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Boosterthon Fun Run Contract

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between **BOOSTER ENTERPRISES, INC.**, a Georgia Corporation ("**Booster**"), and Longbranch Elementary School, a SCHOOL (the "**Client**") (Booster and the Client are referred to collectively herein as the "**Parties**" or individually as a "**Party**").

RECITALS

WHEREAS, Booster is in the business of organizing, marketing, and leading fundraising campaigns whereby students of educational institutions raise funds to sponsor their participation in an exercise based event, such funds (net of compensation to Booster) to be used by such institutions for the furtherance of the purpose thereof (each a "**Boosterthon Fun Run**");

WHEREAS, the Client is interested in hosting a Boosterthon Fun Run, and Booster is willing to offer its services in connection therewith on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Engagement**. The Client hereby engages Booster to organize, market and manage a Boosterthon Fun Run (the "**Services**"), and Booster hereby agrees to provide the Services for the benefit of the Client, all on the terms and subject to the conditions set forth herein.

2. **Obligations of Booster**. Booster shall conduct a Boosterthon Fun Run on behalf of the Client. The services and materials provided by Booster as part of the Boosterthon Fun Run shall include, but are not limited to, supplying all prizes, advertising, promotion, organization, and refreshments necessary or appropriate, in the sole discretion of Booster, to conduct a Boosterthon Fun Run in accordance with Booster's customary practices and customs.

3. **Obligations of the Client.** The Client shall make available to Booster, its personnel and agents, any and all school grounds and facilities, as specified on Exhibit A, as well as any and all Client students, faculty, and staff, as specified, on the dates and during the times as set forth in Exhibit A. The Client shall arrange for the Volunteers (as defined herein) to participate, at the direction of Booster and its representatives, in the Primary Collection (as defined herein) to be held on the date specified in Exhibit A.

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4. **Base Cost. Within** 14 **business days of the execution** of this Agreement, the Client shall pay to Booster a Base Cost of 2000 ***dollars*** (the "**Base Cost**"). The Client agrees that except as set forth in Section 11, the Base Cost is non-refundable, earned as of the date of the execution of this Agreement, and will not be returned to the Client under any circumstances. The Client agrees that the Base Cost is independent of the Booster Share set forth in Section 7 of this Agreement, and that the Base Cost is not deductible or otherwise taken into consideration when calculating the Booster Share.

5. **Date of the Boosterthon Fun Run.** The dates and times of the scheduled Boosterthon Fun Run shall take place on the schedule set forth in Exhibit A.

6. **Collection of Funds**. The collection of funds raised as a result of the Boosterthon Fun Run shall take place as follows:

(a) The primary collection shall take place on the date and time specified on Exhibit A (the "**Primary Collection**"). The Client shall send collection reminders regarding the Primary Collection to students on at least two separate occasions prior to the Primary Collection. All of the funds collected by each of the participating students and/or classrooms from their respective Boosterthon Fun Run sponsors shall be known as the "**Collected Funds**."

(b) Prior to an in person Primary Collection, Booster representatives will train the Volunteers on the use of the Booster online collection program. There must be at least one Volunteer representing the Client at all time funds are collected or tallied at an in person Primary Collection.

(c) After all Collected Funds have been satisfactorily accounted for, the Collected Funds shall be immediately distributed according to Sections 4 and 7 of this Agreement.

(d) After the Primary Collection, the Parties may organize one or more additional collection dates. In the event that the Parties agree to pursue additional collection dates, the Parties will agree on a mutually acceptable date to hold such collection. Any additional collections shall be conducted in the manner set forth in Section 6(a)-(c) above.

7. **Distribution of Raised Funds**.

(a) The Client shall retain a percentage (see Exhibit B for percentage) of Gross Revenues that is raised by the Boosterthon Fun Run. As compensation for the services provided in conducting the Boosterthon Fun Run, Booster shall retain from the Collected Funds, or the Client shall cause to be paid, as applicable, the remaining amount which is equal to a percentage (100 Percent minus the Client's Percentage from Exhibit B) of the Gross Revenues generated by the Boosterthon Fun Run (the "**Booster Share**"). For purposes of this Agreement, "**Gross Revenues**" shall mean all funds collected or otherwise received by Booster, the Client, the participants in the Boosterthon Fun Run, or any other student, parent or Client employee or representative in connection with the fundraising efforts that are the object and purpose of the Boosterthon Fun Run or otherwise related thereto.

(b) The Client will maintain access to and control of the funds and the account in which the funds are deposited. Booster will not, at any time, have access to or control of the funds or account in which the funds are deposited.

