

Meeting Date: 7/5/11

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item # SA-3 SA



Date: June 28, 2011

To: Executive Director for Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of a Resolution Approving the “Pre-Opening Services Agreement – Concessions” between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.

EXECUTIVE SUMMARY:

The Santa Clara Stadium Authority is proposing to enter into a Pre-Opening Services Agreement (Agreement) with Volume Services, Inc., a subsidiary of Centerplate, Inc.(Concessionaire) and Forty Niners Stadium, LLC (Stadco) to obtain input on aspects of the Stadium design related to concession and merchandise sales and services at the Stadium.

The primary purpose of the Agreement is to have Concessionaire input early in the Stadium design and construction process, such as recommendations on the location and design of concession and merchandise service areas, and the development of unique food, beverage and merchandise concepts for the Stadium. Prior to the opening of the Stadium, it is expected that the Concessionaire will enter into a Concessions Operating Agreement with the entity responsible for managing the Stadium; the form of the Concessions Operating Agreement is an exhibit to the Pre-Opening Services Agreement.

More details about the Agreement and the Concessionaire selection process are provided in the Discussion section. A copy of the Agreement has been placed in Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The “Pre-Opening Services Agreement – Concessions” is another step in moving the Stadium Project forward. Selection of the Stadium Concessionaire at this time gives the selected firm the opportunity to identify and provide input regarding the needs of the Concessionaire early in the Stadium design process. The Concessionaire is responsible for all costs associated with providing the services under the Agreement.

ECONOMIC/FISCAL IMPACT:

Execution of the “Pre-Opening Services Agreement – Concessions” will not result in a financial impact on the Stadium Authority. The Concessionaire is responsible for all costs associated with fulfilling the obligations of the Agreement. If the Stadium Authority and Stadco terminate the Agreement for any reason, the Concessionaire is entitled to be reimbursed for any out-of-pocket costs incurred under the Agreement, with Stadco having responsibility for this reimbursement.

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving the "Pre-Opening Services Agreement – Concessions" between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.

June 28, 2011

Page 2

RECOMMENDATION:

That the Authority adopt the Resolution approving the "Pre-Opening Services Agreement – Concessions" between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc. for the purpose of obtaining input on aspects of the Stadium design related to concession and merchandise sales and services at the Stadium.



Pamela J. Morrison

Administrative Analyst to the City Manager

APPROVED:



Jennifer Sparacino

Executive Director for Stadium Authority

Documents Related to this Report:

- 1) Pre-Opening Services Agreement – Concessions between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.***

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving the "Pre-Opening Services Agreement – Concessions" between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.

June 28, 2011

Page 3

DISCUSSION:

The Stadium Authority is proposing to enter into a Pre-Opening Services Agreement with Volume Services, Inc., a subsidiary of Centerplate, Inc. related to concession services at the Stadium.

- Concessionaire Selection Process:
 - Request for Qualifications (RFQ)
 - Sent to nine interested firms on Feb 14, 2011
 - Held two-hour interviews with eight firms (one chose to drop out)
 - Request for Proposals (RFP)
 - Sent to seven concessionaires identified from the RFQ process on April 25, 2011
 - RFP required submittal of detailed proposals for providing concessionaire and merchandise services at the Stadium
 - Concessionaire Interviews
 - Based on review of the proposals, four concessionaires were invited to give presentations to a review panel
 - Presentations were held on June 13-14, 2011
 - Presenters were given up to three hours to make their presentations
 - Review panel included representatives from Stadco and the Stadium Authority.
- Based on the proposal submissions, the interviews, and supplemental information requested, the interview panel is recommending Volume Services, Inc. as the proposed concessionaire.
- The parties to the Agreement are Volume Services, Inc., a subsidiary of Centerplate, Inc.; Stadco; and the Stadium Authority.
- The Agreement covers a term from the date of execution until the Concessionaire Operating Agreement is executed, which is expected to occur before the opening of the Stadium.
- The primary purpose of the Agreement is to obtain input from the Concessionaire on aspects of the Stadium design related to concession and merchandise sales to ensure an efficient design process that addresses the needs of the concessionaire early in the Stadium design process.
- The Agreement requires that the Concessionaire:
 - Actively participate in the Stadium design and construction, including making recommendations on the location and design of concession and merchandise service areas
 - Identify management personnel and staffing necessary to perform the services under the Concessions Operating Agreement
 - Assist in planning and acquiring the initial inventory to be located in the Stadium
 - Apply for and obtain all required licenses and permits for providing the concession services
 - Use best efforts to develop unique food, beverage and merchandise concepts for the Stadium
 - Pay all costs associated with providing the services under the Agreement.

