, which may include, without limitation, requests for additional information, revisions, or corrections. If Contractor does not receive an approval or disapproval within ten (10) days of submitting proposed Advertising to the Contract Administrator, the proposed Advertising shall be deemed disapproved.

7.6. Installation of Advertising. All Advertising installations must be pre-scheduled and coordinated with the Contract Administrator (or designee). Contractor shall provide no less than seventy-two (72) hours advance notice to the Contract Administrator (or designee) to schedule installation and continuing maintenance of Advertising Materials. Such notice shall specify each bus or transit facility and include, as applicable, the number of buses to be staged and each bus's unique identification number. Contractor shall not interfere with or diminish the quality-of-service BCT provides to its transit passengers in order to install or maintain Advertisements on the Eligible Bus Fleet or Eligible Transit Facilities. All Services performed at County's facilities require the prior approval of County and scheduling of such Services shall be coordinated in advance with the Contract Administrator (or designee). Installations, repairs, maintenance, and any other Services performed by Contractor shall not impede or interfere with the operation of County's transportation system or any other County operations.

7.6.1. All Advertising Materials to be used in the production or installation of Advertising shall be of the highest industry standards and are subject to review and approval by County prior to its installation or display on Transit Advertising Inventory.

7.6.2. Advertising shall not interfere with or obstruct emergency operations of the buses or transit facility or create a hazard to BCT passengers, bus operators, or the general public. There shall be no cover of any windows and doors on the Eligible Bus Fleet including in the bus operator area.

7.6.3. Contractor shall maintain, at its own expense, all Advertising Materials and devices in a clean condition, in good repair, and free from graffiti at all times.

7.6.4. Contractor shall take all remedial action within twenty-four (24) hours after written notice from County of any Advertisement-related complaint regarding graffiti, cleanliness, disapproved content, or safety-related condition.

7.6.5. County reserves the right to immediately remove any Advertising that may be hazardous or offensive to BCT's passengers or the general public.

7.7. All scrap Advertising Materials, rubbish, litter, and waste generated by Contractor and its agents, employees, and Subcontractors shall be promptly and appropriately disposed of and removed from County property, at Contractor's sole expense. Although County makes good faith efforts to keep all transportation vehicles and facilities in reasonably clean condition, County does not guarantee the cleanliness of any such vehicles or facilities or Advertisements installed thereon.

7.8. All Advertising Materials shall be removed within seven (7) days of the relevant contract expiration date. All dated Advertising Materials shall also be removed within seven (7) days of the date shown on the Advertisement. In the event Contractor fails to remove such dated or expired Advertising Materials, County shall have the right to remove them, and Contractor shall be responsible for reimbursing the County for the cost of such removal.

7.9. Damage to County Property. Contractor and its agents, employees, and Subcontractors shall not deface or damage County's property and shall use all commercially reasonable efforts to prevent any such damage, including, without limitation damage to vehicle paint finishes. Contractor shall restore County's buses and facilities to their original condition if any damage occurs while installing and/or removing Advertising Materials. If Contractor fails to restore County's buses or facilities to their original condition, as determined by County, County shall have the right to have repairs completed and the cost of such repairs reimbursed by Contractor.

7.9.1. County will notify Contractor in writing of any damage to County's buses or facilities caused by Contractor, its agents, employees, or Subcontractors.

7.9.2. Contractor shall be fully liable for and pay all repair costs (or replacement if repair is infeasible) for damage to County's buses or facilities caused by Contractor, its agents, employees, and/or Subcontractors, as determined by County, including, without limitation, reapplying paint or striping that has been peeled away during the removal of Advertising Materials.

7.9.3. Unless otherwise agreed to in writing by County, all repairs to County buses or facilities shall be performed by County or its designee and Contractor shall pay to County the costs of such repairs as determined by County and such costs shall not be included in the calculation of Net Collections.

7.9.4. In the event Contractor undertakes any repair work to County's buses or facilities with County's prior written approval, Contractor shall complete such work in a good and workmanlike manner, to County's satisfaction, and within a reasonable time not to exceed seven (7) days unless otherwise extended by Contract Administrator in writing.

7.10. Contractor shall utilize its own labor, agents, employees, and Subcontractors to perform the Services and all work associated with the design, production, development, sales, installation, and maintenance of all Advertising Materials at Contractor's sole expense. Unless otherwise expressly provided in this Agreement, such costs shall not be included in the calculation of Net Collections. Further, Contractor shall be solely responsible for the health, safety, and protection of such personnel during the performance of their work. Contractor shall take all necessary steps and precautions to protect its personnel, including Subcontractors, and all other persons or property against injury or damage. Contractor is solely responsible for any such damage, or injury to its employees, agents, or Subcontractors whether intentionally or unintentionally or as a result of negligence.

7.11. Contractor shall at its sole expense (i) assess the need for and provide personal protection equipment to its employees, agents, and Subcontractors as required by the Occupational Safety and Health Administration (OSHA); (ii) observe all applicable OSHA and related safety regulations; and (iii) ensure its employees, agents, or Subcontractors are properly trained to observe and comply with applicable OSHA and related safety regulations.

7.12. Ingress and Egress on County Property. Contractor and its agents, employees, and Subcontractors shall comply with County's prescribed safety and security requirements for vendor access to County property. Subject to any additional requirements of County, Contractor and its agents, employees, and Subcontractors shall have the right to ingress and egress from the Eligible Bus Fleet and the Eligible Transit Facilities to perform the Services under this Agreement with a valid County issued identification card or badge ("County ID Badge").

7.12.1. Contractors and its agents, employees, and Subcontractors shall comply with County's check-in requirements when entering and leaving County's buses and facilities and must have and display at all times a valid County ID Badge while on County property.

7.12.2. Contractor's personnel not in possession of a valid County ID Badge may be denied access to County property.

7.12.3. All County ID Badges shall be returned to County upon expiration or termination of this Agreement or as requested by County at any time during the term of this Agreement and any renewals and extensions thereof.

7.13. Payment of Subcontractors. Contractor shall pay its Subcontractors within thirty (30) days following completion of the contracted work or services or upon receipt of the supplies.