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8. **The Client's Acknowledgments, Representations and Covenants.**

(a) In order to maximize the success of the Boosterthon Fun Run, the Client shall not actively promote any other fundraiser, including any annual fund, from the date of the "Initial Teacher Meeting" (according to the date assigned to this meeting on Exhibit A) until the date of the Primary Collection.

(b) The Client hereby acknowledges that the Boosterthon Fun Run involves strenuous physical activity and hereby agrees that it is the sole responsibility of the Client to determine the physical condition, health, and fitness of its students and other participants in the Boosterthon Fun Run and the safety and suitability of each student's and other participant's participation in the Boosterthon Fun Run. The Client further acknowledges and agrees that Booster has no, and will not at any time have any, independent knowledge of, and is not responsible for investigating or determining (and will take no measures to investigate or determine) the physical condition, health, and fitness of the Client's students and other participants in the Boosterthon Fun Run or the safety or suitability of any student's or other participant's participation in the Boosterthon Fun Run. The Client takes full responsibility for assessing the physical condition of its students and all Boosterthon Fun Run participants and for alerting such students, their guardians, and any other participants to the nature of the Boosterthon Fun Run and any appropriate safety precautions.

(c) The Client is responsible for obtaining and maintaining through the Boosterthon Fun Run all necessary permits as may be required for such events.

9. **State Compliance and Registration.**

(a) Upon receipt of this executed Contract, Booster will register as a professional fundraising counsel, or other fundraising designation deemed by the appropriate State authority, in the State where the Client is located. Booster will file a copy of this Agreement in the States where registration is required. In accordance with fundraising regulations, Booster may request additional information from the Client, including but not limited to, the Client's Employer Identification Number, State Registration Number, and bank account number where Collected Funds will be deposited.

(b) The Parties agree that the Client will review its legal obligations to register as a charitable organization where relevant prior to the date of the Student Pep-Rally set forth in Exhibit A.

(c) Each Party will be responsible for its own costs in becoming and remaining compliant with the appropriate state agency.

10. **Mutual Indemnification.** To the extent allowed by law, the Client and Booster agree to mutually indemnify and hold the other harmless, as well as the other's board members, elected officials, and employees, from and against any and all claims and damages, including attorney's fees, brought by a third party against the other party, and/or its board members, elected officials, and employees arising from the negligence or misconduct of the indemnifying party and/or its board members, elected officials, and employees.

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11. **Termination**.

(a) This Agreement may be terminated by the Client for any reason at any time prior to the date of the Student Pep-Rally set forth on Exhibit A by written notification (including email) to Booster.

(b) This Agreement may be terminated by Booster at any time, and for any (or no) reason by written notification (including email) to the Client. In the event of termination of this Agreement by Booster, the Base Cost shall be returned to the Client within thirty (30) days. The refund of the Base Cost shall be the sole and exclusive liability of Booster, and the sole and exclusive remedy of the Client, with respect to termination of this Agreement pursuant to this Section 11(b).

(c) The Parties acknowledge and agree that the termination of this Agreement, whether by the Client or by Booster, shall not affect the distribution of Gross Revenues as set forth in Section 7 whether such Gross Revenues are collected prior to or after the termination of this Agreement.

12. **Acknowledgements.** To the extent permitted by law, Client shall be responsible for its acts and omissions in connection with this Agreement and the Services performed hereunder, and Client covenants that it will not create liability on the part of Booster to a third party as a result of Client's actions or omissions hereunder. The Client shall maintain in full force and effect Comprehensive General Liability insurance, at its own expense, on an occurrence basis, that includes a duty to defend and provides bodily injury, property damage and contractual liability coverage with limits of at least one million dollars ($1,000,000). Booster shall carry at all times a comprehensive general liability insurance policy at its expense with coverage limits of at least one million dollars ($1,000,000).

13. **Right to an Accounting.**

(a) The Client shall keep, maintain and preserve in its principal place of business, during the term of this Agreement and for at least one (1) year following its termination or expiration, complete and accurate books, accounts, records and other materials covering all transactions (including all donations and Gross Revenues generated by the Boosterthon Fun Run) related to this Agreement. Upon reasonable notice, Booster and/or its duly authorized representatives shall be given full access to, and shall have the right to inspect and review all such records and other materials related to this Agreement. Such records and other materials shall be available for inspection and review (including photocopying) during reasonable business hours at any time during the term of this Agreement and for at least one (1) year following its termination or expiration. The Client will cooperate and will not cause or permit any interference with Booster and/or its representatives in the performance of their duties of inspection and review. Except as set forth in paragraph (b) below, any such accounting shall be performed at Booster's sole expense.

