

# AFTAB PUREVAL HAMILTON COUNTY CLERK OF COURTS

## **COMMON PLEAS DIVISION**

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FUTBOL CLUB CINCINNATI LLC vs. PREMIER PARTNERSHIPS INC

# FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY DEMAND

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#### COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO

: : Case No.
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: (Judge)
: : <u>COMPLAINT FOR MONEY DAMAGES</u> : <u>AND OTHER RELIEF</u>
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: JURY TRIAL DEMANDED
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For its Complaint against Defendant Premier Partnerships, Inc. ("Premier"), Plaintiff Futbol Club Cincinnati LLC ("FC Cincinnati"), states as follows:

#### **INTRODUCTION**

1. This is a contract dispute arising out of Premier's breach of the Agreement for Consulting Services ("Consulting Agreement") between FC Cincinnati and Premier.

2. This case is principally about how Premier botched a lucrative naming rights sponsorship deal for the soccer stadium that FC Cincinnati is currently building in Cincinnati's West End neighborhood. FC Cincinnati originally contracted with Premier in May 2017 to, among other things, secure national cornerstone sponsorships for FC Cincinnati, including a sponsor for FC Cincinnati's new soccer stadium. Premier touted itself as having significant experience and expertise with Major League Soccer ("MLS") sponsorship deals, capable of delivering MLS sponsorships to FC Cincinnati and securing a sponsorship deal for the new stadium.

3. In direct breach of the Consulting Agreement, however, Premier improperly offered the prospective stadium sponsor various deal terms and items that either violated MLS rules or were wholly financially unworkable for FC Cincinnati. Even after FC Cincinnati raised concerns about the problematic deal terms, Premier continued to pressure FC Cincinnati to move forward with the potential deal by offering more unreasonable items, including: (i) pressuring FC Cincinnati to provide the prospective sponsor with additional visibility exposure on the stadium's retaining wall (which would have required that FC Cincinnati revise the stadium's blueprints and seating schematics, and remove the stadium's first row of seating to increase the height of the retaining wall, costing FC Cincinnati millions of dollars in ticketing revenue); and (ii) pressuring FC Cincinnati to offer the prospective sponsor a jersey sleeve sponsorship (which would have directly conflicted with FC Cincinnati's current jersey sponsorship deal). Premier pressured FC Cincinnati to offer these unreasonable items so to compensate the prospective sponsor for the items that Premier improperly offered, but which FC Cincinnati could neither agree to nor deliver per MLS rules.

4. Premier continued to pressure FC Cincinnati because Premier had no other prospective stadium sponsors in the pipeline, and forcing FC Cincinnati move forward with the potential stadium naming rights deal—regardless of whether the terms violated MLS rules or were financially unreasonable for FC Cincinnati—was the only way Premier would collect its sizeable commission for the potential deal.

5. FC Cincinnati spent significant time and money trying to salvage the potential stadium naming rights deal. Indeed, under the potential deal, FC Cincinnati would have received tens of millions of dollars in stadium sponsorship revenue over the next several years.

6. As a result of Premier's breach, however, the potential stadium naming rights deal failed and FC Cincinnati has lost tens of millions of dollars in expected sponsorship revenue. In addition, because Premier had no other prospective stadium sponsor in the pipeline, FC Cincinnati is currently without a stadium sponsor (even though the stadium is scheduled to open next year), and has already lost expected sponsorship revenues for the current 2020 MLS season.

7. This is unfortunately not the first time Premier breached the Consulting Agreement and offered a sponsor deal terms that violated MLS rules. As a result of Premier's prior breaches, the parties in 2019 amended the Consulting Agreement and set certain sponsorship revenue targets that Premier was required to meet for the 2019 and 2020 MLS seasons. When Premier failed to meet its revenue target for the 2020 MLS season, FC Cincinnati exercised its contractual right to terminate the Consulting Agreement.

8. FC Cincinnati now seeks to recover the damages it has incurred as a result of Premier's contractual breaches, as well as a declaratory judgment that the Consulting Agreement is now terminated due to Premier's failure to meet its revenue target for the 2020 MLS season.

#### PARTIES, JURISDICTION, AND VENUE

9. Plaintiff FC Cincinnati is an Ohio limited liability company with its principal place of business in Cincinnati, Ohio.

10. Defendant Premier is a California corporation with its principal place of business located at 1148 4th Street, Santa Monica, California 90403.

11. The Court has subject matter jurisdiction over this matter.

12. Premier is subject to personal jurisdiction of this Court because it purposely availed itself to the privilege of doing business in Ohio and contracted to supply services in Ohio. *See* Ohio R. Civ. P. 4.3(A)(1)–(2). In addition, under the terms of the Consulting Agreement, Premier agreed to exclusive jurisdiction in the federal and state courts located in Cincinnati, Ohio.

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13. Venue is proper in this Court because the conduct giving rise to the claims herein occurred in Hamilton County, Ohio, and FC Cincinnati resides in Hamilton County, Ohio. *See* Ohio R. Civ. P. 3(C)(3), (6), and (7). In addition, the Consulting Agreement expressly provides that all disputes relating to the Consulting Agreement shall be exclusively brought in the federal and state courts located in Cincinnati, Ohio.

#### STATEMENT OF FACTS

14. FC Cincinnati is a professional soccer club based here in Cincinnati, Ohio. FC Cincinnati originally began play in 2016 as member of the United Soccer League ("USL"). During its 2016 USL season, FC Cincinnati achieved significant success and quickly developed a strong and fast-growing fan base. By 2017, FC Cincinnati had become a top contender to be selected as a MLS expansion team. As FC Cincinnati continued to grow and in anticipation of a MLS bid, FC Cincinnati sought new national sponsorships and commercial partnerships.

15. Premier is a Los Angeles-based consulting company, claiming to be "the industry's leading naming rights, sponsorship sales, and consulting firm with a 15-year track record of maximizing revenue for prestigious facilities, events, sports and entertainment properties[.]"<sup>1</sup> While Premier has clients across a variety of sports, its core business relates to MLS sponsorships, as Premier's own chairman, Alan Rothenberg, was a founder of MLS; and Premier's founder and CEO, Randy Bernstein, was a founding executive of MLS.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Premier Partnerships, About Us, *available at* <u>https://www.premierpartnerships.com/about</u> (last visited June 19, 2020).

<sup>&</sup>lt;sup>2</sup> Alan I. Rothenberg, Premier Partnership, *available at* <u>https://www.premierpartnerships.com/bio-alan-rothenberg</u> (last visited June 19, 2020); Randy Bernstein, Premier Partnerships, *available at* <u>https://www.premierpartnerships.com/bio-randy-bernstein</u> (last visited June 19, 2020).

#### A. <u>The Consulting Agreement between FC Cincinnati and Premier</u>

16. On May 1, 2017, FC Cincinnati and Premier executed a Consulting Agreement. (A copy of the May 1, 2017 Consulting Agreement is attached as **Exhibit A**.). Premier held itself out to FC Cincinnati as an entity with soccer and MLS expertise, and as having "extensive experience and knowledge with respect to marketing, sponsorship evaluations, corporate sponsorship sales, and commercial development with regard to a variety of sport and entertainment organizations, facilities, events." (*Id.* at 1.)

17. Under the Consulting Agreement, Premier was required to, among other things: (i) generate leads, sales, and negotiate commercial partnerships for FC Cincinnati; (ii) develop a "business-to-business sponsorship platform" based on FC Cincinnati's current and potential partners; and (iii) develop a construction management plan associated with vendor spending for a new stadium. (*Id.* at § 1.1.)