## **ARTICLE 8. REPORTS**

8.1. The Minimum Monthly Guarantee payment to County must be accompanied by a report that includes the following:

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- 8.1.1. A list of all active Advertising contracts and their expiration dates;
  - 8.1.2. A list of all Advertising Spaces sold and unsold for the month;
  - 8.1.3. Gross billing for the month;
  - 8.1.4. Net Collection earned and received for the month, including for bus and graphics;
  - 8.1.5. Account balances including any past due accounts;
  - 8.1.6. Percentage and number of Advertising Space sold vs. the total available Advertising Space; and
  - 8.1.7. A rolling total of the Annual Percentage Split due to County compared to the rolling total of Minimum Monthly Guarantee paid to County.
- 8.2. Contractor shall provide BCT with a link or access to real time electronic reports in Contractor's current reporting system. Access to reports shall include, without limitation:
- 8.2.1. A copy of each and every contract or agreement by Contractor for Advertising services and subcontracts, including without limitation, agency commission paid or unpaid, including trade, bonus or free space and local and national agreements.
  - 8.2.2. Transit Advertising Inventory usage on each bus, facility, or electronic device including the total sold and unsold space by type/location, total Advertising Space traded or bartered by type/location, and total reserved or unsold Advertising Space used by BCT or other County agencies by type/location.
  - 8.2.3. Installations and removals of Advertisements on each bus, facility, or electronic device including the name of the advertiser, advertising agency (if applicable), type of Advertising display, quantity per type of Advertisement installed and/or removed, date of installation and location (i.e., bus exterior, or bus interior, digital displays, or transit terminal).
  - 8.2.4. Gross and net revenue billings.
- 8.3. Contractor shall submit an annual reconciliation of Net Collections with its financial statements in a form satisfactory to County within thirty (30) days after the end of each Contract Year. Contractor shall report the annual income at the end of each Contract Year.
- 8.4. Contractor shall provide to County monthly reports reflecting gross collections for each preceding calendar month as well as the current month and year, the account name, the billing period, the gross billings, the net billings, the amount collected, the amount owed, and each

Advertising contract's expiration date. Advertising contracts for reduced fee and free Services to nonprofit or tax-exempt organizations shall be detailed in each monthly report.

8.5. Contractor, at its sole cost and expense, shall provide to County a special audit report that covers all Net Collections from Contractor's operations and the operations of any Subcontractors or management companies of Contractor, if applicable. The special audit report shall be prepared by a Certified Public Accountant in accordance with the provisions of the Codifications of Statements on Auditing Standards issued by the American Institute of Certified Professional Accountants (AICPA). The special report shall be delivered to the Contract Administrator within one hundred twenty (120) calendar days after the end of each Contract Year and within one hundred twenty (120) calendar days following the expiration or termination of this Agreement. The special audit report shall include, but is not limited to, the following:

8.5.1. A schedule of all revenue by category, by month;

8.5.2. A schedule of revenues by category on which the monthly payments to County are computed and a list of the payments to County for the year;

8.5.3. A calculation and statement indicating whether the payments to County are in accordance with the Agreement; and

8.5.4. A summary of the procedure agreed upon between Contractor and the Certified Public Accountant for the preparation of the annual audit report.

#### **ARTICLE 9. CONTRACTOR TRADE ADVERTISING**

If any space(s) within the Advertising Space has not been sold to a paying advertiser or is not being used by County pursuant to **Article 9** herein, subject to County's prior approval (including Board approval for Advertising Space with a value greater than Thirty Thousand Dollars (\$30,000.00)), Contractor may use that space(s) to advertise or promote its services on a "trade" basis, limited to ten percent (10%) of the total Transit Advertising Inventory available per year. The costs and value of these displays will not be included in the calculation of Net Collections under this Agreement. Contractor shall request prior written approval from the Contract Administrator for each trade Advertising placement.

#### **ARTICLE 10. MEDIA TRADE OPTIONS**

10.1. During each Contract Year, Contractor shall provide the County with Media Trade Options with a minimum value of [REDACTED] Dollars (\$[REDACTED]) on an annual basis (the "Media Trade Bank"). Contractor shall negotiate, obtain, and offer County premium Media Trade Options. The value of any Media Trade Options exercised by BCT shall be calculated at Contractor's published rates for such services, including production charges. Contractor shall post and remove Advertising in connection with Media Trade Options at no cost to County.

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10.2. During the Contract Year, Contractor shall maintain an accurate accounting of the Media Trade Bank and provide Contract Administrator with a statement of account for the then-current Contract Year's Media Trade Bank. Without prior written consent of Contract Administrator, no part of the Media Trade Bank may be carried over from one Contract Year to the next to meet the Media Trade Bank annual minimum. Prior to Contractor's deductions from the Media Trade Bank, Contractor shall provide Contract Administrator thirty (30) days prior written notice specifying the exchanging entity, the type of media to be used, and County's promotional Advertisement applied. If County desires to promote a special event using the Media Trade Bank, County shall provide to Contractor, at least sixty (60) days advance notice of the special event, indicating the promotional Advertisement to be used.

#### **ARTICLE 11. COUNTY'S USE OF ADVERTISING SPACE**

11.1. Contractor shall keep all Advertising Spaces occupied with Advertising Materials at all times. Advertising Spaces not used for paid Advertising shall be filled in the following order of priority or as otherwise directed by the Contract Administrator:

11.1.1. BCT's informational or promotional materials.

11.1.2. Informational or promotional materials for County agencies other than BCT.

11.2. BCT Reserved Advertising Space. Each Contract Year, Contractor shall reserve for BCT's use: (i) twelve (12) interior media card spaces per vehicle in the Eligible Bus Fleet; (ii) all brochure racks on-board the Eligible Bus Fleet; (iii) twenty percent (20%) of Advertising Space on the exterior of the Eligible Bus Fleet; and twenty percent (20%) of digital/electronic Advertising Space. Such reserved spaces shall not be preempted by Contractor. Contractor shall be entitled to the cost of production at the rates included in the Advertising Price Sheet, attached as Exhibit C, for County's agencies. Contractor shall perform installation and removal of such Advertising at no additional cost to County.

