

Advertising on School Perimeters Agreement

Do not use this form if you are entering into a sponsorship agreement. A Sponsorship agreement is defined as a commercial arrangement in which a sponsor provides a contribution in money or in-kind to support an activity in return for certain specified benefits.

Parties

Department

State of New South Wales by its Department of Education as represented by its
(the **Department**).

ABN 40 300 173 822

Address

Contact	Email	Phone

Advertiser

(the **Advertiser**).

Guarantor

of

ACN/ABN

Address

Contact	Email	Phone

Schedule

Item 1 – Advertisement Agreement Summary

Item 2 – Term of Arrangement

[Maximum Term of Arrangement is one year unless otherwise extended]

Start Date		End Date	
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Item 3 – Arrangement of Contribution and Payment

Type	Description	Value (ex. GST)	Payment method	Tax invoice	Date due
Cash					
Value-in-kind					

Item 4 – Special Conditions

Background

- (a) The Department is committed to the responsible use of its assets for the benefit of the State of New South Wales and develops specific programs to support and achieve this goal. Schools that have perimeter fences and walls of school buildings facing busy intersections or streets are often approached by businesses looking for sites to profile their brand. Schools may consider giving permission to commercial organisations to place advertising on school perimeters for a fee paid to the school.
- (b) The Department is entering into this Advertising agreement with the Advertiser to formalise arrangements for the provision of advertising outlined in this agreement.

1. Term

- 1.1. This Agreement commences on the Start Date and ends on the End Date (each as set out in Item 2) unless otherwise extended or terminated in accordance with this Agreement.
- 1.2. The parties may extend the term of this Agreement in writing and signed by both parties. Any extension may be granted or refused in the Department's absolute discretion.

2. Advertiser's obligations

- 2.1. The Advertiser will comply with all the Obligations set out in this document.
- 2.2. The Advertiser will supply all its advertising/commercial materials including logos and signage/banners and advertisements to be used in respect of the Agreement to the Department by the date notified by the Department.
- 2.3. The Advertiser will provide the Contributions to the Department in accordance with Item 3, subject to any Special Conditions in Item 4, in consideration for the Department permitting the Advertiser to install the Advertising Sign on the Department's site.
- 2.4. The Advertiser is responsible for, and must provide to the Department copies of any required approval (or written verification that such approval is not required) from local council, or any other authorities, to display the Advertising Sign.
- 2.5. The Advertiser is responsible for ensuring that the signage does not breach election advertising guidelines. Please refer to relevant legislation for further information:
 - (a) [Subdivision 13 Election signs](#): Specifies when and how election advertising must be displayed – only relevant to schools registered as election voting locations.
 - (b) [184 Display of posters](#): Specifies election posters must not be displayed on government property. Does not apply on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for voting is situated, or within the grounds of an enclosure in which a building used for voting is situated.

- 2.6. The Advertiser will comply with all relevant policies and guidelines of the Department. The Advertiser acknowledges that the Department's policies and guidelines may change from time to time and it is not possible for the Department to notify all affected persons in the event of a change. It is the Advertiser's responsibility to ensure that they are complying with the current version of these policies and guidelines. This includes the following policies and guidelines:
- (a) Sharing of School Facilities policy
 - (b) Code of Conduct policy; and
 - (c) Values in NSW Public Schools policy.
- 2.7. The Advertiser must ensure that no Conflict of Interest exists in relation to this Agreement and immediately notify all parties if it becomes aware of the existence or possibility of a Conflict of Interest.
- 2.8. The Advertiser must not:
- (a) **endorsement:** in writing or by implication suggest that the Department endorses of the Advertiser or its goods or services (if applicable);
 - (b) **Department intellectual property:** use the School or Department's name or logo or any other Department Intellectual Property in connection with the rights granted in this Agreement or otherwise;
 - (c) **require procurement:** require or expect the Department to procure the Advertiser's goods or services.
- 2.9. The Advertiser's signage must adhere to the following rules.
- (a) **Signage must not target students.** Signage must not:
 - (i) be placed in classrooms, or in a position inside the school where advertising may target students, signage must face outwards from the school toward the public road/space (e.g. on the perimeter fence)
 - (ii) be advertised on school signboards
 - (b) **Messaging and images must be clear on their association with the school.** Signage must indicate that it is paid advertising by including the line 'Paid Advertisement'. The line must be legible, and in size 36 font or larger. Signage must not:
 - (i) imply the advertising is a message from the school
 - (ii) include the school logo or messaging on behalf of the school
 - (iii) imply the school or department endorses the product or service
 - (iv) contain imagery that is not appropriate for the school setting
 - (v) create a perception the school is financially strained, or that advertisers have an inappropriate influence in the school – principals will need to consider wording, size, positioning of signage and number of advertisements on one fence