18. In particular, FC Cincinnati hired Premier to focus on developing new national sponsorships that would drive incremental long-term revenue, including selling stadium naming rights and cornerstone partnerships (\$200,000 plus annually). FC Cincinnati also expressly instructed Premier not to focus on local sponsorship deals with companies that already have ties to FC Cincinnati or its owners. FC Cincinnati made clear that it did not hire Premier to sell local sponsorships to existing sponsors that would only marginally increase revenue.

19. In exchange for these services, FC Cincinnati agreed to pay Premier a monthly retainer of \$10,000.00. (*Id.* at § 3.1.1.) FC Cincinnati also agreed to pay Premier commission on the total gross cash revenues secured by Premier for the sponsorships deals. (*Id.* at § 3.2.) The commission structure ranged from 15–20% depending on the particular sponsor, the type of deal, and whether FC Cincinnati received a MLS bid or remained a USL team. (*Id.*)

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20. By its terms, the Consulting Agreement would terminate on the date of the opening of FC Cincinnati's new stadium, unless terminated earlier as otherwise provided in the Consulting Agreement. (*Id.* at § 2.)

#### B. <u>Premier's Historical Failure to Perform under the Consulting Agreement</u>

#### 1. During the First Seventeen Months of the Consulting Agreement, Premier Delivered Only One Sponsorship, and the Terms of that Sponsorship Agreement Violated MLS Rules

21. During the first seventeen months after execution of the May 1, 2017 Consulting Agreement, FC Cincinnati paid Premier aggregate retainers in excess of \$160,000 and reimbursed more than \$25,000 in expenses. During that entire seventeen-month period, however, Premier delivered only one signed letter of intent and term sheet for a sponsorship agreement.

22. For that one sponsorship agreement, Premier included numerous items that were expressly prohibited by MLS rules and MLS's collective bargaining agreement—and which FC Cincinnati was unable to deliver. These items included, but were not limited to: (i) Premier offering the sponsor exclusive healthcare provider status for FC Cincinnati players, which violated the MLS collective bargaining agreement; and (ii) Premier granting the sponsor sponsorship rights outside FC Cincinnati's geographic territory, which violated MLS sponsorship rules.

23. Because FC Cincinnati was still a USL team during deal negotiations, FC Cincinnati had no access to MLS rules at that time. Premier, however, did have access to MLS rules at that time and also knew by virtue of the Consulting Agreement that a MLS-level sponsorship was the ultimate goal.

24. Premier, as the purported expert in MLS sponsorship deals, knew or should have known not to offer and include deal terms that violated MLS national sponsorship agreements, sponsorship rules, and regulations.

25. By offering deal terms that were prohibited by MLS rules, Premier violated Section 4.1 of the Consulting Agreement, which required Premier to "[a]dhere to all laws, policies, rules, and regulations applicable to the Services to be provided[.]" (*Id.* at § 4.1.)

26. As a result of Premier's breaches, FC Cincinnati was forced to make material economic concessions and give the sponsor hundreds of thousands of dollars in make-goods to compensate for the items Premier improperly offered and improperly included in the sponsorship agreement, but which FC Cincinnati could not deliver per MLS rules.

#### 2. Months After FC Cincinnati Received Its MLS Bid in May 2018, Premier Still Failed to Deliver Sponsorships to FC Cincinnati

27. Months after FC Cincinnati received its MLS bid in May 2018, Premier still had not delivered any more sponsorships to FC Cincinnati. In fact, more than four months after FC Cincinnati received its MLS bid, Premier still had not brought FC Cincinnati a single potential sponsor that could not have been developed by FC Cincinnati's own internal sales team. All the while, FC Cincinnati continued making regular monthly retainer payments to Premier.

28. In August 2018, FC Cincinnati contacted Premier, asked about Premier's current plans, and requested status reports for any potential sponsorships in the pipeline. In response, Premier provided FC Cincinnati a list of more than 7,000 "prospects" for sponsorships that were not in any way tailored or geared to FC Cincinnati. It was apparent to FC Cincinnati that Premier had thrown the list together on short notice, and that Premier had done no meaningful work to generate sponsorship deals for FC Cincinnati.

#### **3.** FC Cincinnati Formally Notified Premier of Its Breach

29. On October 3, 2018, counsel for FC Cincinnati sent Premier a letter outlining FC Cincinnati's concerns and notifying Premier that it was in breach of its obligations under the Consulting Agreement. (A copy of the October 3, 2018 letter is attached as **Exhibit B**.)

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30. In particular, FC Cincinnati notified Premier that it had failed to drive long-term revenue for FC Cincinnati and failed to develop a successful business-to-business sponsorship platform. FC Cincinnati stated that if Premier failed to cure the breach within thirty days, FC Cincinnati would be entitled to exercise its right to terminate the Consulting Agreement.

#### C. FC Cincinnati and Premier Amended the Consulting Agreement to Establish Revenue Targets That Premier Must Meet for the 2019 and 2020 MLS Seasons

31. On February 13, 2019, FC Cincinnati and Premier executed an amendment to the

Consulting Agreement ("Amendment"). (A copy of the February 13, 2019 Amendment is attached

#### as **Exhibit C**.)

32. The Amendment established certain sponsorship revenue targets that Premier was

required to meet in 2019 and 2020. In particular, Section 8 of the Amendment provided:

2019 and 2020 Sponsorship Revenues. Premier has represented to FCC that total revenues secured by Consultant for arrangements entered into by FCC for CER [*i.e.*, "Commercial Exploitive Rights"] as a direct result of the sales efforts of Premier during (i) the 2019 MLS season will equal or exceed \$8.1 million; and (ii) the 2020 MLS season will equal or exceed \$10.875 million. In the event Premier fails to deliver a term sheet or other written approval from Sponsors that they desire to move forward towards definitive agreements that equate or exceed the foregoing sales commitments by May 1 of each of 2019 and 2020 for that particular season, FCC may terminate this Consulting Agreement in its sole discretion upon providing written notice to Premier.

(*Id.* at § 8 (emphasis added).)

33. In other words, under the Amendment, Premier guaranteed FC Cincinnati sponsorship revenues in excess of \$8.1 million for 2019 and \$10.875 million for 2020.

34. If Premier failed to hit these revenue targets, then FC Cincinnati would be entitled,

in its sole discretion, to terminate the Consulting Agreement.

#### D. Premier Breached the Amended Consulting Agreement by Botching FC Cincinnati's Potential Stadium Naming Rights Sponsorship Deal

35. After execution of the Amendment, FC Cincinnati and a third party entity ("Prospective Stadium Sponsor") began discussions regarding a potential naming rights sponsorship deal for FC Cincinnati's new soccer stadium in the West End neighborhood.

36. FC Cincinnati directed Premier, per the Consulting Agreement, to negotiate the

potential deal on FC Cincinnati's behalf with the Prospective Stadium Sponsor.

37. In direct breach of the Consulting Agreement, however, Premier improperly offered

the Prospective Stadium Sponsor various deal terms and items that either violated MLS rules or

were financially unworkable for FC Cincinnati. Such items included, but were not limited to:

- (a) Premier guaranteed exclusive field of play exposure for all MLS games (including nationally-televised games), which directly conflicted and violated core MLS sponsorship rules that require MLS to retain priority for league sponsors for all nationally-televised games);
- (b) Premier offered guaranteed digital, social, and mobile integration with FC Cincinnati's website, in conflict with MLS's privacy policy and leaguewide sponsorship sales across all MLS team's respective websites;
- (c) Premier offered a merchandise discount granting the right to purchase merchandise at cost, when MLS's national merchandising contracts and rules dictate how clubs may sell team merchandise; and
- (d) Premier offered a 50% discount on tickets for all employees of the Prospective Stadium Sponsor, despite FC Cincinnati not having ticket capacity for such a discount and that doing so would require FC Cincinnati to pay MLS out-of-pocket for such tickets to comply with MLS's revenue sharing rules (entitling MLS to keep a certain percentage of non-premium tickets at list price).