11.3. County's Use of Unsold Advertising Space. In addition to the reserved Advertising Space described in Section 11.2 above, County may use unsold Advertising Space for its own informational or promotional materials. Contractor shall notify the Contract Administrator at least two (2) weeks in advance of available unsold Advertising Space. Availability of unsold Advertising Space to County agencies other than BCT will be determined by BCT in collaboration with Contractor.

11.4. To utilize BCT Reserved Advertising Space and Unsold Advertising Space, County will provide Contractor with its Advertising artwork for production and installation by Contractor in available unsold/reserved Advertising Space. For Advertising placed by BCT, County shall pay the production cost for Advertising Space at the rates included in the Advertising Price Sheet, Exhibit C. Contractor shall perform installation and removal of Advertisements placed by BCT at no

additional cost to County. For Advertising placed by County agencies other than BCT, County shall pay Contractor the cost of installation and removal of Advertisements in addition to the production costs at the rates included in the Advertising Price Sheet, Exhibit C.

11.5. Contractor shall maintain a complete inventory of all unsold Advertising Spaces used for County's informational or promotional materials installed by Contractor. Contractor shall also provide Contract Administrator with a monthly report of the percentage of total Advertising Spaces used by BCT and other County agencies.

11.6. Reimbursable Expenses. Contractor shall not be reimbursed for any expenses it incurs unless expressly provided for in this Agreement. For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, Contractor agrees to comply with Section 112.061, Florida Statutes, except to the extent that this Agreement expressly provides otherwise. County shall not be liable for any expenses that exceed those allowed by Section 112.061 or that were not approved in writing in advance by the Contract Administrator.

11.7. Subcontractors. Contractor shall invoice Subcontractor fees only in the actual amount paid by Contractor, without markup or other adjustment.

11.8. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Contractor's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

11.9. Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Contractor is a foreign person or entity that is required to complete Internal Revenue Service ("IRS") Form W-8ECI, Contractor shall provide County a copy of Contractor's current Form W-8ECI prior to issuance of any invoice or payment under this Agreement. If Contractor fails to timely provide a completed, current Form W-8ECI, County will withhold all backup withholding taxes from the amounts due Contractor, remit such sums to the IRS, and pay Contractor only the remainder. County makes no representation regarding the tax treatment of amounts due to Contractor, and Contractor releases and holds County harmless from any claims or damages in any way relating to or arising from any tax withholding by County pursuant to this section.

## **ARTICLE 12. REPRESENTATIONS AND WARRANTIES**

12.1. Representation of Authority. Contractor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that



Contractor has with any third party or violates Applicable Law. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

12.2. Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

12.3. Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

12.4. Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's and County's compensation, including without limitation those made by Contractor during the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

12.5. Public Entity Crime Act. Contractor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Contractor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

12.6. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Contractor represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Contractor represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Contractor represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

12.7. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

12.8. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Contractor violates this section, County may immediately terminate this Agreement for cause and Contractor shall be liable for all costs incurred by County due to the termination.

12.9. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render such Services. Contractor represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

12.10. Prohibited Telecommunications Equipment. Contractor represents and certifies that it and its Subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Contractor represents and certifies that Contractor and its Subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

12.11. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Broward County Administrative Code, Contractor represents and certifies that its policies, practices, and procedures regarding inquiry into the criminal history of an applicant for employment, including a criminal history background check, preclude inquiry into an applicant's criminal history until the applicant is selected as a finalist and interviewed for the position.

12.12. Breach of Representations. Contractor acknowledges that County is materially relying on the representations, warranties, and certifications of Contractor stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

#### **ARTICLE 13. INDEMNIFICATION**

Contractor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

#### **ARTICLE 14. INSURANCE**

14.1. During the Term, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit D in accordance with the terms and conditions of this article. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

14.2. Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit D on all policies required under this article.

14.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, Contractor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Contractor shall provide complete, certified copies of all

required insurance policies and all required endorsements within thirty (30) days after County's request.

14.4. Contractor shall ensure that all insurance coverages required by this article shall remain in full force and effect without any lapse in coverage throughout the Term and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

14.5. All required insurance policies must be issued by insurers: (1) assigned an AM Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

14.6. If Contractor maintains broader coverage or higher limits than the insurance requirements stated in Exhibit D, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Contractor.

14.7. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit D and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor agrees to obtain same in endorsements to the required policies.

14.8. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurer may acquire against County, and agrees to obtain same in an endorsement of Contractor's insurance policies.

14.9. Contractor shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies.

Contractor shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

14.10. If Contractor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. If requested by County, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

14.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit D, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Contractor must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit D.

## **ARTICLE 15. TERMINATION**

15.1. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in all other instances termination for cause may be effected by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause was provided and Contractor shall be eligible for the compensation provided in Section 15.4 as its sole remedy.

15.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, Contractor's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

15.3. Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

15.4. If this Agreement is terminated for convenience by County, Contractor shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Contractor acknowledges that it has received good, valuable, and sufficient consideration for County’s right to terminate this Agreement for convenience in the form of County’s obligation to provide advance notice to Contractor of such termination in accordance with Section 15.1.

15.5. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity.

15.6. At termination of this Agreement, for whatever reason, all Advertising Materials under unexpired contracts shall remain in the display device on or in which it was installed at the time of termination and all such Advertising Materials including any display devices shall become the property of County.

15.7. Upon termination of this Agreement by expiration of same in its normal course, or termination for cause or convenience, Contractor shall assign and transfer to County or a third party designated by County, all contracts for Advertising, and such contracts shall then become the property of County or County’s designee. Upon assignment, such contracts for Advertising shall become the exclusive property of County and/or County’s third-party designee as applicable. Contractor shall incorporate this provision into all of its contracts for Advertising under this Agreement, including any contracts with Subcontractors and suppliers that will perform any of the Services on behalf of Contractor.

15.8. For a period of six (6) months following the expiration of this Agreement in its normal course or termination for convenience by County, County and/or County’s designee shall pay to Contractor twenty percent (20%) of the gross revenues received by County or its designee from the assigned contracts (not including any accounts receivable outstanding at termination or expiration of this Agreement). Neither County nor its designee shall be responsible for collecting or making any collection efforts for Contractor’s accounts receivable outstanding at termination or expiration of this Agreement.

