

## Food & Beverage Agreement

### Team San Jose Meetings

Event Name: **SAMPLE**

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Sales Mgr:  
800-SAN-JOSE

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This Food & Beverage Agreement ("Agreement") is entered into on May 29, 2013 by and among :

**BETWEEN:** Team San Jose, a California non-profit corporation  
408 Almaden Boulevard  
San Jose, CA 95110-2709

(Hereinafter called "Team San Jose"),

TSJ Events, LLC, a California limited liability company  
408 Almaden Boulevard  
San Jose, CA 95110-2709

(Hereinafter called "TSJ Events"),

**AND:** Team San Jose Meetings  
408 Almaden Boulevard  
San Jose, CA 95110

(Hereinafter called "Client")

This Agreement is effective as of the first date that Client, Team San Jose, and TSJ Events have signed this Agreement (the "Effective Date"). Team San Jose, TSJ Events, and Client are sometimes referred to herein as the "parties."

#### AGREEMENT

1. **TERMS AND CONDITIONS.** The Team San Jose Food and Beverage Standard Terms and Conditions ("Standard Terms"), including a downloadable copy thereof, are accessible at [http://c634653.r53.cf2.rackcdn.com/Customer Copy - F&B\\_Standard\\_Terms\\_and\\_Conditions.doc](http://c634653.r53.cf2.rackcdn.com/Customer Copy - F&B_Standard_Terms_and_Conditions.doc). A copy of the Standard Terms can also be obtained from Team San Jose upon request. The terms of this Agreement are subject to and supplemented by the Standard Terms, which Standard Terms are incorporated herein by this reference as if fully set forth herein. All references herein to the "Agreement" means and includes this Agreement as supplemented by the Standard Terms.
2. **APPLICATION OF FACILITY USE AGREEMENT.** Prior to the date of this Agreement, Client and Team San Jose entered into a Facility Use Agreement for the Event ID number shown above (the "FUA") regarding Client's use of one or more of the facilities which are part of the City of San José Convention and Cultural Facilities. The terms of this Agreement are specifically subject to the FUA, all of the terms of which are incorporated herein by reference and made a part hereof as if fully set forth herein, and it is agreed that all obligations of Client under the FUA constitute concurrent obligations under this Agreement.
3. **DEFINITIONS.** The capitalized terms not otherwise defined in this Agreement are defined as follows:
  - a. "Event" means the activity designated under the headings "Event Name" and "Event Schedule" as set forth in the FUA.
  - b. "Event Day" means each day of the Occupation Term, as defined in the FUA.