38. Premier, as the purported expert in MLS sponsorship deals, knew or should have

known not to include deal terms that violated MLS national sponsorship agreements, and sponsorship rules and regulations.

39. By offering deal terms that were prohibited by MLS rules, Premier violated Section 4.1 of the Consulting Agreement, which required Premier to "[a]dhere to all laws, policies, rules, and regulations applicable to the Services to be provided[.]" (*Id.* at § 4.1.)

40. FC Cincinnati raised concerns with Premier regarding the problematic deal terms. Premier, however, continued to pressure FC Cincinnati to move forward with the potential deal by offering additional unreasonable items, including: (i) pressuring FC Cincinnati to provide the Prospective Stadium Sponsor with additional visibility exposure on the stadium's retaining wall (which would have required that FC Cincinnati revise the stadium's blueprints and seating schematics, and remove the stadium's first row of seating to increase the height of the retaining wall, costing FC Cincinnati millions of dollars in ticketing revenue); and (ii) pressuring FC Cincinnati to offer the Prospective Stadium Sponsor a jersey sleeve sponsorship (which would have directly conflicted with FC Cincinnati's current jersey sponsorship deal). Premier pressured FC Cincinnati to offer these unreasonable items so to compensate the Prospective Stadium Sponsor for the items that Premier improperly offered, but which FC Cincinnati could neither agree to nor deliver per MLS rules.

41. Premier continued to pressure FC Cincinnati because Premier had no other prospective stadium sponsors in the pipeline, and forcing FC Cincinnati move forward with the potential stadium naming rights deal—regardless of whether the terms violated MLS rules or were financially unreasonable for FC Cincinnati—was the only way Premier would collect its sizeable commission for the potential deal

42. FC Cincinnati spent significant time and money trying to salvage the potential stadium naming rights deal. Indeed, under the potential deal, FC Cincinnati would have received tens of millions of dollars in stadium sponsorship revenue over the next several years. Accordingly,

FC Cincinnati had every incentive to move forward with such a deal—provided that the deal terms complied with MLS rules and made financial sense for FC Cincinnati.

43. As a result of Premier's breach, however, the potential stadium naming rights deal failed and FC Cincinnati has lost tens of millions of dollars in expected sponsorship revenue. In addition, because Premier had no other prospective stadium sponsor in the pipeline, FC Cincinnati is currently without a stadium sponsor (even though the stadium is scheduled to open next year), and has already lost expected sponsorship revenues for the current 2020 MLS season.

#### E. <u>Premier Failed to Meet Its Revenue Target for 2020 Sponsorships</u>

44. As of May 1, 2020, Premier's total sponsorship revenues for the 2020 MLS season was significantly less than \$10.875 million. Accordingly, FC Cincinnati was entitled in its sole discretion to terminate the Consulting Agreement.

45. On May 1, 2020, counsel for FC Cincinnati sent a letter notifying Premier of its failure and terminating the Consulting Agreement. (A copy of the May 1, 2020 letter is attached as **Exhibit D**.).

#### **<u>COUNT ONE</u>** (Breach of Contract)

46. FC Cincinnati incorporates by reference the foregoing paragraphs of this Complaint, as if fully rewritten herein.

47. As described above, a valid and enforceable contract existed between FC Cincinnati and Premier by virtue of the Consulting Agreement.

48. FC Cincinnati fully performed all of its obligations under the Consulting Agreement. FC Cincinnati has paid and will continue to pay Premier future commissions for future revenue that FC Cincinnati receives for approved sponsorships previously secured by Premier.

49. Premier breached its obligations under the Consulting Agreement by offering items and terms in the potential stadium naming rights deal with the Prospective Stadium Sponsor that were prohibited by MLS rules.

50. In addition, Premier breached the Consulting Agreement by failing to meet its sponsorship revenue target for the 2020 MLS season.

51. As a direct and proximate result of Premier's breaches, FC Cincinnati has incurred damages in excess of this Court's jurisdictional limit, in an amount to be proven at trial.

#### <u>COUNT TWO</u> (Declaratory Judgment under R.C. 2721, *et seq*.)

52. FC Cincinnati incorporates by reference the foregoing paragraphs of this Complaint, as if fully rewritten herein.

53. FC Cincinnati terminated the Consulting Agreement because Premier failed to meet its revenue target for the 2020 MLS season.

54. Premier, however, has made a number of statements (both orally and in writing) that it met its revenue target under the Consulting Agreement for the 2020 MLS season.

55. As a result, there is an actual controversy between FC Cincinnati and Premier as to whether the Consulting Agreement has been terminated.

56. The controversy is justiciable as the parties presently dispute their respective rights, status, or legal relations under the Consulting Agreement.

57. This Court may declare the rights, status, and legal relations between the parties with respect to the Consulting Agreement.

58. Declaratory relief will resolve this controversy and limit the uncertainties created by Premier's repeated threats to seek enforcement of the Consulting Agreement, as well as clarify the parties' current contractual obligations under the Consulting Agreement. 59. FC Cincinnati therefore seeks a declaration that the Consulting Agreement has been terminated.

#### PRAYER FOR RELIEF

WHEREFORE, having set forth its claims herein, FC Cincinnati respectfully requests that

this Court enter judgment as requested in this Complaint:

- (a) Under Count One, award FC Cincinnati compensatory damages in an amount to be proven at trial incurred as a result of Premier's breaches of the Consulting Agreement;
- (b) Under Count Two, a declaratory judgment that the Consulting Agreement is terminated; and
- (c) On all Counts, award FC Cincinnati pre-judgment and postjudgment interest, attorneys' fees and costs, and such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ William N. Minor

James E. Burke (#0032731) William N. Minor (#0084153) Collin L. Ryan (#0095810) KEATING MUETHING & KLEKAMP PLL One East Fourth Street, Suite 1400 Cincinnati, Ohio 45202 Phone: (513) 579-6400 Fax: (513) 579-6457 jburke@kmklaw.com wminor@kmklaw.com cryan@kmklaw.com

Attorneys for Plaintiff, Futbol Club Cincinnati LLC

#### JURY DEMAND

FC Cincinnati demands a trial by jury.

#### **INSTRUCTIONS TO THE CLERK**

Please serve the above-captioned Defendant at the addresses listed above with Summons and a copy of the foregoing Complaint by certified mail, returnable according to law.

<u>/s/ William N. Minor</u> William N. Minor (#0084153)

# EXHIBIT A

#### AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made as of May 1, 2017 between FUTBOL CLUB CINCINNATI LLC ("FCC") located at 14 East 4<sup>th</sup> Street – Third Floor, Cincinnati, OH 45202 and PREMIER PARTNERSHIPS, INC., a California corporation ("Consultant"), with an office located at 1148 4th Street, Santa Monica, CA 90403.

#### RECITALS

A. FCC is a United Soccer League (USL) club that began play in 2016 and has already established itself as one of the league's most competitive clubs with one of the top fan bases in all of professional soccer. So much so that FCC is a top contender to be chosen as a Major League Soccer (MLS) official expansion team.

B. Consultant has extensive experience and knowledge with respect to marketing, sponsorship evaluations, corporate sponsorship sales, and commercial development with regard to a variety of sport and entertainment organizations, facilities, events, and other properties.