15.9. The termination or expiration of this Agreement, for any reason whatsoever, shall not relieve Contractor of its obligation to make all payments to County that are due and unpaid at the time of such termination or expiration.

15.10. Neither County nor its designee shall be obligated to pay Contractor any portion of revenues received as a result of the extension of or renewal of any assigned contract. Contractor

acknowledges that County shall not be a party to disputes of any kind or nature arising from the contracts assigned pursuant to this paragraph including, without limitation, disputes regarding payments that may be due on any contract assigned pursuant to this Agreement.

15.11. Except as otherwise directed by County, after receipt of a Notice of Termination or written notice from County that it will not elect to renew this Agreement upon expiration of the then-current term, Contractor shall:

15.11.1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;

15.11.2. Place no further orders or subcontracts for materials, Services, or equipment, except as may be necessary for completion of such portion of the Services not terminated;

15.11.3. Terminate all orders and subcontracts to the extent they relate to the terminated Services under this Agreement.

15.11.4. Assign to County or its designee, in the manner, at the time, and to the extent directed by County, all of the rights, title and interest of Contractor under the orders and subcontracts so terminated.

15.11.5. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subcontracts, with the approval of County, and such approval shall be final for all purposes of this provision;

15.11.6. Complete performance of such portion of the Services and such obligations under this Agreement that were not terminated by the Notice of Termination; and

15.11.7. Take such action as may be necessary, or as County may direct, for the protection and preservation of the Advertising Materials and any other property in the possession of Contractor that is related to this Agreement and in which County has or may acquire an interest, until the effective date of termination or expiration of this Agreement.

## **ARTICLE 16. NETWORK SECURITY AND ACCESS**

16.1. Access. County shall allow Contractor and its employees, agents, and Subcontractors access to the Software to update, upload, and manage Advertising Materials subject to the terms of this Agreement, the applicable Software agreement(s), and the Enterprise Technology Services Security Requirements attached as Exhibit E. Contractor shall notify County, in the form and in such detail as required by County, of the identities of each and every employee, agent, Subcontractor, or supplier who shall have access to the Software. No other person, firm, or entity shall have access to the Software without County's prior written consent. County reserves the

right to revoke any person, firm, or entity's access to the Software at any time in its sole discretion.

16.2. Security Standards. Contractor shall cooperate with County and provide any and all information that County may request to determine appropriate security and network access restrictions or to verify Contractor's compliance with County's security standards. Contractor and all Services provided under this Agreement shall comply at all times with all applicable County access and security standards, including the Enterprise Technology Services Security Requirements set forth in Exhibit E and any other restrictions or standards for which County provides written notice to Contractor.

16.3. Contractor shall immediately notify County of any terminations/separations of agents, employees, and Subcontractors who have or had access to the Software or who performed Services under this Agreement. Contractor shall provide this notice to County within one (1) day after the date of such termination/separation.

## **ARTICLE 17. INTELLECTUAL PROPERTY RIGHTS**

17.1. Patent and Copyright Indemnification. Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Services. Contractor warrants that all material furnished hereunder, including, without limitation, Advertising Materials, copy, storyboards, concepts, ideas, inventions, discoveries, domain names, logos, taglines, slogans, website design, style, content, structure and look and feel, internet portals, videos, research, studies, reports, presentations and proposals, artwork, videos, music, lyrics, photographs, graphic materials, audiovisual works, equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like (collectively referred to as the "Works"), do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights. Contractor shall be liable and responsible for any and all claims made against County for infringement of patents, copyrights, service marks, trade secrets, or any other third-party proprietary rights, by the use or supplying of the Works, in the course of performance or completion of, or in any way connected with, the Scope of Services, or any use, production, display, or other action relating to any of the Advertising Materials.

Any claim, demand, cause of action, debt, or liability related to Contractor's use or supply of the Works, the performance of the Services, or any action relating to any of the Advertising Materials is deemed a "Claim" subject to indemnification pursuant to Article 13. In the event any materials or anything provided to County hereunder, or any portion thereof, is held to constitute an infringement and its use is or may be enjoined, Contractor shall have the obligation, at County's option, to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing items at its own expense, without impairing in any respect the functionality or



performance of the items, or (ii) procure for County, at Contractor's expense, the rights provided under this Agreement to use the items(s). Contractor shall be solely responsible for determining and informing County whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction that may prohibit Contractor from providing any material hereunder. Contractor shall enter into agreements with all suppliers and Subcontractors at Contractor's own risk. County may reject any material that it believes to be the subject of any such litigation or injunction, or if, in County's judgment, use thereof would delay the Services or be unlawful.

17.2. Proprietary Information. Except as necessary to perform the Services during the term of the Agreement, Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from County's property, any computer programs, data compilations, or other software that County has developed, has used, or is using, is holding for use, or that are otherwise in the possession of County ("Proprietary Information"). Contractor and its agents, employees, and Subcontractors shall comply with and enforce all third-party license agreements, except as expressly authorized by County's Director of Enterprise Technology Services (or their designee) and may be subject to further approval by the third-party licensor(s). Contractor will report to County any information discovered or disclosed to Contractor that may relate to the improper use, publication, disclosure or removal from County's property or any information technology software and hardware and will take such steps as are within Contractor's authority to prevent improper use, disclosure, or removal.

17.3. Proprietary Rights. All right, title, and interest in and to the Works developed or created specifically for County are the property of County whether furnished by County to Contractor, furnished by Contractor to County, or created by Contractor for delivery to County, even if unfinished or in process (collectively the "County Deliverables"). Neither Contractor nor its agents, employees, or Subcontractors shall have any proprietary interest in the County Deliverables. The County Deliverables may not be utilized, reproduced, or distributed by or on behalf of Contractor, or its agent, employee, or Subcontractor, without the prior written consent of County, except as required for Contractor's performance under this Agreement. Further, Contractor hereby acknowledges and agrees that County retains all rights, title, and interests in and to the County Deliverables and copies thereof (collectively the "Proprietary Rights"), and that Contractor as well as its agents, employees, and Subcontractors may use same only in connection with the performance of Services under this Agreement. Contractor shall not, without the prior written consent of County, use the County Deliverables in connection with any other project in which Contractor or its agents, employees, or Subcontractors are or may become engaged. Submission or distribution by Contractor to meet official regulatory requirements or for other purposes in connection with the performance of the Services under this Agreement shall not be construed as a derogation of County's Proprietary Rights.

