

PLATINUM LEVEL ADVERTISING AGREEMENT

This Advertising Agreement (the "Agreement") is made and entered into as of _____ (hereinafter referred to as the "Effective Date"), by and between the Friendswood Independent School District (hereinafter referred to as "FISD"), at 302 Laurel, Friendswood, Texas 77546, and _____ (hereinafter referred to as "SPONSOR") at _____ (INSERT ADDRESS).

WHEREAS, FISD has the exclusive right to market, sell, and control all advertising displayed at Henry Winston Stadium (hereinafter referred to as "STADIUM") located at 702 Greenbriar Drive, Friendswood, Texas 77546;

WHEREAS, FISD has the exclusive right to grant licenses to parties, including SPONSOR, to use marquees and venues or display materials at or on FISD property including the STADIUM and to grant licenses to parties, including SPONSOR, to permit use of FISD intellectual property and promotional materials; and

WHEREAS, SPONSOR desires to purchase from the FISD the right to display certain advertising and to conduct or participate in certain promotions on the electronic scoreboard at the STADIUM for the joint purpose of promoting the FISD, the attendance at FISD events, and the SPONSOR'S products or services;

NOW THEREFORE, in consideration of the foregoing, incorporated herein by reference as provisions of this Agreement, the mutual promises set out below, and other good and valuable consideration, the parties agree as follows:

1. **Grant of Advertising and Promotional Rights.** Subject to the terms and conditions of this Agreement, FISD hereby grants and sells to SPONSOR, and SPONSOR hereby purchases and accepts from the FISD, the advertising and promotional rights described on Exhibit A attached hereto (collectively, the "Rights").
2. **Term of Agreement.** The term of this Agreement ("Term") is described on Exhibit A attached hereto. If the SPONSOR desires to renew this Agreement for an additional term, SPONSOR shall provide written notice to FISD of such desire no later than thirty (30) days before the expiration of the then existing Term. In the event that this Agreement is renewed, all terms and conditions of this Agreement shall continue in full force and effect except for the Rights Fees and the term of the Agreement and except as otherwise agreed upon by the parties.
3. **Rights Fees.** In consideration of the Rights granted to SPONSOR under paragraph 1 of this Agreement, SPONSOR shall pay to FISD the sum of \$ _____ (the "Rights Fee"). Payment is due within ten (10) business days of the effective date hereof.
4. **Non-Exclusivity.** Nothing in this Agreement may be construed to imply that SPONSOR has the exclusive right to provide FISD goods and services, advertise with, or sponsor FISD or any FISD event. During the term of this Agreement, FISD reserves the right to use all available resources to procure other goods, services, and/or advertisers/sponsors as deemed in the best interest of FISD in FISD's sole discretion and doing so will not violate any rights of SPONSOR.

5. **Termination:**

- (a) **Termination for Convenience.** FISD reserves the right to terminate this Agreement for any reason and without cause at any time during the Term and without penalty by providing thirty (30) days written notice to the SPONSOR. In the event that FISD determines, in its sole discretion, that the 30-day notice required by this Paragraph 4(a) would pose a hardship or that immediate termination of this Agreement would be in the best interest of FISD, FISD may provide notice of immediate termination and this Agreement shall terminate upon notice. In the event that FISD desires to terminate the Agreement for convenience as set forth in this Paragraph 5(a), FISD agrees to return a prorated portion of the Rights Fees that have been paid.
- (b) **Termination for Cause.** Either party may terminate this Agreement for cause at any time that the other party breaches any of its obligations under this Agreement. Notwithstanding the foregoing, a breach shall not be deemed to have occurred if either party is delayed or interrupted in fulfillment of its obligations as a result of a Force Majeure as defined in Paragraph 8(a). In the event of breach, the non-breaching party shall have the option to immediately cease all performance under this Agreement. If such breach results from the failure by SPONSOR to pay the Rights Fees or any other monetary obligations of SPONSOR hereunder by the dates when due under this Agreement, FISD may exercise its right to terminate this Agreement, retain all Rights Fees or other payments previously made by SPONSOR, and pursue any and all remedies available in equity or at law. In the case of a breach of this Agreement for any reason other than non-payment, the non-breaching party shall provide the breaching party with written notice of the alleged breach and the breaching party shall have five (5) business days in which to commence curing the breach and thirty (30) days within which to cure the breach to the reasonable satisfaction of the non-breaching party. If the breaching party fails to cure to the reasonable satisfaction of the non-breaching party within thirty (30) days after the date such written notice is given, the non-breaching party may, in addition to any other remedies which may be available to it under the circumstances, terminate this Agreement effective immediately by providing written notice of such termination to the breaching party.