C. FCC desires to engage Consultant to provide certain consulting services in connection with major entitlements and sponsorships (collectively, the "Commercial Exploitation Rights" or "CER"), with respect to FCC by Consultant during the Term of this Agreement.

#### AGREEMENT

**NOW THEREFORE**, in consideration for the mutual covenants that are contained in this Agreement, including all Exhibits and Addendums attached hereto, the parties hereto hereby agree as follows:

1. SCOPE OF SERVICES. FCC hereby engages Consultant, and Consultant shall provide the following services ("Services") for the benefit of FCC during the Term of this Agreement and pursuant to Exhibit A in connection with the CER:

- 1.1 Consultant will provide sales representation services that include lead generation, input and guidance on preparing presentation and sales materials, communication strategy, physical presentation, pipeline reporting and negotiation of commercial partnerships.
- 1.2 Consultant shall develop a business-to-business sponsorship platform based on FCC's current existing business partners, potential new partners across key expense categories, as well develop a construction management plan associated with vendor spends for a new stadium.
- 1.3 Consultant shall assist with the sponsorship training of the new FCC Vice President and sponsorship sales executives on Consultant's approach, during the Term of this Agreement.
- 1.4 With respect to all Services, Consultant shall work directly with FCC personnel in efforts to secure agreements with Sponsors as more fully described herein.

During the Term of this Agreement, Consultant shall be the exclusive third-party consultant utilized by FCC to identify and obtain sponsors and corporate partners ("Sponsors") for FCC.

2. TERM. The term of this Agreement ("Term") will commence on May 1, 2017 and will terminate on the date of the opening of the new stadium, unless terminated earlier as provided herein, or mutually extended between the parties.

#### 3. COMPENSATION

#### 3.1 Project Fee

- 3.1.1 The monthly retainer of ten thousand dollars (\$10,000) will be due in advance, on the first (1<sup>st</sup>) day of each calendar month during the Term of this Agreement, commencing on May 1, 2017 and terminating on the first (1<sup>st</sup>) day of the calendar month following the public announcement for the official MLS expansion teams selection ("Selection").
- 3.1.2 If FCC is selected as an MLS expansion team, the monthly retainer will continue but at a lesser fee of seven thousand five hundred dollars (\$7,500). The monthly retainer will be due in advance, on the first day of each calendar month during the Term of this Agreement, commencing on the first (1<sup>st</sup>) day of the calendar month immediately following the Selection.
- 3.1.3 If FCC is not selected as MLS expansion team 25 or 26, the parties agree to suspend this Agreement until Selection of teams 27 and 28. If FCC is selected as MLS expansion team 27 or 28, the Project Fee will recommence at a fee of seven thousand five hundred dollars (\$7,500). The montly retainer will be due in advance, on the first (1<sup>st</sup>) day of each calendar month immediately following the Selection and continue through the date of the opening of the new stadium, unless terminated earlier as provided herein.
- 3.2 Commission Sales Representation
  - 3.2.1 FCC will pay to Consultant commissions on: (a) total gross cash revenues secured by Consultant for arrangements entered into by FCC for CER; plus (b) the cash equivalent value of barter included as part of the consideration in any agreement or arrangement for CER which is approved in advance in writing by FCC (collectively "CER Revenues"). The value of all barter will be based upon the favorable (i.e. lower than) retail price value to FCC of such barter items.
  - 3.2.2 FCC will pay commissions to Consultant for all sponsor agreements that are entered into by FCC during the Term of this Agreement as follows:
    - 3.2.2.1 If FCC is selected as an MLS expansion team, a commission will be paid to Consultant based on the CER Revenues received by FCC for all sponsor agreements entered into between FCC and Sponsors, whether such Sponsors are secured by Consultant, FCC, or any third parties, pursuant to the commission structure outlined in Exhibit B.
    - 3.2.2.2 Prior to the Selection, if Consultant secures a USL sponsor agreement, a commission will be paid to Consultant based on the CER Revenues received by FCC based on the following sponsor agreements entered into between FCC and Sponsors:
      - 3.2.2.2.1 For a sponsor agreement between current partners or sponsors listed on the Protected List (Exhibit C), a commission of fifteen percent (15%) of the incremental CER Revenues, based upon the current partners or sponsors annual fee, will be paid to Consultant.
      - 3.2.2.2.2 Consultant will be paid a commission of fifteen percent (15%) of all CER Revenue associated with a stadium naming rights partnership

should FCC proceed with stadium construction prior to being selected as an MLS expansion team.

- 3.2.2.3 Consultant will be paid a commission of twenty percent (20%) of all new business CER Revenue including CER Revenue associated with the uniform kit sponsor.
- 3.2.3 For MLS agreements, commissions due on CER Revenues for any sponsor agreement are for the original contract term and only the first extension or succeeding renewal thereof.
- 3.2.4 For USL agreements, commissions due on CER Revenues for any sponsor agreement are for the original contract term and up to two extensions or succeeding renewals thereof.
- 3.2.5 FCC acknowledges that its obligation to pay commissions to Consultant pursuant to this Section 2 may extend beyond the term of this Agreement. Commissions will be due on any CER Revenues actually received by FCC for any agreement pertaining to the CER and secured, and which commences during the Term of this Agreement or within nine (9) months after termination of this Agreement, provided such agreements are with companies targeted during the Term of this Agreement and which appear on Consultant's "Pipeline Report" that is issued prior to the termination date of this Agreement.
- 3.2.6 Commissions will be deemed as earned by Consultant when CER Revenues are actually received by FCC, and will be due to Consultant and paid by FCC to Consultant within thirty (30) days of FCC's actual receipt of such CER Revenues. However, Consultant will be deemed to earn a portion of such commission based on CER Revenues if a portion of CER Revenues are actually received by FCC and Consultant shall receive any remaining commission within thirty (30) days after the date on which the remaining CER Revenues are actually received by FCC.

#### 3.3 Expenses

3.3.1 In addition, FCC will reimburse Consultant, on a monthly basis, for all reasonable, direct, out-of-pocket expenses incurred by Consultant and approved by FCC in connection with Consultant's performance of Consulting Services pursuant to this Agreement, including, but not limited to approved travel and meals. Consultant must obtain prior written approval before any expenses are incurred. Consultant will submit expense reports to FCC on a monthly basis.

4. **REQUIREMENTS.** Without in any way limiting any other term or provision of this Agreement or any obligation of Consultant hereunder, Consultant shall:

- 4.1 Adhere to all laws, policies, rules, and regulations applicable to the Services to be provided by Consultant pursuant to this Agreement.
- 4.2 Review and provide advice with respect to sponsorship packages relating to FCC; provided, Consultant shall have no right or power to enter into any agreement in the name of or on behalf of FCC, or to otherwise obligate FCC in any manner, without the prior written consent and approval of FCC, in its sole discretion. All fees of advisors other than Consultant, including legal, accounting, tax, insurance and otherwise, associated with entering into a contractual agreement on behalf of FCC, shall be the responsibility of FCC.