All County Deliverables protectable under United States copyright law shall be owned by County

as “works made for hire” as defined in Section 101 of the United States Copyright Act. To the extent that any or all of such County Deliverables are not deemed a work made for hire, Contractor assigns to County all right, title, and interest in and to the worldwide copyrights in such County Deliverables. With respect to all other intellectual property rights in the County Deliverables, Contractor irrevocably assigns to County all worldwide right, title, and interest in and to all intellectual property rights in such County Deliverables.

17.4. Upon County’s request, Contractor shall, and shall cause its agents, employees, and Subcontractors to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist County to prosecute, register, perfect, or record its rights in or to any County Deliverables and all intellectual property rights therein. Contractor shall cause all its personnel to:

17.4.1. Agree that all County Deliverables that may qualify as “works made for hire” will be deemed “works made for hire” for County and, to the extent that any of the County Deliverables does not constitute a “work made for hire,” or is protected under other Intellectual Property Rights, to irrevocably assign, to County, in each case without additional consideration, all worldwide right, title, and interest in and all the Intellectual Property Rights in such County Deliverables; and

17.4.2. Irrevocably waive, to the extent permitted by applicable law, any and all claims such Contractor Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” concerning the County Deliverables.

17.5. Notwithstanding anything herein to the contrary, County’s ownership of the County Deliverables shall be subject to (i) the rights of third parties whose materials or services are contained in the County Deliverables with County’s prior knowledge and written approval (for example, stock footage, photos, music, and software) and used under a license or other permission granted to Contractor or County (“Third-Party Materials”), or (ii) all materials owned by Contractor prior to, or independent from, the performance of Services under this Agreement, and all methodologies, software, applications, processes or procedures used, created, or developed by Contractor in the general conduct of its business, excluding those developed specifically for County or at County’s request or funded by County (collectively, “Pre-Existing Materials”). Contractor hereby grants County a royalty-free, perpetual, worldwide license to Pre-Existing Materials to the extent incorporated in, combined with, or otherwise necessary for the use of the County Deliverables for all purposes. Contractor shall disclose in writing to County all usage limitations on Third-Party Materials prior to the use or publication of the applicable County Deliverables.

17.6. Use of Advertisements. County shall have the right to make photographs and video of its vehicles and facilities upon which Advertising is displayed, and to use such photographs and video

for the promotion of County's services, without further consent of Contractor, its Advertising clients, or of the advertisers. Contractor shall secure the consent and agreement of all third parties to such use by County and incorporate this provision into all of its contracts for Advertising under this Agreement including any agreements with Subcontractors.

## **ARTICLE 18. PUBLIC RECORDS**

18.1. Public Records. To the extent Contractor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Contractor shall:

18.1.1. Keep and maintain public records required by County to perform the Services;

18.1.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

18.1.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

18.1.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the Services. If Contractor transfers the records to County, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

18.2 A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Contractor will provide any requested records to County to enable County to respond to the public records request.

18.3 Any material submitted to County that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Contractor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 688.002, Florida Statutes, and stating the factual

basis for same. If a third party submits a request to County for records designated by Contractor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contractor. Contractor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8300, TGARLING@BROWARD.ORG, 1 N UNIVERSITY DRIVE, SUITE 3100A, PLANTATION, FLORIDA 33324.**

#### **ARTICLE 19. NEW ADVERTISING OPPORTUNITIES AND NO EXCLUSIVITY**

19.1. This Agreement is nonexclusive in character and shall in no way prevent County from offering or authorizing the sale of competitive services, products or items by other concessionaires or others in other locations or facilities not specifically listed in the Scope of Services.

19.2. County reserves the right to place self-promotional material and devices in or on any County facility or property whether leased or owned by County. County in its sole discretion, further reserves the right to allow vendors or advertisers the use of County facilities including on unused Advertising Space for special short term joint promotions which encourage the use of public transportation.

19.3. Contractor shall have no rights to any new or additional display/Advertising device that may be made available by County, whether or not such display/Advertising device is in or on the locations or facilities specifically listed in the Scope of Services.

19.4. County retains the right to enter into contractual arrangements with parties other than Contractor for the use and installation of new Advertising opportunities not described in the Scope of Services and therefore not included in this Agreement. Contractor does not have the right of first refusal for any such new Advertising opportunities.

19.5. Contractor shall have no claim against County for any lost revenues that may be attributable to the exercise of County's rights provided for in this Article 19.

## **ARTICLE 20. MISCELLANEOUS**

20.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Code of Ordinances or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may approve in writing minor modifications to the Scope of Services in Exhibit A provided that such modifications do not decrease the Minimum Monthly Guarantee, incur costs to County, or waive any rights of County.

20.2. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to this Agreement. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or its Subcontractor shall make same available in written form at no cost to County.

Contractor and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Contractor in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, Contractor shall pay the actual cost of County's audit or, if the actual cost is unreasonably high, the reasonable cost. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Contractor.

Contractor shall ensure that the requirements of this Section 20.2 are included in all agreements with its Subcontractor(s).

20.3. Bankruptcy. County reserves the right to terminate this Agreement, if during the term of any agreement between County and Contractor, Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law.

20.4. No Tenancy Created. Contractor does not lease or occupy any portion of County's premises, facilities, or property and nothing in this Agreement shall constitute or create any tenancy or lessor/lessee relationship between the Parties.