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- c. "Facility" means each facility or room indicated on the Summary Page of the FUA to be made available to Client under the terms of the FUA during the Occupation Term. "Facilities" means and includes each Facility, individually and collectively.
- d. "Food and Beverages" means food and both alcoholic and non-alcoholic beverages to be served to attendees at the Event.
4. **FOOD AND BEVERAGE SERVICES.** Subject to the terms of this Agreement, Team San Jose agrees to manage and perform the presentation and delivery of Food and Beverages (the "Services") in accordance with, and provide the Food and Beverages detailed on, the Event Resume (defined below).
5. **SALE OF ALCOHOL.** Subject to the terms of this Agreement, TSJ Events agrees to sell to Client, and Client agrees to purchase from TSJ Events, all of Client's alcoholic beverage ("Liquor") requirements for the Event as listed on the Event Resume.
6. **EVENT RESUME.** On or before 30 calendar days prior to the first day of the Occupation Term (the "Selection Deadline"), Client shall deliver to Team San Jose a written detail of the service dates, products, projected attendance, pricing (based on the menu pricing provided to Client by Team San Jose), and quantity of items for all Services and Food and Beverages, to be provided at the Event ("Client Requirements"), with an aggregate cost equal to or greater than the minimum food and beverage commitment set forth on the cover page to the FUA (the "FUA Summary Page"). Within 14 calendar days after delivery of the Client Requirements, Team San Jose shall prepare and deliver to Client a written statement of the order numbers, description of products, quantity of items, expected attendance, and pricing for all Services and Food and Beverages to be provided at the Event ("Event Resume") confirming (a) the Services, Service Times, attendance, and the Food and Beverages to be provided based on the Client Requirements, and (b) the aggregate sum of all fees and charges for food and non alcoholic beverages to be provided based on the menu pricing that was delivered to Client prior to the Selection Deadline, the Estimated Bar Charges, and any additional and/or ancillary charges applied under this Agreement (the "Contract Price"). On or before 14 calendar days prior to the first Event Day (the "Confirmation Date"), the parties shall mutually confirm the terms of the Event Resume, including the Contract Price, and shall each initial a copy thereof, whereupon the Event Resume shall be attached hereto, incorporated herein, and become a part of this Agreement. If, after Team San Jose has delivered the Event Resume to Client, the Client fails to either (a) confirm the terms of the Event Resume on or before the Confirmation Date, or (b) timely identify and describe specific objections or changes to the Event Resume not less than two business days prior to the Confirmation Date, then the Event Resume originally submitted by Team San Jose shall be deemed to be accepted by Client and become the Event Resume for the Event. Subject to the terms of Sections 7 and 10, the Event Resume may not be modified except with the written consent of Team San Jose.
7. **MODIFICATIONS TO REQUIREMENTS.**
- a. After the Selection Deadline, any changes to the services and products identified in the Client Requirements resulting in a reduction of the Services, Food and/or Beverages to be provided at the Event may result in surcharges and/or loss of discount pricing.
- b. After the Guarantee Date (as hereinafter defined), an increase in the Services, Food and/or Beverages to be provided at the Event will result in price increases and surcharges associated with additional administrative costs and increased food and beverage costs.
8. **CLIENT OBLIGATIONS.** Client agrees to:
- a. Timely deliver to Team San Jose the Client Requirements on or before the Selection Deadline;
- b. Timely deliver to Team San Jose a written notice identifying the guaranteed number of attendees to whom Food and Beverages will be served pursuant to the section of this Agreement titled *Attendance Guarantee* ("Attendance Guarantee");
- c. Timely pay the Contract Price in the manner and at the times provided for in this Agreement, the Event Resume, and

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- the FUA;
- d. Pay additional surcharges or increased costs, if any, as provided in this Agreement;
- e. Conduct the Event in an orderly manner and in full compliance with applicable laws, ordinances, regulations, and rules and regulations governing the use of the Facilities; and
- f. Coordinate and cooperate with Team San Jose in order to enable Team San Jose to present and deliver the Services in a timely manner with minimal disruption of Client's Event.
9. **PRICING.** The estimated costs, fees and charges for Food and Beverages, and for the delivery of the Services, are set forth on the then current menu offerings delivered concurrently with the execution of the FUA. The cost of Liquor is separately detailed as an amount charged by and payable to TSJ Events. Due to fluctuating market conditions, the charges for Food and Beverages quoted in the current menu offerings and pricing at the time of the execution and delivery of the FUA may change prior to the Selection Deadline. The charges for Food and Beverages will be finalized by Team San Jose at the Selection Deadline, and an updated menu will be delivered to Client at such time. Notwithstanding anything in this Agreement to the contrary, in no event shall the Contract Price under this Agreement be less than Minimum Food & Beverage Commitment (as defined on the FUA Summary Page). Also, notwithstanding final pricing on Food and Beverage items as reflected in the Event Resume, Client will nevertheless pay for labor service charges (server gratuities) calculated on the standard published menu rate in effect at the time that the Services are provided.
10. **ATTENDANCE GUARANTEE.** On or before the close of business on the date that is 5 business days prior to the first Event Day (the "Guarantee Date"), Client shall provide Team San Jose with a written Attendance Guarantee statement indicating the guaranteed number of attendees to be served Food and Beverages at the Event. Should a written Attendance Guarantee not be provided on the Guarantee Date, noted attendance outlined in requirements on the Selection Deadline will become the Attendance Guarantee. The Attendance Guarantee may not modify any term of the Event Resume other than the number of attendees and the number of meals to be served as a result thereof. Deviations from the Attendance Guarantee may result in additional charges as set forth in the Attendance Guarantee Matrix described the section titled *Attendance Guarantee Matrix*. Upon determining any additional surcharges, fees, or costs, if any, arising as a result of difference in the number of attendees from the number stated in the Event Resume, the Contract Price will be set. Thereafter, the Contract Price may be increased as a result of additional attendees, but the Contract Price shall in no event be less than as set on the Guarantee Date.
11. **PAYMENT.**
- a. Deposit. Client shall deliver a deposit to Team San Jose on the execution and delivery of, and in the amount set forth in, the FUA (the "Deposit"). In the event that the Event Resume indicates an increase in Estimated Contract Price, the Deposit shall be increased upon the execution of the Event Resume in the same proportion as the aggregate increase in the Contract Price. In no event shall the Deposit be reduced.
- b. Additional Deposit. Client shall deliver an additional deposit as set forth in the FUA on or before the Selection Deadline.
- c. Minimum Commitment; Balance. Notwithstanding any other term or provision of this Agreement, and unless otherwise approved by Team San Jose in writing, the Client will pay in full the amount of the Minimum Food and Beverages Commitment, as identified in the FUA Summary Page, not later than the Selection Deadline. Any additional charges based on the Attendance Guarantee and pricing fluctuations will be due on the Guarantee Date. The failure of Client to timely pay any amount when due may cause a delay in Team San Jose or TSJ Events pre Service preparation or ordering of Food and Beverages, and may result in increased costs of the Service.
12. **CREDIT INFORMATION; CREDIT CARD CHARGES.** Client agrees to provide Team San Jose and TSJ Events with all information that Team San Jose and/or TSJ Events deem necessary to assure Client's creditworthiness with respect to Client's payment of the Contract Price. The credit information shall include (a) an executed form that authorizes the payment of the Contract Price on Client's credit card, and (b) a photocopy of the front and back of the Client's credit card