6. **Provisions Regarding Advertising Copy.** Provisions regarding advertising, sideline signs, static digital impressions, PA announcements, etc. (hereinafter referred to as “Advertising Copy”), approval of Advertising Copy, and standards of approval are set forth in FISD Board Policy and applicable Regulations which are incorporated herein as if set forth in full.

7. **Retained Rights to Intellectual Property.** SPONSOR’s logo, trademark, service mark, composite mark, design work, and other creative content prepared by or for SPONSOR that is displayed on or in the Advertising Copy, and all trademark rights or copyrights in such Advertising Copy (collectively, “SPONSOR Intellectual Property”), shall be and remain the sole and exclusive property of SPONSOR. Throughout the Term of this Agreement, SPONSOR grants the FISD a non-exclusive limited license to publish, distribute and display SPONSOR Intellectual Property on and/or in the Advertising Copy or on any other items or materials consistent with the terms and purposes of this Agreement. The FISD’s name, logo, service marks, composite marks, creative content, trademark rights, copyrighted material and related materials and work, including without limitation any such property that is displayed on or in Advertising Copy with the written consent of FISD (collectively, “FISD Intellectual Property”) shall be and remain the sole and exclusive property of the FISD. Any and all advertising or promotional materials displayed or distributed by SPONSOR pursuant to this Agreement in conjunction with any FISD Intellectual Property shall be subject to the prior written approval of

FISD, and, if approved, shall be subject to the grant of non-exclusive limited license that automatically expires upon the expiration or termination of this Agreement. Neither party shall have the right to use in any way or reproduce for any purpose the corporate or trade names, trademarks, service marks, logos, or other proprietary symbols of the other party without that party's prior written consent.

8. **Force Majeure.**

- (a) **Definition of "Force Majeure".** For purposes of this Agreement, "Force Majeure" shall mean and include any event beyond FISD's reasonable control (including, but not limited to fire; flood; explosions; weather events; damage by third parties, whether negligently or intentionally caused; work stoppages; picketing; lockouts and/or any other concerted action by any employees; acts of God or other casualties; the laws or actions of any governmental authority; or any other event or cause that is beyond the reasonable control of FISD), as a result of which, at any time and from time to time during the Term, (1) the display of the Advertising Copy is suspended or prevented; or (2) any event, including a FISD athletic event, is not held, is interrupted, or is suspended, at the STADIUM.
- (b) **Options in Event of Force Majeure.** If a Force Majeure occurs during any Contract Year during the Term, FISD shall have the option, upon written notice to SPONSOR, (i) to extend the Term of this Agreement beyond its expiration to make up for lost exposure by the SPONSOR; (ii) to terminate this Agreement, pay the Termination Fee Adjustment, and reimburse to the SPONSOR a reasonable pro-rata amount of the Rights Fees for the current Contract Year that had been paid by the SPONSOR, such an amount to be determined by FISD, in its reasonable discretion, to compensate SPONSOR for the value of the advertising and promotional rights lost prior to termination of the Agreement; or (iii) to provide to SPONSOR advertising and/or promotional rights of substantially equivalent value, as reasonably determined by FISD.