20.5. Independent Contractor. Contractor is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Contractor nor its agents shall act as officers, employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

20.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

20.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

20.8. Third-Party Beneficiaries. Neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

20.9. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Payments shall be made to the noticed address for Contractor. Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Transportation Department  
Attn: Chris Walton  
1 N University Drive, Room 3100A  
Plantation, Florida 33324  
Email address: cwalton@broward.org

FOR CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

20.10. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

20.11. Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

20.12. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement,

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2021 Transit Advertising Program Agreement

duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

20.13. Compliance with Laws. Contractor and the Services must comply with all Applicable Law, including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

20.14. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

20.15. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

20.16. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to "business day" means any day other than a weekend or a U.S. public holiday observed by County.

20.17. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 20 of this Agreement, the provisions contained in Articles 1 through 20 shall prevail and be given effect.

20.18. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY**



**EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

20.19. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Contractor.

20.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

20.21. Payable Interest

20.21.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and Contractor waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

20.21.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

20.22. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

20.23. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

20.24. Use of County Logo. Contractor shall not use County's name, logo, or otherwise refer to this Agreement in marketing or publicity materials without prior written consent from County.

20.25. No Liens. Contractor or its agents, employees, or Subcontractors shall have no power or authority to place any liens or other encumbrances of any kind or character upon the right, title, or interest of County in and to County's property. Contractor shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material, or services claimed by, through, or under Contractor. Contractor shall also indemnify, hold harmless, and defend County against any such liens pursuant to Article 13 of this Agreement. Such liens shall be discharged by Contractor within ten (10) business days after notice by County by bonding, payment, or otherwise, provided that Contractor may contest, in good faith and by appropriate proceedings, any such liens.

20.26. Drug-Free Workplace. To the extent required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has and will maintain a drug-free workplace program throughout the Term.

20.27. Additional Security Requirements. Contractor shall comply with the ETS Security Requirements attached hereto as Exhibit E.

20.28. Federally Funded Contracts. Contractor shall comply with the Federally Funded Contracts Requirements attached hereto as Exhibit F

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement:  
BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through  
its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_, and Contractor, signing by and through its  
\_\_\_\_\_ duly authorized to execute same.

COUNTY

ATTEST:

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By: \_\_\_\_\_  
Devona A. Reynolds Perez (Date)  
Assistant County Attorney

By: \_\_\_\_\_  
Angela J. Wallace (Date)  
Transportation Surtax General Counsel

AJW/drp  
Transit Advertising Agreement.doc  
7/30/2021  
#21-114.00

RFP #TRN2122974P1  
2021 Transit Advertising Program Agreement

**AGREEMENT BETWEEN BROWARD COUNTY AND \_\_\_\_\_  
FOR THE TRANSIT ADVERTISING PROGRAM (RFP # TRN2122974P1)**

**CONTRACTOR**

WITNESSES:

CONTRACTOR NAME

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name of Witness above

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Print Name of Witness above

ATTEST:

\_\_\_\_\_  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)

## **EXHIBIT A - SCOPE OF SERVICES**

## EXHIBIT B - REVENUE SHARING

### Section 5.1

#### Minimum Annual Guarantee:

Contract Year	Minimum Annual Guarantee (MAG)	Minimum Monthly Guarantee
Year 1	\$	\$
Year 2	\$	\$
Year 3	\$	\$

### Section 5.2- Percentage Split of Annual Net Collections

#### Percentage Split Tiered Rates

	Annual Net Collections	Tiered Rate
Tier 1	\$0 - \$1,250,000.00	___%
Tier 2	greater than \$1,250,00.00	___%

#### Annual Percentage Split Calculation

(Col 1)	(Col 2) Annual Net Collections (ANC)	(Col 3) Tiered Rate	(Col 4) Percentage Split
Tier 1	\$0- \$1,250,000.00	___%	(ANC [ $\leq$ \$1,250,000.00]) x (Tier 1 Rate)
Tier 2	>\$1,250,000.00 (in excess of)	___%	(ANC [ $>$ \$1,250,000.00]) x (Tier 2 Rate)
<b>Annual Percentage Split for Year X (APSx)</b>			Sum(Col 4) = APSx
<b>Minimum Annual Guarantee (MAG) for Year X</b>			MAGx
<b>Due to County for Year X</b>			APSx– MAGx

(see example of Percentage Split Reconciliation and Calculation on the following page)

**Example of Percentage Split Reconciliation and Calculation for Illustration Purposes Only:**

<b>Summary:</b>	<b>Month</b>	<b>Net Collections</b>	
	Jan-19	200,000.00	
	Feb-19	210,000.00	
	Mar-19	215,000.00	
	Apr-19	220,000.00	
	May-19	225,000.00	
	Jun-19	230,000.00	
	Jul-19	235,000.00	
	Aug-19	240,000.00	
	Sep-19	245,000.00	
	Oct-19	250,000.00	
	Nov-19	255,000.00	
	Dec-19	260,000.00	
	<b>TOTAL</b>	<b>\$ 2,785,000.00</b>	

  

<b>Annual Net Collection for Current Contract Year</b>	<b>Tiered Percentage Rate</b>	<b>Collection Amount</b>	<b>Annual Percentage Split</b>
\$0 - \$1,250,000	65%	\$ 1,250,000.00	\$ 812,500.00
>\$1,250,000	70%	\$ 1,535,000.00	\$ 1,074,500.00

  

<b>NET COLLECTION</b>	<b>\$ 2,785,000.00</b>	<b>\$ 1,887,000.00</b>
<b>Minimum Annual Guarantee (MAG)</b>		<b>\$ 1,000,000.00</b>

  

<b>Difference between Annual Percentage Split and MAG</b>		
<i>(To be paid to the County annually in addition to the MAG)</i>		<b>\$ 887,000.00</b>

## EXHIBIT C - ADVERTISING PRICE SHEET



**EXHIBIT D - MINIMUM INSURANCE REQUIREMENTS**

*[Use form provided by Risk, not Contractor]*

## EXHIBIT E - ETS SECURITY REQUIREMENTS

### Additional Definitions.

“County Confidential Information” means any County Data that includes employee information, financial information, or personally identifiable information for individuals or entities interacting with County (including, without limitation, social security numbers, birth dates, banking and financial information, and other information deemed exempt or confidential under state or federal law or applicable regulatory body).