5. INDEMNIFICATION. Consultant shall indemnify, defend and forever save and hold harmless FCC, its principals, shareholders, managers, members, partners, officers, directors, contractors, agents and

employees (sometimes collectively referred to herein as "FCC Indemnitees" and individually as a "FCC Indemnitee"), from and against any and all damages, claims, losses, demands, costs, expenses (including reasonable attorneys, fees and costs), obligations, liens, liabilities, actions and causes of action, which any one of FCC' Indemnitees may suffer or incur arising out of breach of this Agreement by Consultant. The foregoing indemnification shall survive any termination or the expiration of the Term of this Agreement. FCC shall indemnify, defend and forever save and hold harmless Consultant, its principals, shareholders, members, partners, officers, directors and employees (sometimes collectively referred to herein as the "Consultant's Indemnitees" and individually as a "Consultant Indemnitee"), from and against any and all damages, claims, losses, demands, costs, expenses (including reasonable attorneys, fees and costs), obligations, liens, liabilities, actions and causes of action, which any one of the Consultant's Indemnitees" and individually as a "Consultant Indemnitee"), from and against any and all damages, claims, losses, demands, costs, expenses (including reasonable attorneys, fees and costs), obligations, liens, liabilities, actions and causes of action, which any one of the Consultant's Indemnitees may suffer or incur arising out of breach of this Agreement by FCC. The foregoing indemnification shall survive any termination or the expiration of the term of this Agreement.

6. TERMINATION FOR BREACH. In the event Consultant or any employee of Consultant performing Services on behalf of Consultant for the benefit of FCC breaches this Agreement, FCC will have the right to terminate this Agreement in addition to other rights or remedies which FCC may have under this Agreement, or at law or in equity.

- 6.1 In the event of a termination for breach, Consultant will be paid the Project Fee accrued, as well as Commissions due on any sponsorship CER Revenues secured by Consultant prior to the effective date of such termination, but no further compensation under this Agreement shall be due thereafter.
- 6.2 In the event FCC or any employee breaches this Agreement, Consultant will have the right to terminate this Agreement in addition to other rights or remedies which Consultant may have under this Agreement, or at law or in equity.
- 6.3 A party will not be in breach hereof unless such party has first been notified in writing by the other party of the alleged breach and the notified party has failed to cure the alleged breach within thirty (30) business days following delivery of such notice.
- 6.4 Consultant acknowledges that no portion of Project Fee shall accrue or commissions on sponsorship CER Revenues be due and payable hereunder during any period that FCC have provided written notice to Consultant of the occurrence of any alleged breach unless Consultant actually cures such alleged breach to the satisfaction of FCC prior to the expiration of the applicable cure period.
- 7. **TERMINATION FOR CAUSE.** In the event Consultant fails to deliver on the Scope of Services described herein, FCC will have the right to terminate this Agreement, provided they can produce a commercially articulate basis for the termination.

8. INDEPENDENT CONSULTANT STATUS. Consultant is engaged hereunder as an independent contractor and as such shall be solely responsible for full compliance with all requirements under all laws and regulations now or in the future applicable to Consultant, its business affairs and its performance of its duties under or pursuant to this Agreement. The relationship of the Consultant to FCC created by this Agreement is that of an independent contractor, and nothing contained in this Agreement shall be deemed or construed as creating any partnership, joint venture, employment relationship, agency or other relationship between the parties or to make FCC liable for the debts or obligations of Consultant.

#### 9. INTELLECTUAL PROPERTY

9.1 Consultant agrees that (a) nothing in this Agreement is intended to convey any ownership or other rights in the trademarks, service marks, copyrights or other intellectual property rights to FCC or any of FCC' affiliated businesses (the "FCC Trademarks"), (b) ownership of all such FCC Trademarks shall remain the property of FCC or its affiliates, as the case may be, and (c)

E-FILED 06/22/2020 07:59 AM / CONFIRMATION 956703 / A 2002252 / COMMON PLEAS DIVISION / IFIJ

Consultant will not use any FCC Trademarks under any circumstances without the prior written consent of FCC, which consent FCC may withhold in its sole and absolute discretion.

9.2 FCC shall have all ownership rights in all written reports pertaining to the Services prepared by Consultant produced in the performance of this Agreement. All Documents and Reports shall be for FCC exclusive use and re-use at any time without further compensation to Consultant, however distribution of the deliverables outside of the FCC organization must be pre-approved by Consultant. Any restrictions imposed by third parties, such as rights fees payable for use of images in photographs, etc., shall be immediately disclosed to FCC.

10. CONFIDENTIAL INFORMATION. During the term of this Agreement, Consultant may gain access or be exposed to certain confidential and proprietary information relating to the business of FCC or its affiliates. Consultant agrees that all such confidential and proprietary information shall remain and be kept in strictest confidence and shall not be disclosed to or used by any person or entity without the prior written consent of FCC, which consent may be withheld by FCC in its sole and absolute discretion. The obligation to maintain confidentiality provided herein shall survive any termination or expiration of the Term of this Agreement and may be enforced by injunctive relief or other equitable or legal remedies without the necessity of proving inadequacy of legal remedies and without proving that FCC or any of its affiliates or any of their respective officers, directors, shareholders, partners, managers, members, employees, agents, consultants or representatives would suffer irreparable harm as a result of a violation of such confidentiality obligation.

11. EFFECT OF AGREEMENT/ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective assigns; provided, however, this Agreement may not be assigned by Consultant, nor may any of Consultant's duties hereunder be delegated, without written consent by FCC.

12. WAIVER. No course of dealing or delay by either party to this Agreement in exercising any right, power or remedy under this Agreement will operate as a waiver of any right, power or remedy of that party, and no waiver by a party of a breach of any provision of this Agreement will not be considered or constitute a waiver of any succeeding breach of the provision or a waiver of the provision itself.

13. CHOICE OF LAW. The validity, interpretation, construction and enforcement of this Agreement shall be governed and controlled by the laws of the State of California. Each party irrevocably submits to the exclusive jurisdiction and venue of any Ohio State or Federal court sitting in the city of Cincinnati, over any suit, action or proceeding commenced by or on behalf of any party hereto arising out of or relating to this Agreement.

14. SEVERABILITY. If any covenant, term or provision of this Agreement is deemed to be contrary to law, that covenant, term or provision will be deemed separable from the remaining covenants, terms and provisions of this Agreement and will not affect the validity, interpretation or effect of the remainder of this Agreement.

15. OTHER ASSURANCES. The parties agree to take such further acts and to execute such further documents that may be necessary or convenient to carry out the intents and purposes of this Agreement.

16. ENTIRE AGREEMENT. This Agreement expresses and contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes and replaces any and all prior agreements and understandings, either oral or written, with respect to the subject matter hereof. This Agreement may not be modified, altered or amended-except by a written instrument signed by both parties.

17. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

**INWITNESS WHEREOF**, the parties have executed this Agreement and have made it effective as of the day and year first above written.

#### **CONSULTANT:**

#### PREMIER PARTNERSHIPS, INC.

auch By:

Randy Bernstein, President & CEO

5.16.77 Date:

FUTBOL CLUB CINCINNATĮ LLC.