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(the "Credit Card") for verification. Unless otherwise indicated by Client, the Credit Card authorization will be held only as a guarantee of payment of amounts due hereunder, and charges will be submitted against the Credit Card only if Client is in default of payment; provided, however, Team San Jose is not required to deliver any notice to Client of default or of its election to charge any amount in default against the Credit Card. At Client's election, a Credit Card may be used as a principal form of payment.

### 13. TERMINATION OF AGREEMENT.

a. Team San Jose may terminate this Agreement immediately upon written notice to Client upon the occurrence of any one or more of the following:

- i. Failure to pay any amount due hereunder on or before the Guarantee Date.
- ii. Failure to provide Team San Jose with the Insurance Certificate required under the FUA.

b. This Agreement shall terminate effective immediately upon termination of the FUA for any reason.

### 14. CANCELLATION FEE. Client understands and acknowledges that, if Client cancels the Services and/or the delivery of Food and Beverages under this Agreement, or if this Agreement is terminated pursuant to the section of this Agreement titled *Termination of Agreement*, Team San Jose and TSJ Events will suffer substantial harm which is difficult or impossible to determine as of the date of this Agreement. Accordingly, if any portion of the Services or the Food and Beverages is cancelled, or this Agreement is terminated pursuant to the section of this Agreement titled *Termination of Agreement*, Client shall pay, as liquidated damages, and not as a penalty, a cancellation fee as set forth below, and the parties agree that the amounts set forth below constitute a reasonable assessment for liquidated damages:

a. For cancellations delivered to Team San Jose more than 60 days prior to the first Event Day, no liquidated damage amount;

b. For cancellations delivered to Team San Jose more than 30 but less than 61 days prior to the first Event Day, liquidated damages in an amount equal to 10% of the full amount of the Deposit;

c. For cancellations delivered to Team San Jose more than 14 but less than 31 days prior to the first Event Day, liquidated damages in an amount equal to 75% of the full amount of the Deposit; and

d. For cancellations delivered to Team San Jose less than 15 days prior to the first Event Day, liquidated damages in an amount equal to 100% of the full amount of the Deposit.

### 15. FINANCE CHARGES. The failure of Client to timely pay any amount when due will result in increased costs of the Service that are difficult or impossible to determine. Therefore, Client agrees to pay a finance charge of 2% per month on any unpaid balance of the Contract Price commencing 30 days after the last day of the Occupation Term.

### 16. OTHER REMEDIES. In addition to any finance charges that may accrue under the section of this Agreement titled *Finance Charges*, in the event of late payment of any Deposit or balance due under this Agreement, Team San Jose may elect either to (a) cancel any Service and/or delivery of any Food and Beverages upon written notice to Client, or (b) continue to provide the Service and the Food and Beverages; provided, however, in the event that Team San Jose elects to continue, Team San Jose and TSJ Events will be released from any liability for any failure of timely performance of their respective obligations under this Agreement.