(c) **Sign and logo sizing need to comply with department requirements.**
Signage must not:

- (i) be larger than the school sign (with maximum dimensions of A0 being 841mm x 1188mm)
- (ii) be close to the school sign or school entrance – keep an exclusion zone of three metres around the school sign and school entrance
- (iii) contain images or logos larger than the school logo or school name on the school sign (school signage and logo should remain the most prominent on display)
- (iv) exceed the sizing limit for the set percentage of the size of a school fence (set percentage is 30%, excluding the exclusion zones of three metres from the school sign and school entrance)

- 2.10. The Advertiser may erect the sign in the location on the school site as approved by the Department, and in accordance with the above Obligations.
- 2.11. The Advertiser is responsible at its cost to install the Approved Advertisement at the location on the School site as agreed/shown on the plan at Appendix C subject to arrangements being agreed with the Principal/ or the Principal being notified. The Advertiser must rectify, to the satisfaction of the Department, any damage caused to the Department site and/or Department fixtures when installing the advertisement at its expense.
- 2.12. The Advertiser must ensure that the advertisement is maintained to a reasonable standard, as not to reflect poorly on either party.
- 2.13. The Advertiser must remove the advertisement from the Department site at the end of the Term unless instructed to do otherwise by the Department.
- 2.14. Should the Advertiser fail to remove a sign that has fallen into disrepair, the Department is at liberty to remove this sign before the end of the Term of Agreement.

3. Department's Obligations

- 3.1. Determine the request within a reasonable time.
- 3.2. Advise the Advertiser of the decision and if approved where the sign can be installed on the Department's site.
- 3.3. Department's decision is final.
- 3.4. The Department should ensure that the Advertiser's signage adheres to the following considerations before entering this agreement:

(a) **Suitability.** The Department should ensure:

- (i) any advertising on school perimeter aligns with the Department's values – integrity, excellence, respect, responsibility, cooperation, participation, care, fairness and democracy (Values in NSW Public Schools Policy).

- (ii) conflicts of interest are managed, and are declared and documented throughout the decision-making process (for example, if an advertiser has a personal relationship with a member of staff or P&C executive).
 - (iii) they have considered the suitability of advertisers before entering into any agreement (for example, organisations that promote unhealthy food, tobacco, alcohol products or gambling products are inappropriate).
 - (iv) signage has a connection to the local community as there are limitations for large companies advertising on multiple school perimeter in an area they do not service.
- (b) **School reputation.** The Department should ensure:
 - (i) the product or service being advertised is appropriate for display on school property
 - (ii) there is no political advertising (from political parties, unions and lobby groups) on the school perimeter as the department needs to remain impartial and apolitical (with the exception of polling days where political signage is managed externally)
 - (iii) schools avoid over-advertising and creating the impression that the school is reliant on external funding (the principal could make this decision during consultation with the school community)
- (c) **Fair compensation.** The Department should ensure:
 - (i) the agreement represents a fair exchange between the school and the advertiser
 - (ii) schools and directorates do not receive financial remuneration in return for recommending, endorsing or directing business to a third party or commercial provider.
- (d) **Transparency and fairness.** The Department should ensure:
 - (i) an equitable system for providing opportunities for organisations to advertise on school perimeters
 - (A) For example, an annual invitation in the school newsletter may be a transparent way to open the market to all. For popular locations with high traffic or greater visibility, principals should have a defined number of advertising places available.
 - (B) Pre-determined selection criteria may help where schools receive multiple applications.
 - (ii) documentation of decisions, particularly where business-owning parents are the advertisers. Transparency and fairness are greater is critical to reduce potential risk of those parents being seen to have undue influence in the school or on school decisions.