By: Jeff resident & GN

5-15-1 Date:

Agreement – Page 6 FCC / Premier Partnerships Agreement

#### Exhibit A: Key Tasks & Deliverables

#### Key Tasks

- Sales Representation
  - Assist with the ideation around new sales materials and/or the revision of existing sales materials (i.e. sizzle reel, story deck, one-sheet, presentation and term sheets) for the naming rights, uniform kit, cornerstone and official level partnership packages
  - Conduct an internal Premier sales workshop to introduce the FCC sponsorship program to sales team
  - Train the new FCC VP and current sponsorship executives on the Premier sponsorship sales approach
  - Work with FCC to integrate current partners into new hierarchy and drive incremental long-term revenue
  - Develop and Execute "Shock and Awe" campaign for all major companies in the Greater Cincinnati Region and throughout Ohio/Northern Kentucky to announce uniform kit and new stadium/naming rights partner opportunity
  - Secure high-level calls and meetings with targeted companies to present the FCC sponsorship program
  - Assist in the negotiation of FCC sponsorship agreements
  - Work with FCC's legal team on key contract elements
- Develop a Business-to-Business Sponsorship Platform
  - Review, analyze and recommend the appropriate business-to-business sponsorship categories based on FCC's current expenses with existing business partners (e.g. technology, insurance, printing, manufacturing, etc.)
  - Construct a business-to-business sponsorship platform and process to enable FCC to maximize expenses on an ongoing bases
  - Aggregate and leverage business spend across key expense categories such as Insurance Brokerage, IT Integration, Large-scale Graphics and Printing and Energy Efficient Lighting
  - o Develop business-to-business partnership process materials
  - o Develop a construction management plan associated with vendor spends for new stadium

#### Deliverables

- Secure meetings with pre-approved new prospects
- Assist in creation and ideation of customized partner proposals
- Work with FCC in negotiating and finalizing partnership agreement (s)
- Provide bi-monthly prospect pipeline reporting

#### **Exhibit B: Commission Structure**

### **MLS Commission Structure:**

Naming Rights Partner

	Low	Medium	High
Deal range	\$1.00M - \$2.99M	\$3.00M - \$4.49M	\$4.50M+
Commission (Premier brings in client and negotiates deal)	5%	10%	15%
Commission (FCC Protected List, but Premier negotiates deal)	4%	7%	10%

#### • Uniform Kit Partner

	Low	Medium	High
Deal range	\$1.00M - \$2.49M	\$2.50M - \$4.49M	\$4.50M+
Commission (Premier brings in client and negotiates deal)	5%	10%	15%
Commission (FCC Protected List, but Premier negotiates deal)	4%	7%	10%

#### Cornerstone Partner

	Low	Medium	High
Deal range	\$100k - \$199k	\$200k - \$399k	\$400k+
Commission (Premier brings in client and negotiates deal)	5%	10%	15%
Commission (FCC Protected list, but Premier negotiates deal)	4%	7%	10%

#### Official Partner

	Low	Medium	High
Deal range	\$1k - \$74k	\$75k - \$124k	\$125k+
Commission (Premier brings in client and negotiates deal)	5%	10%	15%
Commission (FCC Protected List, but Premier negotiates deal)	4%	7%	10%

#### **Exhibit C: FCC Protected List**

#### FC Cincinnati Protected Partner List:

#### 100% Protected List:

- Great American Insurance/American Financial Group
- Cintas

Partial Protected List: (will need help negotiating the deal) - see charts above in Exhibit B for commissions

- The Kroger Co.
- P&G
- UC Health
- US Bank
- Toyota
- PNC Bank
- General Electric
- · Cinti. Children's Hospital Med. Center
- Fidelity Investments
- Duke Energy
- Ohio National Financial Services
- Macy's
- Fifth Third Bank
- Western & Southern
- Cincinnati Bell
- Humana

# EXHIBIT B



**D. BROCK DENTON** DIRECT DIAL: (513) 579-6456 FACSIMILE: (513) 579-6457 E-MAIL: DDENTON@KMKLAW.COM

October 3, 2018

#### VIA ELECTRONIC MAIL & U.S. MAIL

Randy Bernstein Premier Partnerships Inc. 1148 4th Street Santa Monica, CA 90403

> Re: Futbol Club Cincinnati LLC

Dear Randy:

As you are aware, our firm represents Futbol Club Cincinnati LLC ("FCC USL") and Fussball Club Cincinnati, LLC ("FCC MLS" and together with FCC USL, "FC Cincinnati"). FCC USL entered into that certain Agreement for Consulting Services dated May 1, 2017 (the "Consulting Agreement") between FCC USL and Premier Partnerships, Inc. ("Premier"). This letter will memorialize some of the concerns communicated by FC Cincinnati to Premier.

FC Cincinnati has participated in multiple calls with Premier over the past few weeks to articulate its concerns regarding Premier's inability to close sponsorship deals and drive long-term revenue for the club. During the seventeen months following execution of the Consulting Agreement, FC Cincinnati has paid Premier aggregate retainers in excess of \$160,000 and reimbursed more than \$25,000 in expenses. In exchange, Premier has delivered only one signed LOI/term sheet for a sponsorship agreement, which was sold by Jason Miller, a former employee and the initial principal FC Cincinnati contact with Premier. FC Cincinnati's trust and confidence in Jason's ability to drive long-term incremental revenue was a primary factor in it hiring Premier and agreeing to the commission structure set forth in the Consulting Agreement. Unfortunately, Jason terminated his employment with Premier and you have chosen to replace Jason with a team approach divided by industry categories. This approach has proven unsuccessful.

Contrary to FC Cincinnati's express instructions dating back to the initial work with Jason Miller, Premier's approach has primarily been focused on local sponsorship deals with companies that already have ties to FC Cincinnati or its owners. FC Cincinnati has communicated to Premier for several weeks that its focus should be to sell stadium naming rights and cornerstone partnerships. FC Cincinnati hired Premier and agreed to a commission structure that will pay Premier millions of dollars for years to come based on the understanding that Premier would

> ONE EAST FOURTH STREET | SUITE 1400 | CINCINNATI, OHIO 45202-3752 513.579.6400 TEL | WWW.KMKLAW.COM | FAX 513.579.6457

Randy Bernstein October 3, 2018 Page 2

deliver national sponsors and drive significantly more revenue from local sponsors. As Jason Miller will confirm, FC Cincinnati did not hire Premier to sell local sponsorships to existing sponsors with marginally increased revenue. FC Cincinnati did not hire Premier to focus on selling sponsorships to its owners or their companies. Over four months after being awarded an MLS bid and winning the USL with record attendance, Premier has not brought the club a potential sponsor that could not have been developed by the club's internal sales team.

In addition, we have discussed the fact that Premier included numerous items in the agreement with Mercy Health for the kit sponsorship and medical provider agreement that are expressly prohibited by MLS rules and the MLS collective bargaining agreement. FC Cincinnati's negotiation of the kit sponsorship and medical provider agreement with Mercy Health took much longer and has been more contentious than anticipated. As part of the negotiations, FC Cincinnati was forced to make material economic concessions to compensate Mercy Health for items that FC Cincinnati could not deliver per MLS rules. Based on Premier's representations as to its experience selling MLS deals, it was surprising for FC Cincinnati to learn that some items in the term sheet prepared by Premier actually violated MLS rules and the MLS collective bargaining agreement.

For the reasons outlined above and others, this letter constitutes notice that Premier is in breach of its obligations under the Consulting Agreement. Specifically, Premier has failed to drive incremental long-term revenue to FC Cincinnati. Premier has also failed to develop a successful business-to-business sponsorship platform. In the event Premier fails to cure the breach within thirty days of this letter FC Cincinnati may exercise its right to terminate this agreement.

As we have agreed on numerous calls, on a going forward basis Premier should focus on selling sponsorships for (i) stadium naming rights; (ii) cornerstone partnerships; and (iii) other sponsorships that will result in net revenues to FC Cincinnati in excess of \$400,000 annually. FC Cincinnati understands that some lower dollar sponsorships proposals are pending as of the date of this letter and Premier will continue to drive those proposals to conclusion. FC Cincinnati will work with Premier to prepare a list of proposals that are outstanding. FC Cincinnati also understands from our call this past Monday that Ryan Smith will lead our weekly calls and be the primary point of contact across all industries moving forward. Ryan will be supported primarily by Seth Frankenthal with other representatives of Premier helping as needed behind the scenes.

