

## **TAILGATE SITE AND SERVICES AGREEMENT TERMS AND CONDITIONS**

This Tailgate Site and Services Agreement, including the Terms and Conditions set forth herein (collectively, this “Agreement”), are effective upon the day on which you agree hereto and apply to your purchase of products and services from Tailgate Guys, LLC (“TAILGATE GUYS”). For simplicity herein, we refer to you (i.e., the person or entity purchasing the products or services from Tailgate Guys) as “CLIENT” and “CLIENT’S” or “you” and “your.”

Tailgate Guys operates a business, which provides tailgating products and services that are designed to increase the quality of the tailgate experience and ease the burden on fans with regard to Game Day setup;

Client has or desires to reserve a tailgate spot and purchase certain products and services from TAILGATE GUYS, pursuant to the terms hereof.

In consideration of the mutual covenants and promises herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, TAILGATE GUYS and CLIENT hereby agree, as follows:

1. **TAILGATE PACKAGE.** In consideration of the payments to be made to TAILGATE GUYS as provided herein and the terms, covenants and conditions set forth in this Agreement to be observed and performed by CLIENT, TAILGATE GUYS will provide for each home game or games reserved reflected on the invoice/reservation a tailgate tent, chairs, tables, and other products and services more particularly described on the invoice/reservation, which includes site setup and tear-down, operation management, trash collection from designated bins and all labor required in connection therewith (collectively, the “Tailgate Services”).
  - a. TAILGATE GUYS shall determine the exact location of CLIENT’s tailgate site (the “Site”), which may be relocated from time-to-time in TAILGATE GUYS reasonable discretion to accommodate ESPN, CBS Network, NBC Network, FOX, NFL or other Houston Texans sanctioned events, to adjust for space availability or for other reasons or circumstances. In each case, TAILGATE GUYS will take into consideration CLIENT’s request for a particular location. TAILGATE GUYS will communicate CLIENT’s “Site” no later than the Monday of the week of the game reserved.
  - b. TAILGATE GUYS shall not be held liable for any delay or default in performing hereunder, if such delay or default is caused by conditions beyond its control, including but not limited to acts of God (including weather), government or NRG Stadium restrictions, decisions and regulations, wars, insurrections and/or any other cause beyond the reasonable control of TAILGATE GUYS; and CLIENT does hereby release TAILGATE GUYS from any claim for damages arising therefrom. However, if a previously cancelled game is rescheduled, TAILGATE GUYS agrees to provide the Tailgate Services on the date of the rescheduled game given that the game is in the same season, subject to applicable conditions, authority and regulations. CLIENT is not entitled to a refund, if the game is not rescheduled; however, TAILGATE GUYS will give CLIENT a credit equal to fifty percent (50%) of the cost of the Tailgate Services that were to be provided at the cancelled game, which credit may be applied toward any Tailgate Services purchased by CLIENT for a future game, subject to availability. In the event that inclement weather prevents TAILGATE GUYS staff from setting up the

tailgate site or providing any component of the Tailgate Services hereunder, TAILGATE GUYS may suspend or cancel its tailgate operations and credit the CLIENT an amount equal the amount of the invoice/reservation to that specific game.