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving the "Pre-Opening Services Agreement – Concessions" between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.

June 28, 2011

Page 4

- The Stadium Authority and Stadco can terminate the Agreement for any reason in their sole discretion. Upon termination, the Concessionaire is entitled to be reimbursed by Stadco for its out-of-pocket costs incurred pursuant to the Agreement.
- The Agreement includes as an exhibit the form of the Concessions Operating Agreement to be entered into between the Concessionaire and an affiliate of the Forty-Niners designated to manage the Stadium ("Manager"). The Concessions Operating Agreement specifies the terms and conditions under which concessions and merchandise services will be provided at the Stadium including:
 - Granting Concessionaire an exclusive right to provide food and beverage services and merchandise services at all events at the Stadium for a term of five years from the date of the first event held at the Stadium
 - Allows for renewal of the Agreement for five additional two year terms at the Manager's sole discretion
 - Requires the Concessionaire to invest \$1,000,000 toward the Stadium Project
 - Requires the Concessionaire to pay the Manager commissions on concession and merchandise gross receipts in amounts set forth in Exhibit G to the Concessions Operating Agreement
 - Commission structure fluctuates depending upon the type of event (NFL versus Non-NFL event) and the size of events (events with 25,000 or more attendees and events with fewer than 25,000 attendees)
 - In the event a second team occupies the Stadium the commission for NFL events will increase
 - Concessionaire must pay an annual minimum commission of \$6,800,000
 - The Management Agreement between Stadium Authority and Manager as well as the Stadium Lease between the Stadium Authority and Stadco will address the distribution of the commissions for Non-NFL events to the Stadium Authority
 - Requires that the Manager approve menus and pricing
 - Requires the Concessionaire hire, train and supervise all employees including conducting regular employee training programs. An outline of the employee training program is attached to the Operating Agreement as Exhibit H.
 - Requires regular customer surveys to be conducted, included at least four per year with two during the NFL Season and two during the Non-NFL season
 - Requires the Concessionaire to comply with a Waste Reduction and Recycling Plan that targets 100% diversion of solid waste from all events
 - Requires the Concessionaire to fund a Renewal and Replacement Account in an amount equal to 2.5% of gross receipts, to be used to replace and improve the food and beverage and merchandise facilities in the Stadium
 - Allows the Manager to contract with local restaurants for food and beverage items
 - Requires the Concessionaire to indemnify the Stadium Authority, the City and the Agency from claims and losses resulting from the Concessionaire's use and occupancy of the Stadium.
 - Requires the Concessionaire to carry insurance naming the Stadium Authority, the City and the Agency as additional insureds.
 - Requires Centerplate, Inc., the parent company of Volume Services, to guarantee all of Volume Services' obligations under the Operating Agreement

RESOLUTION NO. _____ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY APPROVING A PRE-OPENING SERVICES
AGREEMENT - CONCESSIONS RELATED TO THE
CONSTRUCTION OF THE STADIUM PROJECT**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City of Santa Clara authorized the execution of a Joint Powers Agreement (“Agreement”) with the City of Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority (“Stadium Authority”);

WHEREAS, the Stadium Authority was formed to facilitate the development and operating of a stadium in the City suitable for NFL games ("Stadium Project") and to fulfill the mandates of Measure J, “The Santa Clara Stadium Taxpayer Protection and Economic Progress Act; and

