



TEAM SAN JOSE FOOD AND BEVERAGE STANDARD TERMS AND CONDITIONS

The following Team San Jose Food and Beverage Standard Terms and Conditions ("Standard Terms") apply to all Food and Beverage Agreements (each an "F&B Agreement") entered into with Team San Jose on or after March 1, 2012, in connection with an event held at one or more of the City of San José Convention and Cultural Facilities. The within Standard Terms are incorporated by reference into all F&B Agreements entered into on or after March 1, 2012, and the term "F&B Agreement" as used herein is deemed to include the within Standard Terms. Capitalized terms used herein and not otherwise defined have the meanings set forth in the F&B Agreement.

A. **FOOD & BEVERAGE SERVICES.** Services will be provided to Client subject to the following:

(1) Length of service time for service of breakfast and lunch is one hour, and for plated dinner is two and one half hours; provided, however, dinner buffet service is limited to one and one half hours. Service periods may be extended subject to payment of additional labor fees and charges.

(2) All Services provided in the Facilities will include the use of high-grade disposable ware, with the exception of plated meals which will include the use of china and silverware. Additional charges will be assessed for plated meals or the use of china as more particularly set forth in the Event Resume.

(3) A charge may be assessed to Client if the Event's actual start and finish times deviate from the times set forth on the Event Resume in excess of 30 minutes. The additional charge will be at the then current applicable union labor rate per hour or part thereof for the period of time that the Event was delayed or extended multiplied by the number of staff persons assigned to provide the extended Service.

(4) Client understands and acknowledges that a certain level of disruption of Client's Event may be unavoidable in light of the time and personnel required for set-up, presentation, and break-down of each Service.

(5) Food and Beverage items detailed on the Event Resume for a specified Service Time will be served only during the subject Service Time and at the designated location, and will not be available for any period before or after the selected Service Time, or at another location, except on payment of additional charges therefore.

B. **BAR CHARGES.** The sales prices charged or to be charged by TSJ Events for all alcoholic beverages purchased or to be purchased at or with respect to an Event may be partially based on estimated bar charges ("Estimated Bar Charges") arising from anticipated point of delivery sales for hosted events. Client shall pay TSJ Events the Estimated Bar Charges prior to the first Event Day. At the conclusion of the Event, TSJ Events will notify Client of the actual amount of bar charges arising from such point of delivery item sales ("Actual Bar Charges"). If Estimated Bar Charges exceed Actual Bar Charges, TSJ Events shall refund the difference to Client within 30 days; if Actual Bar Charges exceed Estimated Bar Charges, Client shall pay the difference to TSJ Events.

C. **RESPONSIBLE ALCOHOL SERVICE.** All alcohol products ("Liquor") served or consumed at the Facilities are to be acquired solely from TSJ Events and will be served only by employees of Team San Jose under the supervision of TSJ Events. Liquor will be served only to individuals who are at least 21 years of age, and Team San Jose employees may check identification of Client and any of Client's guests who, in the opinion of such Team San Jose employee, appear to be under 30 years of age. If either Team San Jose or TSJ Events believes, in their sole discretion, that any of Client's guests are intoxicated to such an extent so as to be a danger to themselves or others, Team San Jose and/or TSJ Events may, in their sole discretion, discontinue or limit further alcohol service, and may request that Client and/or any of its guests leave the Facility, all without any refund of any portion of the Contract Price. Notwithstanding the foregoing, Client is solely responsible monitoring the actions of its guests, and neither TSJ Events nor Team San Jose shall have any liability or responsibility whatsoever for the consumption of Liquor by the guests of Client.

D. OUTSIDE FOOD AND BEVERAGE. Team San Jose is the exclusive provider of Food and non-alcoholic Beverages at the Facilities, and TSJ Events is the exclusive provider of Liquor at the Facilities. Except as permitted pursuant to, and in compliance with, (1) the Food and Beverage Sample Service Policy, which can be reviewed at <http://www.sanjose.org> Refer to the Meeting Planner Tool Kit, or (2) the Donated Food and Beverage terms set forth in Section E below, no food or beverages of any kind, may be brought into, consumed at, or removed from the Facility by either Client or Client's guests without the prior written approval of Team San Jose.

E. DONATED FOOD & BEVERAGES. In the event that a Client is to be provided with food and/or beverages from a manufacturer or distributor without charge ("Donated Product"), Client must receive prior written approval from Team San Jose. The approval of Team San Jose is subject to Client indemnifying and holding Team San Jose and the City of San Jose harmless from any claims, liabilities, costs, fees, damages, and expenses arising from the receipt, preparation, storage and/or serving of the Donated Product, and Client shall deliver and executed Release of Liability Agreement with respect thereto (Form can be reviewed at <http://www.sanjose.org> Refer to the Meeting Planner Tool Kit) as a condition precedent to receiving approval. Donated Product must be delivered to the Team San Jose facilities with a \$0 invoice and in its original, un-opened, manufacturer packaging. Any Donated Product consisting of alcoholic beverages may be served only by Team San Jose or TSJ Events personnel. Donated Product consisting of food or non-alcoholic beverages may, with the prior consent of Team San Jose, be served by agents of the manufacturer, distributor, or Client. Service charges and set-up fees will be charged based on the retail value of Donated Product; however, the value of the Donated Product will be reflected as \$0 for purposes of satisfying any food and beverage minimum commitments, and Client cannot buy-out any portion of Client's minimum food and beverage commitment on account of Donated Product.