- c. The Tailgating Services provided by TAILGATE GUYS pursuant to this Agreement may, at the option of CLIENT and subject to availability, include a media package comprised of a television, stand, connection to a satellite, connection to a receiver, and power source (a "Media Package"). CLIENT acknowledges and agrees that TAILGATE GUYS has no control over television broadcasts and shall not be held accountable for any channel "blackouts" caused by contract disputes or inclement weather or other availability issues. For single game Media Packages, If CLIENT wishes to cancel its Media Package as a result of changes in broadcast scheduling to not include Houston Texans home games, then CLIENT must inform TAILGATE GUYS of this decision in writing no later than 5:00 p.m. on the date which is three calendar days prior to the date on which Tailgate Services for the particular home game are to be provided. If notice of cancellation of the Media Package is received in the manner provided, then CLIENT will not be charged for said component of the Tailgate Services.
  - d. Except as provided herein, the CLIENT will not be entitled to a refund of the cost of a Media Package that is cancelled less than 21 days prior to the date of the game (for a single game media package) or 21 days prior to the start of the season (for a full season media package).
2. PAYMENT. In consideration of the Tailgate Services to be provided by TAILGATE GUYS, CLIENT shall pay the amount set forth on the invoice/reservation/billing summary made available to CLIENT (the "Package Price"). In order to reserve the Site for the entire season, CLIENT agrees to pay to TAILGATE GUYS a deposit equal to fifty percent (50%) of the Package Price immediately. The balance of the Package Price shall be due on the August 1 preceding the applicable football season. If the order is on or after August 1, the entire balance of the Package Price shall be immediately due and payable. ***If payment in full has not been received by fourteen days prior to the first home game date, TAILGATE GUYS reserves the right to terminate this Agreement and retain all sums previously paid to TAILGATE GUYS.*** If payment is made by credit card or ACH, TAILGATE GUYS may, but shall not be required to, automatically process the payment for any remainder of the Package Price at any time on or after August 1, and CLIENT hereby authorizes such charges. If CLIENT cancels this Agreement in writing more than twenty one (21) days before the start of the season, TAILGATE GUYS agrees to refund one hundred percent (100%) of the Package Price (or portion thereof that has been paid by CLIENT); ***provided, however,*** in order to reserve the Site for the selected home game, CLIENT agrees to pay to TAILGATE GUYS on hundred percent (100%) of total invoice, ***upon execution of this Agreement,*** all of which shall be non-refundable within twenty one (21) days of the date of the selected home game for a single game order or within twenty one (21) days of the date of the first home game for a full season order. Where CLIENT has made payment of the total reservation, or any portion thereof, by credit card, CLIENT shall be prohibited from disputing said charge which CLIENT previously authorized TAILGATE GUYS to make.
3. TERM. This Agreement shall be effective for the immediately upcoming football season. CLIENT may renew this Agreement for subsequent seasons and/or add additional products or services as they become available, subject to the terms hereof. Renewals and modifications shall not be effective until confirmed in writing by TAILGATE GUYS. TAILGATE GUYS agree to give first priority to existing full season clients who renew by the communicated renewal deadline (to be established by TAILGATE GUYS following each

football season), and the terms thereof, including pricing shall be subject to adjustment by TAILGATE GUYS in its discretion.

4. CONDITIONS OF USE. CLIENT acknowledges that its use of the Site is subject to and conditioned upon the following terms and agrees that TAILGATE GUYS may exercise any of the remedies set forth herein for CLIENTS failure to comply:
  - a. CLIENT shall comply with all rules and regulations established by TAILGATE GUYS, Houston Texans and any other applicable authority, including but not limited to parking regulations in effect around the stadium. A copy of current rules and regulations is attached hereto as Exhibit A, which shall be subject to adjustment at any time by TAILGATE GUYS, Houston Texans or other applicable authorities.
  - b. CLIENT shall be permitted to access the Site at the respective times set forth in the rules or otherwise determined by TAILGATE GUYS and Houston Texans.
  - c. CLIENT shall be solely responsible for all personal property in and around the Site, and shall take all precautions necessary to prevent theft or destruction thereof. CLIENT expressly acknowledges and agrees that TAILGATE GUYS shall not be responsible for any personal property of CLIENT at any time. TAILGATE GUYS will not remove or hold for safe-keeping any personal items left on the Site after event closing and same will be subject to removal by Houston Texans facilities. CLIENT may be subject to costs and fees associated with such removal.
  - d. As an accommodation to CLIENT, TAILGATE GUYS may allow CLIENT to drop off their own tailgate supplies and personal property at designated drop off locations and during certain times as determined by TAILGATE GUYS, and same will be transported by TAILGATE GUYS staff to CLIENT's Site (and returned to the drop off location after event closing upon request). CLIENT is responsible for properly packaging all items that will be transported and otherwise agrees to comply with procedures established by TAILGATE GUYS for this "drop off service," including but not limited to any limitations with regard to the amount and size of items to be transported. TAILGATE GUYS will not be responsible for any damaged or broken items during unloading or loading and transportation to or from the Site.
  - e. CLIENT shall respect the interests of other fans and clients of TAILGATE GUYS and shall not permit disorderly or offensive conduct in or around the Site. CLIENT further agrees not to exceed the maximum number of guests allowed within the Site (See Exhibit A). Should CLIENT violate these provisions, TAILGATE GUYS management will give CLIENT a verbal warning. If CLIENT fails to promptly come into compliance, TAILGATE GUYS may immediately revoke CLIENT's rights to the Site and in its sole and absolute discretion terminate this Agreement. Upon such revocation or termination, all amounts paid to TAILGATE GUYS will be forfeited by CLIENT and retained by TAILGATE GUYS.
  - f. CLIENT shall not move, alter, or disrupt operation of any media equipment provided by TAILGATE GUYS. In the event of inclement weather, TAILGATE GUYS reserves the exclusive right to cover and protect all equipment associated with the Media Package with such materials and coverings as it deems appropriate, which may include gator covers or hard cases for TV's, plastic bags for receivers and generators or the like (collectively, the "Protective Equipment"). CLIENT shall not remove any Protective