“County Data” means the data and information (including text, pictures, sound, graphics, video, and other data) relating to County or its employees or agents, or made available or provided by County or its agents to Contractor, for or in the performance of this Agreement, including all derivative data and results derived therefrom, whether or not derived through the use of the Contractor’s services, whether or not electronically retained, and regardless of the retention media.

All other capitalized terms not expressly defined within this exhibit shall retain the meaning ascribed to such terms in the Agreement (and if not so defined, then the plain language meaning appropriate to the context in which it is used).

Security and Access. If Contractor will have access to any aspect of County’s network via an Active Directory account, onsite access, remote access, or otherwise, Contractor must:

- (a) comply at all times with all applicable County access and security standards, policies, and procedures related to County’s network, as well as any other or additional restrictions or standards for which County provides written notice to Contractor;
- (b) provide any and all information that County may reasonably request in order to determine appropriate security and network access restrictions and verify Contractor’s compliance with County security standards;
- (c) provide privacy and information security training to its employees with access to County’s network upon hire and at least once annually; and
- (d) notify County of any terminations or separations of Contractor’s employees who had access to County’s network.

In addition, for any remote access to County’s network, Contractor must:

- (a) utilize secure, strictly-controlled industry standards for encryption (e.g., Virtual Private Networks) and passphrases and safeguard County Data that resides in or transits through Contractor’s internal network from unauthorized access and disclosure;
- (b) ensure the remote host device used for access is not connected to any other network, including an unencrypted third party public WiFi network, while connected to County’s network, with the exception of networks that are under Contractor’s complete control or

under the complete control of a person or entity authorized in advance by County in writing;

- (c) enforce automatic disconnect of sessions for remote access technologies after a specific period of inactivity with regard to connectivity into County infrastructure;
- (d) utilize equipment that contains antivirus protection software, an updated operating system, firmware, and third party-application patches, and that is configured for least privileged access;
- (e) utilize, at a minimum, industry standard security measures, as determined in County's sole discretion, to safeguard County Data that resides in or transits through Contractor's internal network from unauthorized access and disclosure; and
- (f) activate remote access from Contractor and its approved subcontractors into the County network only to the extent necessary to perform services under this Agreement, deactivating such access immediately after use.

If at any point in time County, in the sole discretion of its Chief Information Officer (CIO), determines that Contractor's access to any aspect of County's network presents an unacceptable security risk, or if Contractor exceeds the scope of access required to perform the required services under the Agreement, County may immediately suspend or terminate Contractor's access and, if the risk is not promptly resolved to the reasonable satisfaction of the County's CIO, may terminate this Agreement or any applicable Work Authorization upon ten (10) business days' notice (including, without limitation, without restoring any access to County network to Contractor).

Data and Privacy. To the extent applicable to the services being provided by Contractor under the Agreement, Contractor shall comply with all applicable data and privacy laws and regulations, including without limitation Florida Statutes Section 501.171, and shall ensure that County Data processed, transmitted, or stored by Contractor or in Contractor's system is not accessed, transmitted, or stored outside the United States. Contractor shall not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Florida Statutes Section 501.171, Section 817.568, or Section 817.5685, as amended) that Contractor may receive or otherwise have access to in connection with this Agreement, unless expressly authorized in advance by County. If applicable and requested by County, Contractor shall ensure that all hard drives or other storage devices and media that contained County Data have been wiped in accordance with the then-current best industry practices, including without limitation DOD 5220.22-M, and that an appropriate data wipe certification is provided to the satisfaction of the Contract Administrator.

Managed or Professional Services. Contractor shall immediately (within one (1) day after the date of termination or separation) notify County of any terminations or separations of Contractor's employees who performed services under the Agreement and who had access to County Confidential Information or the County network. If any unauthorized party is successful in accessing any information technology component related to Contractor (including but not limited to servers or fail-over servers) where County Data or files exist or are housed, Contractor shall

notify County within twenty-four (24) hours after becoming aware of such breach, unless an extension is granted by County's CIO. Contractor shall provide County with a detailed incident report within five (5) days after becoming aware of the breach, including remedial measures instituted and any law enforcement involvement. Contractor shall fully cooperate with County on incident response, forensics, and investigations into Contractor's infrastructure as it relates to any County Data or County applications. Contractor shall not release County Data or copies of County Data without the advance written consent of County. If Contractor will be transmitting County Data, Contractor agrees that it will only transmit or exchange County Data via a secure method, including HTTPS, SFTP, or another method approved by County's CIO. Contractor shall ensure adequate background checks have been performed on any personnel having access to County Confidential Information. To the extent permitted by such checks, Contractor shall not knowingly allow convicted felons or other persons deemed by Contractor to be a security risk to access County Data. Contractor shall ensure the use of any open source or third-party software or hardware does not undermine the security posture of the Contractor or County.

System and Organization Controls (SOC) Report. Contractor must provide County with a copy of a current unqualified System and Organization Controls (SOC) 2 Type II Report for Contractor and for any third party that provides the applicable services comprising the system, inclusive of all five Trust Service Principles (Security, Availability, Processing Integrity, Confidentiality, and Privacy), prior to commencement of the Agreement, unless this requirement is waived in writing by the County's CIO or designee.

Software Installed in County's Network. To the extent Contractor provides any Software to be installed in County's network, Contractor must:

- (a) advise County of all versions of any third-party software (e.g., Java, Adobe Reader/Flash, Silverlight) to be installed and support updates for critical vulnerabilities discovered in applicable third-party or open source software;
- (b) ensure that the Software is developed based on industry standards and best practices, including following secure programming techniques and incorporating security throughout the Software-development life cycle;
- (c) develop and maintain the Software to operate on County-supported and approved operating systems and firmware versions;
- (d) mitigate critical or high risk vulnerabilities (as defined by Common Vulnerability and Exposures (CVE) scoring system) to the Software or Contractor platform within 30 days after patch release, notifying County of proposed mitigation steps to be taken and timeline for resolution if Contractor is unable to apply a patch to remedy the vulnerability;
- (e) ensure the Software provides for role-based access controls and runs with least privilege access, enables auditing by default for any privileged access or changes, and supports electronic delivery of digitally signed upgrades from Contractor's or the third-party licensor's website;
- (f) ensure the Software is not within three (3) years from its end of life date and provide County with end-of-life-schedules for all applicable Software;

- (g) support encryption using at a minimum Advanced Encryption Standard 256-bit encryption keys ("AES-256") or current industry security standards, whichever is higher, for confidential data at rest and use transport layer security (TLS) 1.2 or current industry standards, whichever is higher, for data in motion; and
- (h) upon request by County, provide an attestation letter identifying date of the most recent security vulnerability testing performed and any vulnerabilities identified and mitigated (must be dated within six (6) months after any major release).