- (e) **Equitable community approach.** The Department should ensure:
- (i) signage does not indicate endorsement of one company over another (for example, principals should consider whether the school should align with one real estate agent if there is more than one agent within the school community)
 - (ii) the advertisement doesn't encourage use of a product in exchange for a benefit to the school (for example, spotter's fees or kick-back)
 - (iii) advertising opportunity is not only offered/made available to one organisation to the exclusion of other organisations

4. Dispute Resolution

- 4.1. If the Advertiser disputes the Contribution amount set out in Item 3 of this Agreement the Advertiser must provide notice in writing of the reasons to the Department. The parties will use best endeavours to resolve the dispute.

5. Payment/Delivery of Advertisement Contribution

- 5.1. The Contribution, both cash and in-kind contributions, will be paid or delivered in accordance with Item 3.
- 5.2. The parties agree that the Contribution is a taxable supply under the GST Legislation. The parties will issue invoices in accordance with Item 3.
- 5.3. **GST Legislation** means any law imposing or relating to a goods and services tax and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such Act.
- 5.4. Each party to the Agreement warrants that it is registered under the GST Legislation and that it will advise the other party should any change occur in that registration.

6. Confidential Information

- 6.1. Each party must:
- (a) keep the other party's Confidential Information confidential;
 - (b) only use the other party's Confidential Information for the purposes of this Agreement;
 - (c) only disclose the other party's Confidential Information to their key personnel who need to know the Confidential Information for the purposes of this Agreement and who have been directed to keep it confidential. The party disclosing the other party's Confidential Information to its personnel is responsible for any unauthorised disclosure by those Personnel;
 - (d) notify the other party if there is an actual or suspected breach of confidentiality; and
 - (e) comply with all reasonable directions given by the other party concerning the other party's Confidential Information.

7. Intellectual property

- 7.1. The Advertiser warrants and agrees that any Intellectual Property used by it for the signage or any the purpose under this Agreement does not infringe the Intellectual Property rights of any third party.
- 7.2. The Department relies on the Advertiser's warranty.

8. Insurance

- 8.1. The Advertiser will maintain public liability insurance of at least \$10 million per occurrence, and workers compensation insurance (as required).
- 8.2. The Advertiser will provide the Department evidence of such insurances if requested.

9. Termination

- 9.1. The Department may at any time retract any agreement or approval it has provided under this clause. If this happens, the parties will negotiate in good faith new arrangements.
- 9.2. The Department may immediately terminate the Agreement by written notice if:
 - (a) The Advertiser breaches this Agreement and does not remedy the breach within 14 days of receiving notice from the Department requiring it do so. For the avoidance of doubt, a failure to provide the Contribution in the form of cash and/or the in-kind contributions (or any part thereof) is a breach to which this clause 8.1(a) applies;
 - (b) The Advertiser breaches this Agreement where that breach is not capable of remedy; or
 - (c) the Department determines that, for any reason in its absolute discretion, it should no longer be associated with the Advertiser.
- 9.3. The Advertiser may terminate the Agreement and remove its signage at its absolute discretion, but will forfeit any funds paid to the Department.
- 9.4. On ending of this Agreement the Advertiser is obliged to remove signage as outlined in clause 2.7.
- 9.5. If the Department terminated the Agreement under clause 9.1(c), the Department must return any Contribution proportional to the period remaining had the Agreement not been terminated.
- 9.6. Ending of this Agreement for any reason will otherwise be without prejudice to any rights which either party may have accrued before such ending.