(b) Should an accounting indicate an underpayment by the Client of any of the compensation to be paid to Booster hereunder, the Client shall be liable for the full amount of any such underpayment, including interest at the highest rate allowable under applicable law. The Client shall submit any and all of the foregoing payments owed to Booster within thirty (30) days from the date of the accounting.

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14. **Intellectual Property.**

(a) The Client hereby acknowledges and agrees that Booster's trademarks, label designs, literature, website materials, videos, product and service identification, artwork and other symbols associated with Booster's Services ("**Booster Marks**") are and shall remain Booster's property.

(b) The creative ideas, concepts (including the concept of the Boosterthon Fun Run as a fundraiser), slogans, art and printed material provided to the Client prior to the date hereof are the property of Booster and cannot be used, duplicated, copied or repeated without Booster's prior written consent.

(c) The Client shall not manufacture or sell, or license or procure the manufacture or sale of, any tee-shirts or other promotional or other merchandise which bears the Booster Marks except as otherwise consented to by Booster in writing.

(d) Booster shall own all right, title and interest in and to all intellectual property created by or on behalf of either Party in connection with this Agreement or the Boosterthon Fun Run, including, without limitation, all logos, names, ideas, concepts, creative materials, promotional materials, advertising, and graphics, including all copyrights and proprietary rights therein, and any inventions and discoveries first conceived or developed, whether or not protected by patent, trade secret or copyright. The distinctive colors, concepts, indicia and look displayed by Booster at the Boosterthon Fun Run and by Booster in its regular business operations and materials shall constitute Booster property and therefore be owned by Booster. The Client expressly acknowledges that the Parties have agreed that all copyrightable aspects of the Boosterthon Fun Run are to be considered "works made for hire" within the meaning of the Copyright Act of 1976, as amended (the "**Act**"), of which Booster is to be the "author" within the meaning of such Act. All such copyrightable works, as well as all copies of such works in whatever medium fixed or embodied, shall be owned exclusively by Booster as its creation, and the Client hereby expressly disclaims any interest in any of them. The Client expressly acknowledges that it is not a joint author and that all works created in connection with the Services hereunder are not joint works under the Act.

(e) Any and all rights of Booster, including those in and to the Boosterthon Fun Run, are reserved to Booster and may be exercised, marketed, licensed, exploited or disposed of by Booster with respect to any third parties concurrently with the term of this Agreement.

15. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (a) delivered personally, (b) transmitted by guaranteed overnight delivery services, or (c) sent by certified mail, return receipt request, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. All notices personally delivered or sent by overnight delivery service shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on the date of the return receipt.

DocuSign Envelope ID: 3F971CF4-272F-4A80-BD35-0ADEB128C4B6

Booster: Booster Enterprises, Inc.
10400 Old Alabama Road Connector, Suite 400
Alpharetta, GA 30022
Telephone: _____
Attn: _____

Client: Longbranch Elementary School

a SCHOOL

Street: 2805 Longbranch Rd.

City: Union

State, Zip: KY 41091

Telephone: _____

Attn: _____

16. **Choice of Law/Venue**. This Agreement will be construed and enforced according to the laws of the State of Georgia, United States of America, without giving effect to any conflicts of law rule or principle that might require the application of the laws of another jurisdiction. The Client agrees that any action or proceedings arising out of this Agreement shall be brought and maintained in Georgia, and hereby consents to the jurisdiction of courts located in Georgia.

17. **Relationship of Parties.** Booster is an independent contractor and nothing herein shall be construed to make either Party the partner, employee, joint venture or agent of the other Party. Except as set forth in this Agreement, neither Party shall have the right or power to obligate or bind the other in any manner whatsoever. Except as expressly set forth otherwise herein, the Client shall not exercise direct supervision or control over Booster's day-to-day activities or over Booster's employees, agents or subcontractors. Each of Booster and the Client shall be solely responsible for its actions and the actions of its employees and agents. For the avoidance of doubt, neither Booster nor its employees, agents or subcontractors, including, without limitation, any temporary labor, shall be deemed the Client's employees, agents or subcontractors, and no such party or individual shall hold itself out as such. In no event shall the Client be responsible for providing any employee benefits to any such party or individual. Without limiting the generality of the foregoing, (a) the Client shall not withhold from any of the consideration hereunder, except when required by law, any amount for federal income taxes, social security, Medicare or any other legal deductions; and (b) the Client shall not make premium payments or contributions for any workers' compensation or unemployment compensation benefits for any employee or agent of Booster or its agents, payment of which shall be Booster's responsibility.