Finally, we understand that Premier will endeavor to provide more time for Jeff Berding to review proposals. In addition to managing the current USL team, Jeff and others at FC Cincinnati are working hard to build a first-class training facility and stadium and otherwise position FC Cincinnati to be successful next year in MLS. Premier cannot assume Jeff is available to review last minute proposals that commit FC Cincinnati to long-term partnerships without the ability to fully understand how those terms may fit within the overall strategic goals of FC Cincinnati. Finally, FC Cincinnati has discussed that Premier should be cognizant of whether long term deals are appropriate and in the best interests of FC Cincinnati based on the amount of the sponsorship proposal.

**Randy Bernstein** October 3, 2018 Page 3

Enclosed is an amendment to the Consulting Agreement that reflects what we have mutually agreed as Premier's sales focus moving forward. Please review the amendment and contact me if you have questions. Otherwise, please sign and return it at your earliest convenience.

Please let me know if you have questions.

Sincerely,

**KEATING MUETHING & KLEKAMP PLL** 

By: \_\_\_\_ D. Brock Denton

DBD:maf

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# EXHIBIT C

### FIRST AMENDMENT TO CONSULTING AGREEMENT

This First Amendment to the Consulting Agreement is made effective as of February 13, 2019 (the "First Amendment") by and among Futbol Club Cincinnati LLC, an Ohio limited liability company ("FCC") and Premier Partnerships Inc., a California corporation ("Consultant") to amend that certain Consulting Agreement dated as of May 1, 2017 among FCC and Consultant (the "Consulting Agreement").

WHEREAS, FCC and Consultant are parties to the Consulting Agreement; and

WHEREAS, FCC and Consultant desire to amend the Consulting Agreement in certain particulars, all on the terms and conditions contained hereinafter.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained hereinafter, the parties hereto agree as follows:

1. <u>Defined Terms</u>. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Consulting Agreement.

2. <u>Section 3.2.1 – Commission</u>. Section 3.2.1 of the Consulting Agreement is amended and restated to provide as follows:

FCC will pay to Consultant commissions on: (a) total net cash revenues (defined as gross cash revenues less hard costs in excess of 5% of the total sponsorship price incurred by FCC to fulfill programming obligations under agreements with Sponsors) secured as a result of the sales efforts of Consultant for arrangements entered into by FCC for CER; plus (b) the cash equivalent value of barter included as part of the consideration in any agreement or arrangement for CER which is approved in advance in writing by FCC and identified as "barter" (collectively "CER Revenues"); it being agreed Consultant shall not be entitled to commissions on the sponsorship arrangement between FCC and University of Cincinnati in connection with its negotiation to use Nippert Stadium for the 2019, 2020 and possibly the 2021 MLS seasons. The value of all barter will be based upon the favorable (i.e., lower than) retail price value to FCC of such barter items.

For purposes of computing hard costs of FCC and net cash revenues (i) only actual out-of-pocket hard costs incurred by FCC due to the Sponsor shall be included, it being agreed that placing the sponsor name on an item that already exists will not be included but if the costs associated with adding the sponsorship increase the cost of the overall item the increased amount attributable to such sponsorship will be included (i.e., cost of sign above a stadium gate will be included in hard costs, but only the increased cost over what the gate sign would cost without the sponsor with such amount being amortized over the term of the sponsorship); (ii) payroll expenses for internal FCC employees shall not be considered hard costs; (iii) fifty percent (50%) of revenues associated with suites and premium seating tickets included in sponsorship packages will be considered hard costs; (iv)

intellectual property and exclusivity rights, in stadium digital signage shall not be considered hard costs; (v) media spots that are required to be purchased by FCC shall be considered hard costs; (vi) player and coach appearances where payments are actually made by FCC shall be considered hard costs; (vii) food costs for suites and other activities where FCC incurs third party expenses shall be considered hard costs; (viii) production signs and banners paid for by FCC shall be considered hard costs; (ix) giveaway items paid for by FCC shall be considered hard costs; and (x) merchandise items provided to sponsor and paid for by FCC shall be considered hard costs. The foregoing examples of hard costs are not inclusive of all potential hard costs incurred by FCC and, for others, FCC and Consultant will work together in good faith to determine the amount of hard costs and commissions owed Consultant. Consultant shall have the right to review agreements between FCC and Sponsors for which Consultant is entitled to a commission for purposes of confirming the amount of the commission owed to Consultant..

3. <u>Section 3.2.2.1 – Commission</u>. Section 3.2.2.1 of the Consulting Agreement is amended and restated to provide as follows:

If FCC is selected as an MLS expansion team, a commission will be paid to Consultant based on the CER Revenues received by FCC for all sponsor agreements entered into between FCC and Sponsors that are secured as a result of the sales efforts of Consultant pursuant to the commission structure outlined in Exhibit B.

For purposes of this Agreement, a Sponsor shall be deemed secured as a result of the sales efforts of Consultant if (i) such Sponsor is identified on Schedule 1 attached hereto as being an actual or potential sponsor that Consultant has either (a) secured a term sheet for a sponsorship as of the date of this First Amendment; or (b) been in active discussions prior to the date of this First Amendment with respect to a sponsorship for naming rights, kit, cornerstone or as an official partner (collectively, the "Pipeline Accounts"); or (ii) such Sponsor is identified by Consultant following the date of this First Amendment and approved in writing by FCC as a potential sponsor for a naming rights or cornerstone sponsorship. As future potential Sponsors are identified and approved in writing by FCC, Schedule 1 attached hereto shall be updated to include such Sponsors. FCC's approval of any potential sponsor for a naming rights or cornerstone sponsorship shall not be unreasonably withheld. For the avoidance of doubt, Consultant shall not be entitled to a commission on any sales of sponsorships to Sponsors that are not identified on Schedule 1, and commissions shall only be payable for sponsorship sales to official partners if such Sponsor is identified as a Pipeline Account: provided, however, that from time to time at the request of Premier and with the written consent of FCC in its sole discretion additional accounts may be added as a Pipeline Account by specifically identifying such accounts as Pipeline Accounts on an addendum to Schedule 1.

4. <u>Section 3.2.2.2 – Commission</u>. Section 3.2.2.2 of the Consulting Agreement is deleted in its entirety.

5. <u>Section 3.2.3 - Commission</u>. Section 3.2.3 of the Consulting Agreement is amended and restated to provide as follows:

For MLS agreements, commissions due on CER Revenues for any sponsor agreement are for the original contract term and first renewal term.

6. <u>Section 3.2.5</u>. Section 3.2.5 of this Agreement is amended and restated to provide as follows:

FCC acknowledges that its obligation to pay commissions to Consultant pursuant to this Section 2 may be extended beyond the term of this Agreement. Commissions will be due on any CER Revenues actually received by FCC for any agreement pertaining to the CER and secured, and which commences during the Term of this Agreement or within six (6) months after termination of this Agreement, provided such agreements are with companies identified on <u>Schedule 1</u> attached hereto, as such schedule may be updated during the Term of this Agreement.