F. RELEASE OF LIABILITY. Except in the case of the gross negligence or the intentional misconduct or omission of Team San Jose, TSJ Events, or their respective employees in the context of food processing and/or preparation, Team San Jose and TSJ Events shall not be liable for any injury to, or death of, persons, or damage to property, resulting from (i) bacteria carried in food or beverage items where such bacteria originated outside of, and existed at the time of delivery to, Team San Jose, (ii) contamination of food or beverage items by third persons, or (iii) food sensitivities of the persons consuming the food and beverage items, and Client hereby releases Team San Jose, TSJ Events, and their respective employees from any liability with respect thereto.

G. INTERVENING FORCES. If, for any reason beyond the reasonable control of either Team San Jose or TSJ Events, including, but not limited to, strikes, labor disputes, accidents, unavailability of the Facility, food scarcity due to external forces, government requisitions, acts of war or acts of God (collectively "Intervening Forces"), either Team San Jose or TSJ Events is unable to perform its obligations under this Agreement, such non-performance is excused and Team San Jose may terminate the F&B Agreement without further liability of any nature. In such event, Team San Jose shall return the Deposit within 30 days. In no event will either Team San Jose or TSJ Events be liable for any damages, including, but not limited to, indirect, punitive or consequential damages of any nature, for any reason, whatsoever arising from Intervening Forces.

H. DISPUTES. All disputes or complaints relating to the Services or the preparation, delivery, or sale of the Food and Beverages under this Agreement must be submitted in writing within 7 days after the last day of the Occupation Term. In the event that the dispute is not resolved within 10 Business Days after timely notice to Team San Jose, Client may submit the dispute to binding arbitration with a single arbitrator from the Judicial Arbitration and Mediation Services panel of arbitrators in Santa Clara County, California. The parties agree that arbitration shall be the exclusive means through which they may seek relief in connection with a dispute covered by this Agreement, and the parties hereby waive their right to a trial by judge or by jury of such dispute, as well as their right to appeal the decision rendered by the arbitrator. Client's failure to notify Team San Jose of any dispute or complaint, as detailed herein, shall constitute a waiver thereof.

I. MISCELLANEOUS.

(1) Controlling Law. The F&B Agreement, as supplemented by the Standard Terms, shall be governed and construed by and according to the laws of the State of California, without regard to its conflicts of law provisions, and without regard to its provisions that construe ambiguities against the drafter. The parties acknowledge and agree that the F&B Agreement, as supplemented by the Standard Terms, is entered into and will be performed in San Jose, California. In the event that a lawsuit is brought by either party under the F&B

Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or, if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

(2) Counterparts; Facsimile. The F&B Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed counterpart signature page to the F&B Agreement by facsimile or other electronic delivery shall be effective as delivery of an original counterpart signature page.

(3) Attorneys' Fees. Should any litigation, arbitration or mediation (collectively "Proceeding") commence between the parties to the F&B Agreement concerning or arising out of the F&B Agreement or the rights and duties of any party hereto, whether it be an action for damages, tort, or equitable and declaratory relief, the prevailing party in such Proceeding shall be entitled to reasonable attorneys' fees, including attorneys' fees incurred in post-judgment motions and collection actions enforcing any judgment granted therein, and bankruptcy litigation, as an element of such party's costs in addition to other relief as may be granted by the court, arbitrator or mediator, whether or not such action is prosecuted to judgment. Any judgment or order entered in such Proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

(4) Headings; Severability. The section headings are not a part of the F&B Agreement and shall have no effect upon the construction or interpretation of any part of the F&B Agreement. If a court of competent jurisdiction finds or rules that any provision of the F&B Agreement is void or unenforceable, the remaining provisions of the F&B Agreement shall remain in effect.

(5) Assignment; Successors and Assigns. Client shall not assign, transfer, or subcontract any right or interest in the F&B Agreement, whether in whole or in part, to any third-party. Notwithstanding the foregoing, Client may assign the F&B Agreement, with the prior written consent of Team San Jose, whose consent will not be unreasonably withheld, to any entity that directly or indirectly controls, is controlled by, or is under common control with Client, or to any entity which acquires all or substantially all of the assets of Client. Team San Jose may assign the F&B Agreement to the City of San José or to any affiliate of Team San Jose at any time in its sole and absolute discretion. The provisions of the F&B Agreement shall, subject to the provisions of this Section I(5), apply to and bind the successors and assigns of the parties hereto.