9. **Indemnification.** SPONSOR agrees to and hereby defends, indemnifies, and holds FISD and its present and future board members/trustees, officers, administrators, employees, stakeholders, other representatives, successors and assigns and their respective subsidiaries, affiliates, partners, officers, directors, employees, stakeholders, shareholders, agents, other representatives, successors and assigns (collectively the "FISD Indemnitees") harmless from and against any and all losses, liabilities, damages, claims, demands, suits, and judgments (collectively, "Claims"), including, without limitation, attorneys' fees and the costs of any legal action, arising out of (i) the use of any trademark, service mark, logo, design, and other intellectual property right materials provided by SPONSOR; (ii) the character, content, and subject matter of any Advertising Copy displayed by SPONSOR; (iii) any act or omission of the SPONSOR related to or in connection with the rights, privileges, or obligations under this Agreement; and (iv) any breach of this Agreement by SPONSOR and all costs incurred by the FISD or any Representatives (including but not limited to attorney's fees) as a result of any breach of this Agreement, the enforcement of this Agreement against SPONSOR, or the collection from SPONSOR of any amounts due hereunder. The indemnification obligation of SPONSOR under this Agreement shall survive expiration or earlier termination of this Agreement.

10. **Assignment.** SPONSOR shall not have the right or power to assign any of its rights or obligations under this Agreement to any other party without the prior written consent of the FISD in its sole discretion. The FISD shall not assign any of its rights or obligations under this Agreement to any other party without the prior written consent of SPONSOR. Subject to the

foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

- 11. **Immunity.** The execution of this Agreement and/or the performance by FISD of its obligations hereunder does not, and is not intended to waive or relinquish, and FISD shall not waive or relinquish, any governmental, sovereign immunity or defense from liability or prosecution available to FISD, its trustees, officers, employees, or agents under federal or Texas laws.
- 12. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without regard to its choice or law or conflict of law provisions. Exclusive venue for any proceeding that may be instituted in connection with this Agreement and the parties' rights and liabilities hereunder shall be in a court of competent jurisdiction located in Galveston County, Texas.
- 13. **Notices.** All notices or other communications which are required or contemplated by this Agreement ("Notices") shall be in writing. All other may be sent by any delivery method which provides a tracking number and delivery receipt. Notices shall be addressed as provided below (unless a party changes its addresses or addresses through a written notice to the other party that complies with this Paragraph 11):

If to the FISD: Friendswood Independent School District
302 Laurel
Friendswood, Texas 77546
Attention: Superintendent
Telephone: _____
Facsimile: _____
Electronic mail: _____

If to SPONSOR: _____

Attention: _____
Telephone: _____
Facsimile: _____
Electronic mail: _____

- 14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed to be one and the same instrument.
- 15. **Relationship of Parties.** This Agreement does not create, and shall not be construed by the parties or any third person as creating, any agency, partnership, joint venture, or employment relationship between the parties. The relationship of the parties under this Agreement shall be solely that of independent contractors. Each party shall be solely responsible for the conduct of its respective agents and employees in connection with that party's performance of this Agreement.
- 16. **Merger Clause.** This Agreement (including the attached exhibits) is the final, complete, and exclusive statement and expression of the agreement among the parties hereto with relation to the subject matter of this Agreement, supersedes all prior communications with respect to the subject matter contained herein, it being understood that there are no oral representations, understandings, or agreements covering the same subject matter as this Agreement.

17. **Incorporation of Exhibits.** Any and all Exhibits referenced in this Agreement shall be attached to the Agreement, made a part of the Agreement, and incorporated into the Agreement by reference for all purposes including without limitation the following Exhibit:

Exhibit A Advertising and Promotional Rights

18. **Severability.** In case any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement. The validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by an authorized representative as of the Effective Date.

SPONSOR:

(Name)

By: _____

Printed Name: _____

Printed Title: _____

Date: _____

FISD:

Friendswood Independent School District

By: _____

Printed Name: _____

Printed Title: _____

Date: _____

**EXHIBIT A (Platinum Level Sponsor)
TO ADVERTISING AGREEMENT**

DATED _____ BETWEEN FISD AND _____

Advertising and Promotional Rights

to _____ (“SPONSOR”) for the Term of the Agreement with an Effective Date of _____.

TERM / COMPENSATION: 5 years for \$10,000 per year if paid annually or 5 years for \$45,000 paid in full up front.

The Rights granted under this Agreement include the following:

- Permanent Logo on 4’4.5” x 8’6” internally illuminated panel
- One (1) 30 sec. videoboard commercial shown at home football games (production not included)
- Videoboard acknowledgement as a Platinum Sponsor
- One (1) public address announcement recognizing Platinum Sponsor
- Advertising banner placed inside stadium - size TBD by District