### 17. INCORPORATION OF EXHIBITS AND SCHEDULES. The terms of the Event Resume, and the written notice of the Attendance Guarantee, are incorporated into this Agreement by reference as though an original part hereof and are hereby accepted by the parties hereto.

### 18. MISCELLANEOUS.

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a. Authority. Client has the right, power, legal capacity, and authority to enter into and perform its obligations under the Agreement, as supplemented by the Standard Terms, and no approvals or consents of any persons other than Client is necessary in connection with it.

b. Consent. In the event an approval or consent of a party is required under the Agreement, as supplemented by the Standard Terms, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent. Unless specifically indicated otherwise, any approval or consent required of either Team San Jose or TSJ Events may be granted or withheld in the sole and absolute discretion of Team San Jose or TSJ Events, as applicable.

c. Entire Agreement. Other than this Agreement, the Event Resume, the Facility Use Agreement (FUA), and the Standard Terms (collectively the "Definitive Documents"), the parties acknowledge that (1) there are no agreements or understandings, written or oral, between the parties regarding the provision of the Services or the Food and Beverages by Team San Jose or TSJ Events during Client's Event, and (2) the Definitive Documents constitute the full and complete agreement between the parties with respect to the same. The Definitive Documents shall not be modified or amended unless the parties each first agree to and approve such modification or amendment in writing. The provisions of this Agreement are incorporated into and are made a part of the FUA as an amendment thereof; provided, however, in the event there is a conflict between the terms of the FUA and the terms of this Agreement solely with respect to the delivery of the Services and/or Food and Beverages, the terms of this Agreement shall prevail.

#### 19. ATTENDANCE GUARANTEE MATRIX.

Service in Excess of Attendance Guarantee: Team San Jose will be prepared to serve up to 5% above the Attendance Guarantee, or up to a maximum of 30 additional meals, whichever is less; provided, however, Team San Jose shall have no liability or responsibility for delivery of meals in excess of the Attendance Guarantee.

Client Base Payment Obligation: In the event that Team San Jose serves any meals in excess of the Attendance Guarantee, Client shall pay for such additional meals at the standard published menu rate then in effect.

Surcharges (Actual Services Less than Attendance Guarantee): If the Attendance Guarantee that Client submits to Team San Jose (as provided in the section entitled *Attendance Guarantee*) reflects a number of Event attendees that is less than 90% of the number of attendees as set forth in the Event Resume, then (a) a surcharge may be added to the Contract Price, the amount of which will be determined by Team San Jose based on the shortfall in the attendance set forth in the Event Resume, and (b) Team San Jose and TSJ Events reserve the right to revoke volume discounted pricing and/or rebates, if any, reflected in the Event Resume or FUA, and to charge Food and Beverage items at the standard published menu rate then in effect. (By way of example, and without limitation, if the attendance reflected in the Event Resume is 100, and the Attendance Guarantee reflects an attendance of 89, then the Attendance Guarantee is 89% of the number identified in the Event Resume, and a surcharge will be added).

Surcharges (Actual Services Greater than Attendance Guarantee): If the Attendance Guarantee that Client submits to Team San Jose (as provided in the section entitled *Attendance Guarantee*) reflects a number of Event attendees that is greater than 105% of the number of attendees set forth in the Event Resume, then (a) a surcharge may be added to the Contract Price, the amount of which will be determined by Team San Jose based on the excess attendance and the expediency in which Team San Jose has to respond to the increased attendance, and (b) the Contract Price may be further increased by any increase in the cost of the additional food and beverage items. (By way of example, and without limitation, if the attendance reflected in the Event Resume is 100, and the Attendance Guarantee reflects an attendance of 106, then the Attendance Guarantee is 106% of the number identified in the Event Resume, and a surcharge will be added).

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IN WITNESS WHEREOF, this Food and Beverage Agreement is entered into at San Jose, California.

### Team San Jose Meetings

### TEAM SAN JOSE

Per:

Per:

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Team San Jose Signature

Date:

Date:

### Credit Card Authorization

I, the undersigned, hereby authorize Team San Jose and TSJ Events, LLC, to charge by below credit card for the above products and services.

Amount: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ CSC: \_\_\_\_\_

Signature: \_\_\_\_\_