Equipment or items contained inside Protective Equipment, and expressly acknowledges and agrees that only TAILGATE GUYS staff shall have authority to do so. CLIENT acknowledges and agrees that its right to use the media equipment may be suspended, without refund, at TAILGATE GUYS option, for violation of these provisions, and CLIENT further assumes all responsibility for any damages to media equipment resulting from violation of these provisions and shall reimburse TAILGATE GUYS for the cost to repair or replace damaged equipment.

- g. CLIENT shall keep the Site in a neat and orderly manner at all times and may incur fees set forth on Exhibit A, attached hereto and made a part hereof.
  - h. CLIENT acknowledges and agrees that the signage identifying each Site is uniform and provided by TAILGATE GUYS, who reserves the right to omit any vulgar, offensive or discriminatory content requested by CLIENT, in the sole and absolute discretion of TAILGATE GUYS.
  - i. TAILGATE GUYS reserves the right to immediately terminate CLIENT's use of the Site for violation of the conditions of use. In addition, CLIENT shall be responsible for payment of all damages incurred by TAILGATE GUYS as a result of CLIENT's failure to comply with the foregoing conditions of use. To insure compliance and payment of damages or fines, CLIENT agrees to keep a credit card on file with TAILGATE GUYS, and hereby authorizes TAILGATE to charge said credit card amounts owing as a result of its breach; provided that TAILGATE GUYS delivers to CLIENT an itemization of said charges and receipt for payment thereof.
5. **DEFAULT.** Should CLIENT fail to pay any sums when due hereunder or fail to comply with or perform any other term, covenant or condition hereof, TAILGATE GUYS may terminate this Agreement and proceed against CLIENT for the recovery of all damages incurred by TAILGATE GUYS as a result of the breach by CLIENT, or proceed for specific performance. Without limiting the foregoing, in the event CLIENT fails to timely pay any amounts due hereunder, such overdue balances shall accrue interest in the amount of one and one-half percent (1.5%) per month (or the maximum amount allowed by law, whichever is lower) from the due date until paid. In addition, CLIENT shall reimburse TAILGATE GUYS for all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of TAILGATE GUYS occasioned by or in connection with any default by CLIENT under this Agreement.
6. **RELEASE AND INDEMNIFICATION.** CLIENT hereby releases TAILGATE GUYS and agrees to indemnify and defend TAILGATE GUYS and save TAILGATE GUYS harmless from and against all suits, actions, damages, liability and expenses in connection with loss of life, body or personal injury or property damage (and each and all of them) arising from or out of any occurrence in and around the Site or any part thereof, or occasioned wholly or in part by any act or omission of CLIENT, its invitees, and guests.
7. **INTEGRATION.** It is agreed and understood that this Agreement contains all agreements, promises and understandings between TAILGATE GUYS and CLIENT and that no verbal or oral agreements, promises or understandings shall be binding upon either TAILGATE GUYS or CLIENT in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or

conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

8. **GOVERNING LAW AND VENUE.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of Alabama, without regard to its conflicts of law principles. The parties further agree that the exclusive venue for any disputes arising out of or in connection with this Agreement shall be the state and federal courts of Lee County, Alabama, and CLIENT hereby irrevocably submits to the jurisdiction of such courts.
9. **ASSIGNMENT.** This Agreement is personal to CLIENT and may not be sold, assigned or transferred without prior written consent of TAILGATE GUYS.
10. **NOTICES.** TAILGATE GUYS may give all notices required hereunder to CLIENT by phone, email, regular mail or courier at the addresses and/or phone number on file for CLIENT. All notices to TAILGATE GUYS must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Tailgate Guys, L.L.C.  
ATTN: Accounts Receivable  
2111 Marvyn Parkway  
Opelika, Alabama 36804

11. **NO WAIVER.** In the event there is a breach by CLIENT with respect to any of the provisions of this Agreement, without limitation of any other rights or remedies, TAILGATE GUYS shall have the right to terminate this Agreement. TAILGATE GUYS's failure to act upon any default on the part of the CLIENT shall not be construed as a waiver of TAILGATE GUYS' rights hereunder, nor shall any custom or practice that may arise between the parties in the course of dealing be construed to waive or lessen the right of the TAILGATE GUYS to enforce the terms of this Agreement.
12. **BINDING EFFECT.** The terms and provisions hereof shall extend to, bind and inure to the benefit of, as the case may require, the successors and assigns of TAILGATE GUYS and CLIENT.
13. **CAPTIONS.** The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.