7. <u>Exhibit B – Commission Structure</u>. Exhibit B is amended and restated as follows:

	Medium	High
Deal Range	\$3.00M-\$4.49M	\$4.50M+
Commissions (Premier brings in client and negotiates deal)	10%	15%
Commission (FCC Protected List, but FCC has Premier Negotiate Deal)	7%	10%

Naming Rights Partner for FC Cincinnati MLS Stadium:

#### Uniform Kit Partner

	Medium	High
Deal Range	\$2.50M-\$4.49M	\$4.5M+
Commissions (Premier brings in client and negotiates deal)	10%	15%
Commission (FCC Protected List, but FCC has Premier Negotiate Deal)	7%	10%

#### Cornerstone Partner

	Medium	High
Deal Range	\$200k-\$399k	\$400k+
Commissions (Premier brings in client and negotiates deal)	10%	15%
Commission (FCC Protected List, but FCC has Premier Negotiate Deal)	7%	10%

### Official Partner (Commissions Payable Only for Pipeline Accounts)

	Medium	High
Deal Range	\$100k-\$149k	\$150k+
Commissions (Premier brings in client and negotiates deal for a Pipeline Account)	10%	15%

Commission (FCC	7%	10%
Protected List, but		
FCC has Premier		
Negotiate Deal for a		
Pipeline Account)		

For purposes of computing whether a commission is payable at the "medium" or "high" percentage, the average annual sponsorship amount during the initial sponsorship term shall be used. By way of example, if a Sponsor has a four year commitment and the price per year is \$300k, \$325k, \$350k and \$375k, the average annual sponsorship amount is \$337,500 per year for purposes of computing whether commission should be paid at the "medium" or "high" percentage.

8. 2019 and 2020 Sponsorship Revenues. Premier has represented to FCC that total revenues secured by Consultant for arrangements entered into by FCC for CER as a direct result of the sales efforts of Premier during (i) the 2019 MLS season will equal or exceed \$8.1 million; and (ii) the 2020 MLS season will equal or exceed \$10.875 million. In the event Premier fails to deliver a term sheet or other written approval from Sponsors that they desire to move forward towards definitive agreements that equal or exceed the foregoing sales commitments by May 1 of each of 2019 and 2020 for that particular season FCC may terminate this Consulting Agreement in its sole discretion upon providing written notice to Premier.

9. <u>Miscellaneous</u>. Except as otherwise modified by this First Amendment, the Consulting Agreement shall remain in full force and effect as originally executed and delivered. A facsimile or electronically transmitted signature shall constitute an original.

#### [Remainder of page is blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Consulting Agreement effective as of the day and year first above written.

FUTBOL CLUB CINCINNATI LLC By: Name: Jeff ertin ኅ Title: Preside

PREMIER PARTNERSHIPS INC.

Ву:	
Name:	
Title:	

[Signature Page to First Amendment to Consulting Agreement]

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IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Consulting Agreement effective as of the day and year first above written.

#### FUTBOL CLUB CINCINNATI LLC

By:	
Name:	
Title:	

PREMIER PARTNERSHIPS INC.

Randy Berostein CEO By:\_ Name: Title:

[Signature Page to First Amendment to Consulting Agreement]

#### SCHEDULE 1

#### **PIPELINE ACCOUNTS:**

# Approved Targets per December 2018 meeting with Brock, Vince, Alan & Ryan

Cincinnati Bell (10% per original agreement) Kroger (10% per original agreement) Procter & Gamble (10% per original agreement) Toyota / Lexus (10% per original agreement)

Mercy Health First Financial Bank Total Quality Logistics (TQL) Heineken Wine Society Advocare Life Center Sibcy Cline Allegiant Air Gorilla Glue Honda/Acura AARP Target Huntington Bank AB InBev Coca-Cola Keurig Dr. Pepper Miller Coors PepsiCo Gold Star Chili / Tom + Chee AAA American Family Insurance Penn Station East Coast Subs Midwest Dental Ollie's Bargain Outlet Pizza Hut MadTree Brewing Beam Suntory Buffalo Wings & Rings Universal Windows Direct United Dairy Farmers GEICO Ford Motor Company **Bimbo Bakeries** 

Frisch's / Big Boy Tire Discounters Unilumin Panasonic LG Lyft Jani-King IBM Konica-Minolta **Republic Services** Ephesus Tech Mahindra Sherwin-Williams Ferguson / Signature Hardware John Deere SAP Toshiba Samsung Johnson Controls Ricoh Value City Nissan JBL Getroncis CVS Walgreens Harley-Davidson Whirlpool CyrusOne **Big Lots** Stanley Black & Decker Quicken Loans Circle K Staples

#### Approved by Vince Cicero on 1/6/19

Macy's (10% per original agreement) AK Steel Holding Beats by Dre Best Buy Bob Evans Bose Crown Equipment CSX Corp. Delfin

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Discount Drug Mart Dollar General Eastbay Eaton Corp. Emerson Electric Express Scripts JC Penney Kohl's L Brands Marathon Petroleum Marc Glassman Norfolk Southern Reed Elsevier Group Rite Aid Signet Jewelers Time Warner Cable Untuckit Verizon

### **NON-PIPELINE ACCOUNTS:**

None

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# EXHIBIT D

# KMK Law

**D. BROCK DENTON** D: (513) 579-6456 DDENTON@KMKLAW.COM

May 1, 2020

#### VIA ELECTRONIC MAIL & U.S. MAIL

Randy Bernstein Premier Partnerships Inc. 1148 4th Street Santa Monica, CA 90403 Alan Rothenberg Premier Partnerships Inc. 1875 Century Park East, Suite 1400 Los Angeles, CA 90067

Re: FC Cincinnati

Dear Randy and Alan:

As you are aware, our firm represents Futbol Club Cincinnati LLC ("FCC USL") and Fussball Club Cincinnati, LLC ("FCC MLS" and together with FCC USL, "FC Cincinnati"). FCC USL entered into that certain Agreement for Consulting Services dated May 1, 2017 between FCC USL and Premier Partnerships, Inc. ("Premier") (the "Original Agreement"), as amended by that certain First Amendment to Consulting Agreement dated February 12, 2019 (the "First Amendment" and together with the Original Agreement collectively, the "Consulting Agreement").

Section 8 of the First Amendment provides as follows:

<u>2019 and 2020 Sponsorship Revenues</u>. Premier has represented to FCC that total revenues secured by Consultant for arrangements entered into by FCC for CER as a direct result of the sales efforts of Premier during (i) the 2019 MLS season will equal or exceed \$8.1 million; and (ii) the 2020 MLS season will equal or exceed \$10.875 million. In the event Premier fails to deliver a term sheet or other written approval from Sponsors that they desire to move forward towards definitive agreements that equal or exceed the foregoing sales commitments by May 1 of each of 2019 and 2020 for that particular season FCC may terminate this Consulting Agreement in its sole discretion upon providing written notice to Premier.

As of May 1, 2020, total revenues secured by Premier for arrangements entered into by FC Cincinnati for CER as a direct result of the sales efforts of Premier for the 2020 MLS season is significantly less than \$10.875 million. Please accept this letter as notice that FC Cincinnati is exercising its right to terminate the Consulting Agreement effective immediately due to Premier being in breach of its representation in Section 8 of the Consulting Agreement.

Randy Bernstein Alan Rothenberg May 1, 2020 Page 2

Premier should immediately cease any sponsorship sales efforts for the benefit of FC Cincinnati. Further, Premier may no longer represent to third parties that it is authorized to sell sponsorships or otherwise act in any capacity on behalf of FC Cincinnati. Premier should also not engage in any communications with FC Cincinnati sponsors on behalf of FC Cincinnati and any such sponsors that may contact Premier should be referred to Vince Cicero. In the event FC Cincinnati discovers that Premier is not complying with the foregoing or otherwise engaging in actions that are detrimental to the best interests of FC Cincinnati it will immediately take steps necessary to protect its legal rights.

Finally, Jeff Berding forwarded me your email dated April 24, 2020. FC Cincinnati disagrees with the allegations in your email and is confident that it has complied with its obligations in the Consulting Agreement. Any further communications regarding this matter should be directed to me.

Sincerely,

**KEATING MUETHING & KLEKAMP PLL** 

By: Kr

DBD:maf

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