18. **Unavoidable Delay.** The Parties shall not be liable for failure to perform its complete obligations described in this Agreement, if such failure results from any act of God, inclement or severe weather, flood, earthquake, terrorist attack, riot, war, civil unrest or other cause outside of a Party's control that prevents such Party from fulfilling its obligation as outlined in this agreement (a "**Force Majeure Event**"). If a Boosterthon Fun Run is not staged due to a Force Majeure Event, Booster shall be permitted to keep the Base Cost for the Boosterthon Fun Run, and no

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Party shall have further recourse against the other Party for fees or services with respect to such cancelled event. In the event that the Boosterthon Fun Run is cancelled due to a Force Majeure Event, Booster will work with the Client to schedule an alternative date for the Boosterthon Fun Run at a date that is mutually convenient for the Parties. If rescheduled, the retained Base Cost shall be applied to the newly scheduled Boosterthon Fun Run.

19. **Further Assurances.** The parties agree to take such action, and to produce or execute such other documents or agreements as may be necessary or desirable for the execution and implementation of this Agreement and the consummation of the transactions contemplated hereby.

20. **Dispute Resolution.** Any Dispute arising out of or relating to this Agreement or the breach thereof shall be submitted in writing to the other Party. Upon receiving written notice of the Dispute, the Party will have thirty (30) days to respond. If an amenable resolution cannot be achieved within thirty (30) days, the Parties may extend the period for an additional thirty (30) days. If an amenable resolution still cannot be reached, the Parties will elect a single mediator, agreeable to each Party, and submit the Dispute to mediation. The cost of mediation will be shared equally between the Parties. If an amenable resolution cannot be achieved through mediation, each Party may pursue any legal remedy available under the law. If litigation is pursued, the prevailing Party shall recover reasonable costs including attorney's fees.

21. **Severability**. If any provision of this Agreement, or part thereof, or the application of any provision, or part thereof, is held invalid or unenforceable, the application of such provision, or part thereof, other than to the extent it is held invalid or unenforceable, shall remain in full force and effect. All other provisions in this Agreement shall remain in full force and effect.

22. **Entire Agreement/Amendment**. This Agreement, together with Exhibits A and B, constitutes the final, complete, and exclusive embodiment of the entire agreement and understanding between Booster and the Client and supersedes and preempts any prior or contemporaneous understandings, agreements, or representations by or between the parties, whether written or oral. Any amendment to this Agreement shall be set forth in writing, dated, and signed by both parties to this Agreement.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement. Documents, including signatures, transmitted via facsimile or electronic transmission shall have the full force and effect of original documents.

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IN WITNESS WHEREOF, this Agreement has been executed and delivered effective on the date first above written.

"Booster"

BOOSTER ENTERPRISES, INC.

DocuSigned by:

By: Jonathan Knopf
94F375B845A4470...

Name: Jonathan Knopf

Title: Account Executive

Date: 3/9/2020

"Client"

Name of Client: Longbranch Elementary School

a

SCHOOL

By: _____

Name: Stephanie Stambaugh

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

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Exhibit A

Boosterthon Fun Run Schedule

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Event	Date(s)	Parties Involved
Student Pep-Rally	2021-02-22	
Team Day 1		
Team Day 2		
Team Day 3		
Team Day 4		
Team Day 5		
Team Day 6		
Boosterthon Fun Run Event	2021-03-03	
Primary Collection		
Official End		



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Exhibit B

Boosterthon LIVE Pricing Scale - Based on total gross collected amount

Min. Gross	Max Gross	Client %	Booster %
$155,001	+	65%	35%
$145,001	$155,000	64%	36%
$135,001	$145,000	63%	37%
$125,001	$135,000	62%	38%
$115,001	$125,000	61%	39%
$105,001	$115,000	60%	40%
$95,001	$105,000	59%	41%
$85,001	$95,000	58%	42%
$75,001	$85,000	57%	43%
$65,001	$75,000	56%	44%
$55,001	$65,000	55%	45%
$45,001	$55,000	54%	46%
$35,001	$45,000	53%	47%
$30,001	$35,000	52%	48%
$25,001	$30,000	51%	49%
$0	$25,000	50%	50%

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Make checks payable to:
Booster Enterprises Inc.
10400 Old Alabama Rd Conn
Suite 400
Alpharetta, GA 30022

INVOICE

Date

Bill To
School Longbranch Elementary School
Address 2805 Longbranch Rd.
Union
KY 41091

BASE COST DUE $ 2000