**Exhibit A**  
**Rules and Regulations**

- Access to the reserved areas for clients are as follows: For all game times, the Site will open four hours prior to kickoff. The Site will close and services will conclude thirty minutes after Kickoff (the “Event Close”). (Site open for any Thursday Night game is 3:00pm, and the site will close at thirty minutes after kickoff). Tailgate Guys will not be responsible for any items left by the Client overnight.
- The number of persons inhabiting each reserved area will not exceed the allocated space. Space capacity for an All Pro Package is 50 persons. Space capacity for a Club Package is 60 persons. Space capacity for a Texas Club Package is 75. Please see Section 4 Paragraph E regarding the penalties associated with exceeding occupancy numbers.
- All supplemental items, media packages, and catering orders must be received by the end of the business day on Wednesday the week of the game (for Sunday games & Monday games). Orders placed after this time will not be delivered or provided past said date. All supplemental items are subject to availability and are issued on a first come first serve basis.
- Items otherwise not provided as part of the package (i.e. cookers, grills, televisions, satellites, generators, sound equipment, etc.), will not exceed the allocated space for each reserved area. CLIENT may not install or otherwise utilize any tent(s) within the allocated space or any adjoining space that are not ordered through and installed by TAILGATE GUYS.
- All generators used within the area of Tailgate Guys operation are to be Honda 2000i quiet generators or an approved equal. Please contact Tailgate Guys if you plan to use a generator that is not the aforementioned product. Tailgate Guys will review all requests and provide approval if the said generator meets the required specifications
- Power sources reserved with a Media Package may not be for the sole use of one CLIENT. TAILGATE GUYS reserves the right to distribute power from generators to multiple sources.
- Any items that contain heating elements including but not limited to, crockpots, griddles, coffee makers, electric grills, heaters, hotplates, popcorn machines, cotton candy machines, toasters, and any others not mentioned, will not be powered by any TAILGATE GUYS generator. Failure to comply may result in suspension of aforementioned media package and a fine up to the amount of the generator value.
- All fires must be contained within grills or other containers designed specifically for that purpose. TAILGATE GUYS does not permit the use of propane grills within the Site.
- Live music and excessive amplified sound are not permitted within the Site.
- Common sources of alcohol, including kegs of beer are prohibited within each reserved area. Each client is responsible for purchasing and transporting alcohol to their reserved area. Styrofoam coolers are not allowed within the tailgate areas.
- Clients wishing to use an outside caterer are responsible for transporting all goods to their reserved area or coordinating same with Tailgate Guys.

- Client shall maintain their reserved location in an orderly manner throughout the entirety of the event. Should Client violate this provision, TAILGATE GUYS management may give Client a verbal warning. If Client fails to come into compliance within 15 minutes after a verbal warning, TAILGATE GUYS, in its sole discretion, may take one or more of the following actions: 1) assess a fine of up to \$200 per All Pro, \$400 per Club Package, or \$600 per Texas Club and/or 2) immediately revoke Client's rights to the Site and in its sole discretion terminate this Agreement. Additionally, failure by the Client to return the site to its initial neat and orderly condition at the end of event may also result in a fine according to the same schedule.
- Banners and signage recognizing businesses, political candidates or any other form of solicitation are prohibited. Signage, produced by Tailgate Guys and approved by The Houston Texans, identifying each tent will be permitted at the entrance of each tent.
- Use of any NRG Stadium utilities is prohibited.
- Non-stadium golf carts, all-terrain and the like are not allowed on our site. Vehicles, mopeds, scooters, and the like may not be parked on the premises on which tailgate services are provided pursuant hereto.
- Houston Texans reserves the right to implement additional rules and regulation regarding the use of the Reserved Areas/Premises, as the need arises.
- CLIENT is responsible for conveying all rules and regulations to all attendees and guests at client's tailgate and assumes responsibility for actions taken by attendees and guests at client's tailgate.