

**FREEDOM BOWL HIGH SCHOOL FOOTBALL PREMIERE EVENTS
FOOTBALL GAME PARTICIPATION AGREEMENT**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2018, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as “SBBC”),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

SPIRE FOOTBALL, LLC

(hereinafter referred to as “Company”),
whose principal place of business is
19510 Jetton Road, Suite 300, Cornelius, North Carolina 28031

WHEREAS, Company has developed a regional invitation-only high school tackle football event for participation by public and private high school teams, including the 2018 Atlanta Freedom Bowl and related educational and promotional activities at Milton High School in Alpharetta, Georgia from August 31, 2018 through September 2, 2018 (the “Event”) and Marjory Stoneman Douglas High School (“MSD”) has been invited to participate in said event; and

WHEREAS, MSD accepts Company’s invitation, and it commits to participating in the Event. MSD acknowledges and understands that Company must procure commitments from a specific number of teams in order to proceed with the Event, and MSD further understands and acknowledges that Company will be committing its resources and entering into contractual engagements with third parties in reliance of this commitment from SBBC. Therefore, if SBBC cancels this Agreement at any time after execution by both parties, SBBC shall pay to Company liquidated damages in the amount of \$2,500, with such payment due and payable within thirty (30) days of the cancellation; and

WHEREAS, MSD shall play one 11 versus 11 tackle football game against another invited secondary school tackle football team participant (the “Opponent”) on a day and time during the Event as selected by Company in its sole discretion. Company, shall, in its sole discretion, select the Opponent. Company shall meaningfully consult with MSD concerning the selection of the Opponent, and Company shall use reasonable effort to select an Opponent that will be competitively matched with MSD; and

WHEREAS, the Event will be held at Milton High School in Alpharetta, Georgia; and

WHEREAS, Company and SBBC have agreed to the terms pursuant to which the Event will take place; and

WHEREAS, the Event presents a tremendous opportunity for both SBBC and Company to showcase educational excellence through interscholastic sports and receive national attention and exposure.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of all parties and shall conclude on September 3, 2018.

2.02 **Dates.** The Event will be from August 31, 2018 through September 2, 2018.

2.03 **Kickoff Times.** The exact time of the game will be determined by Company.

2.04 **Venue.** The venue for the Event shall be Milton High School, Alpharetta, Georgia.

2.05 **Compliance with Code of Conduct and Rules.** MSD shall cause all of its coaches, assistants, players, and other participants (the “School Parties”) to be and remain familiar with, and to comply with, the Code of Conduct and the Event rules issued by Company and posted on Company’s website located at WWW.AIRONATION.COM.

2.06 **Registration and Waivers.** All MSD players participating in the Event must complete Company’s online registration documentation for the Event and sign the waiver and release, express assumption of risk, indemnity and rights of publicity agreement.

2.07 **Rights of Publicity and Trademarks.** SBBC hereby grants to Company a limited, non-exclusive, royalty-free, and approval-free license to include the rights of publicity, name, image, likeness, logos, and fame of MSD (the “School Marks”) along with the rights of publicity, name, image, likeness, logos, and fame of Company, the Event, and the other schools participating in the Event in connection with the marketing, advertising, and promotion of the Event, charitable activities associated by and supported by the Event, and the Event’s sponsors and suppliers in all forms of advertising and broadcast media, including, but not limited to, the

internet, social media, print, radio, television, electronic advertising formats (such as electronic billboards and jumbotrons), and online digital uploads and streaming.

2.08 **Broadcast Rights, Photography, and Other Event Content.** SBBC acknowledges and understands that photographs and video and audio recording content of this Event will be captured (the “Event Materials”). Company shall be the first owner of the entire copyright of the Event Materials, and Company shall retain any and all rights, titles and interests in and to any and all trade secrets, patents, copyrights, service marks, trademarks, or similar intellectual property rights, as well as any and all moral rights, rights of privacy and similar rights of any type under the laws of the United States of America and any state thereof in connection with the Event Materials. Company shall have the sole and exclusive right to broadcast, distribute, license, and sublicense the Event Materials. Company shall provide SBBC with a link that will allow access to view the Event remotely.

2.09 **SBBC Equipment and Travel.** SBBC shall, at its expense, be responsible to provide and transport all team and player equipment reasonable required for MSD’s participation in the Event. Company will cover one night team hotel rooms, estimated cost of \$2,475 and one of Company’s sponsors will donate \$5,000 towards bus transportation. MSD will utilize travel arrangements approved by SBBC.

2.10 **Game Rules.** All football games at the Event shall be played under the rules as adopted by the National Federation Rules Committee of the National Federation of State High School Associations.

2.11 **Game Officials.** Officials certified by the Georgia High School Association will be utilized in the football game. Company shall secure and pay the Game Officials.

2.12 **Game Expenses.** All Event expenses including but not limited to officials, gate keepers, statisticians, security, police officers, EMT personnel and equipment, field usage and operations shall be borne by Company.

2.13 **Event of Emergency.** Company shall ensure that all safety requirements and precautions are met prior to the commencement of the game. Both parties shall each provide an athletic trainer trained in First Aid that will be available within close proximity of the players during the game. Pursuant to O.C.G.A. §20-2-775, in the event of an emergency, an automated external defibrillator will be accessible to trained and certified personnel.

2.14 **Proceeds.** Any and all proceeds and profits made by this event will be solely paid to Company.

2.15 **SBBC Disclosure of Education Records.**

(a) SBBC will provide the information listed in 2.15(b) for the purpose of announcing the football players during the game and for inclusion in the event program.

(b) SBBC will provide Company with the following education records: full team roster including player names and jersey numbers no later than July 1, 2018.

(c) SBBC will obtain consent from each student's parent/guardian or student age 18 or older whose education records are to be shared prior to disclosing or allowing access to the education records listed above.

2.16 Company Confidentiality of Education Records.

(a) Notwithstanding any provision to the contrary within this Agreement, Company shall:

1) Fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) Hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release.

3) Ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request.

4) Safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements.

5) Utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party.

6) Notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes.

7) Fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner.

8) Prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC

for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes.

9) Be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law.

10) Provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records.

11) Securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Company shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.17 Inspection of Company's Records by SBBC. Company shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of Company's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Company's Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Company pursuant to this Agreement. SBBC's agent or its authorized representative shall provide Company with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized

representative shall have access to the Company's facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. Company shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.18 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director
The School Board of Broward County, Florida
600 Southeast Third Avenue, Third Floor
Fort Lauderdale, Florida 33301

To Company: Spire Football, LLC
19510 Jetton Road, Suite 300
Cornelius, North Carolina 28031

2.19 **Background Screening.** Company agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Company or its personnel providing any services under the conditions described in the previous sentence. Company shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Company and its personnel. The parties agree that the failure of Company to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, Company agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Company's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or Company of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.20 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.21 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.22 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.23 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized

in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward

County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **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.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

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FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR COMPANY

SPIRE FOOTBALL, LLC

ATTEST:

Name

Title

Subscribed before me
This ___ day of _____, 2018

Notary Public

Affix Notorial Seal

Commission Expiration Date