Equipment Leased or Purchased from Contractor. To the extent Contractor is the Original Equipment Manufacturer (OEM) or an authorized reseller for the OEM for any Equipment provided under this Agreement, Contractor must:

- (a) ensure that physical security features to prevent tampering are included in any Equipment provided to County and ensure, at a minimum, industry-standard security measures are followed during the manufacture of the Equipment;
- (b) ensure any Equipment provided does not contain any embedded remote-control features unless approved in writing by County's Contract Administrator, and disclose any default accounts or backdoors that exist for access to County's network;
- (c) shall supply a patch, firmware update, or workaround approved in writing by County's Contract Administrator within thirty (30) days after identification of a new critical or high security vulnerability and notify County of proposed mitigation steps taken;
- (d) develop and maintain Equipment to interface with County-supported and approved operating systems and firmware versions;
- (e) upon request by County, make available any required certifications as may be applicable per compliance and regulatory requirements (e.g., Common Criteria, Federal Information Processing Standard 140);
- (f) ensure the Equipment is not within three (3) years from its end of life date at the time of delivery and provide County with end-of-life-schedules for all applicable Equipment;
- (g) (for OEMs only) support electronic delivery of digitally signed upgrades of any applicable Equipment firmware from Contractor's or the original Equipment manufacturer's website; and
- (i) (for OEMs only) upon request by County, provide an attestation letter identifying date of the most recent security vulnerability testing performed and any vulnerabilities identified and mitigated (must be dated within six (6) months after any major release).

Payment Card Industry (PCI) Compliance. If and to the extent at any point during the Agreement the Software accepts, transmits, or stores any credit cardholder data or is reasonably determined by County to potentially impact the security of County's cardholder data environment ("CDE"), Contractor must:

- (a) comply with the most recent version of VISA Cardholder Information Security Program ("CISP") Payment Application Best Practices and Audit Procedures including Security Standards Council's Payment Card Industry ("PCI") Data Security Standard ("DSS"),

including the functions relating to storing, processing, and transmitting of the cardholder data;

- (b) Maintain PCI DSS validation throughout the Agreement;
- (c) prior to commencement of the Agreement (or at such time the Software will process cardholder data), prior to Final Acceptance (if applicable), after any significant change to the CDE, and annually, provide to County: (i) a copy of Contractor's Annual PCI DSS Attestation of Compliance ("AOC"); and (ii) a written acknowledgement of responsibility for the security of cardholder data Contractor possesses or otherwise stores, processes, or transmits and for any service Contractor provides that could impact the security of County's CDE (if Contractor subcontracts or in any way outsources the credit card processing, or provides an API that redirects or transmits cardholder to a payment gateway, Contractor is responsible for maintaining PCI compliance for the API and providing the AOC for the subcontractor or payment gateway to County);
- (d) maintain and provide to County a PCI DSS responsibility matrix that outlines the exact PCI DSS controls that are the responsibility of either party and the PCI DSS controls that are the shared responsibility of Contractor and County;
- (e) follow Open Web Application Security Project (OWASP) for secure coding and transmission of payment card data only to the extent Contractor provides a payment application;
- (f) immediately notify County if Contractor learns or suspects that Contractor, its Software, or its platform is no longer PCI DSS compliant and provide County the steps being taken to remediate the noncompliant status no later than seven (7) calendar days after Contractor learns or suspects it is no longer PCI DSS compliant;
- (g) activate remote access from Contractor and its approved subcontractors into County's network only to the extent necessary to perform services under this Agreement, deactivating such access immediately after use; and
- (h) maintain all inbound and outbound connections to County's CDE using Transport Layer Security (TLS) 1.2 or current industry standard (whichever is higher).

Health Information Portability and Accountability Act. If County determines in its reasonable business judgment that Contractor is a covered entity or business associate or otherwise required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Contractor shall fully protect all protected health information ("PHI") that is subject to the requirements of 45 C.F.R. §§ 160, 162, and 164 and related statutory and regulatory provisions, as required by HIPAA and HITECH.

Business Associate Agreement. If requested by County, Contractor shall execute County's form Business Associate Agreement (located at [https://www.broward.org/purchasing/documents/9. Standard Business Associate Agreement Form.pdf](https://www.broward.org/purchasing/documents/9.Standard%20Business%20Associate%20Agreement%20Form.pdf)). Contractor shall handle and secure such PHI in compliance with HIPAA, HITECH, and its related regulations and, if required by HIPAA, HITECH, or other laws, shall include in its "Notice of Privacy Practices" notice of Contractor's and County's

uses of a client's PHI. The requirement to comply with this provision, HIPAA, and HITECH shall survive the expiration or termination of the Agreement.

Application Development Services. Contractor shall develop, implement, and comply with industry-standard secure coding best practices as outlined by the County's Service Provider Application Secure Coding Standard. In addition, if application development services are performed by Contractor augmented staff on behalf of County, staff must strictly follow and adhere to the County's established application development policies, process, procedures, practices, and standards.

Upon request by County, Contractor shall provide an attestation letter to certify that security testing as specified above was performed along with security scan test results and tests performed. Any exceptions must be documented with the delivery of the attestation letter for acceptance by the County.

**EXHIBIT F - FEDERALLY FUNDED CONTRACTS REQUIREMENTS  
FTA SUPPLEMENT**



## **EXHIBIT G - TRANSIT ADVERTISING INVENTORY**

**EXHIBIT H – BROWARD COUNTY ADVANTAGE MARKETING PROGRAM**