10. Definitions

- 10.1. **Advertising Signage** is any externally facing graphic designs, symbols, emblems, or words, used to identify an organisation that is not the Department of Education.
- 10.2. **Approved Advertising** is any advertisement approved under clause 2.7.
- 10.3. **Department Site** means any land or building owned by the Department of Education.
- 10.4. **Conflict of Interest** means any perceived or actual conflict of interest including engaging in any activity, or obtaining any interest which restricts or is likely to conflict with the performance by the Advertiser of its obligations under this Agreement.
- 10.5. **Confidential Information** means all information that is either directly or indirectly disclosed from either the Department or the Advertiser to the other party, regardless of form, that relates to its business and is either:
- (a) is by its nature confidential;
 - (b) designated by the disclosing party and advised to the other party as being confidential; or
 - (c) of a confidential or sensitive nature, marked or denoted as confidential or information that a reasonable person would consider confidential
- but does not include information which is or becomes public knowledge other than by breach of this Agreement.
- 10.6. **Intellectual Property** includes:
- (a) patents, copyright, registered and unregistered designs, registered and unregistered trademarks, and the right to have confidential information kept confidential; and
 - (b) any application or right to apply for registration of the rights referred to in (a).

11. General and interpretation

- 11.1. **Variation:** An amendment or variation to this Agreement is not effective unless it is in writing and signed by both parties.
- 11.2. **Relationship:** Nothing in this Agreement constitutes any relationship of employer and employee, principal and agent, or partnership between the Department and the Advertiser.
- 11.3. **Warranty:** Each party warrants that by entering into this Agreement and performing its obligations under this Agreement will not contravene any law to which it is bound, or infringe any Intellectual Property right of any other person.
- 11.4. **Governing law and jurisdiction:** The law of New South Wales governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.
- 11.5. **Waiver and consents:** Except as expressly stated in this Agreement, each party acknowledges that:

- (a) a waiver or consent under this Agreement is not effective unless it is in writing and signed by the parties entitled to give the waiver or consent;
 - (b) a waiver or consent may be given conditionally or unconditionally or withheld at the absolute discretion of the party entitled to give the waiver or consent;
 - (c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
 - (d) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
 - (e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 11.6. **Notices:** A notice or communication has no effect unless it is in writing and sent by email, prepaid post, or delivered to the addressee.
- (a) Each party's address, and email details are set out in the Agreement Details. A party can change its details by giving notice to the other party.
 - (b) A notice is received: if sent by email at the time the email is sent if there is no failure delivery report; if sent by post 3 business days after posting; or if delivered when it is left at the main office address.
- 11.7. **Standalone arrangement:** The Advertiser enters into this Agreement for the purposes of the Agreement only. The Advertiser's entitlement to any benefits are set out in this Agreement. The Advertiser must not seek to rely on its Contribution under this Agreement in support of any other arrangement with the Department (including but not limited to in support of any tender) and/or may not request any other benefit from the Department, including in connection with any other commercial arrangement with the Department.
- 11.8. **Survival:** clauses 6, 7, 9 and 10 survives ending of this Agreement as well as any right or obligation, which, by its nature is intended to survive the ending of this Agreement.
- 11.9. **Interpretation:** In this Agreement, unless the contrary intention appears:
- (a) a reference to a document (including this Agreement) includes any variation or replacement of it;
 - (b) the words include, including, for example or such as when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind; and
 - (c) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

Executed as an agreement on

2021

Signed for and on behalf of:

The **State of New South Wales by
its Department of Education** in the
presence of:

Signature of witness

Signature of authorised delegate

Name of witness (print)

Name of authorised delegate (print)

Date: _____

EXECUTED by
Act 2001:

in accordance with section 127 of the Corporations

Signature of Director

Signature of Director/Secretary
(* **Delete as appropriate**)

Name of Director (print)

Name of Director/Secretary (print)

Date: _____

Signed for and on behalf of:

Signature of witness

Signature of authorised person

Name of witness (print)

Name of authorised person (print)

Appendix A

Commercial Arrangement Agreement further details (Item 1)

Appendix B

Special Conditions (Item 4)