WHEREAS, the Forty Niners Stadium, LLC and the Stadium Authority have participated in a competitive selection process to select the concessionaire to provide concession and merchandise services for the Stadium upon the completion of construction and opening of the Stadium and have determined that Volume Services, Inc., doing business as Centerplate is the best qualified entity to provide concession and merchandise services for the Stadium; and

WHEREAS, the Stadium Authority and the Forty Niners Stadium, LLC desires to enter into a Pre-Opening Services Agreement – Concessions with Volume Services, Inc., doing business as Centerplate to provide certain pre-opening services related to the design of the Stadium subject to the terms and conditions set forth in the Agreement; and

WHEREAS, the Staff Report provides additional information upon which the findings and actions set forth in this Resolution are based.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The Stadium Authority hereby approves the Pre-Opening Services Agreement-Concessions and authorizes the Executive Director to enter into and execute the Pre-Opening Services Agreement-Concessions on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Executive Director. The Executive Director is authorized to implement the Pre-Opening Services Agreement-Concessions and take all further actions and execute all other documents which are necessary or appropriate to carry out the Pre-Opening Services Agreement-Concessions.
3. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the Pre-Opening Services Agreement-Concessions.
4. The Authority Secretary shall certify to the adoption of this Resolution.
5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be

declared invalid.

6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2011, BY THE FOLLOWING

VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

- 1. Staff Report dated June 28, 2011: Adoption of a Resolution Approving the “Pre-Opening Services Agreement – Concessions” between the Santa Clara Stadium Authority, Forty Niners Stadium, LLC, and Volume Services, Inc.

S:\Attorney\RESOLUTIONS\Form Resolution - STADIUM AUTHORITY.doc

PRE-OPENING SERVICES AGREEMENT—CONCESSIONS

THIS PRE-OPENING SERVICES AGREEMENT—CONCESSIONS (this “Agreement”) is made as of _____, 2011 (the “Effective Date”), by and among the **SANTA CLARA STADIUM AUTHORITY**, a California joint powers authority (the “Authority”), **FORTY NINERS STADIUM, LLC**, a Delaware limited liability company (“StadCo”), and **VOLUME SERVICES, INC.**, a Delaware corporation, doing business as Centerplate (the “Pre-Opening Concessionaire”). The Authority, StadCo and the Pre-Opening Concessionaire are sometimes referred to collectively in this Agreement as the “Parties” and each individually as a “Party.” Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Concessions Operating Agreement (defined below) attached as Exhibit A hereto.

WITNESSETH:

WHEREAS, on June 8, 2010, the voters of the City of Santa Clara (the “City”) approved Measure J, which endorses the construction, operation and maintenance of a multi-purpose stadium in the City suitable for, among other Events, National Football League (“NFL”) games (the “Stadium”);

WHEREAS, the Authority is a joint powers authority formed by, and comprised of, the City, its Redevelopment Agency (the “Agency”) and the Bayshore North Project Enhancement Authority (the “BNPEA”) for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities;

WHEREAS, the construction of the Stadium will further the goal of both the City and the Agency of creating an entertainment destination in the Bayshore North Redevelopment Project Area (the “Project Area”), and will provide significant economic benefits to the City and its residents and businesses;

WHEREAS, the Authority and StadCo anticipate that they (or in StadCo’s case, an Affiliate of StadCo) will enter into a lease, as the same may be amended from time to time (the “Stadium Lease”), pursuant to which it is anticipated that StadCo (or an Affiliate thereof) will be granted the right, for approximately one-half of each year (from August 1 to January 31) during the term of the Stadium Lease, to use and occupy the Stadium; except for certain designated areas that StadCo or its Affiliate will lease year-round, the Authority will retain the right to lease or otherwise use the Stadium for the other one-half of each year during the term of the Stadium Lease;

WHEREAS, the Authority and StadCo anticipate that StadCo (or its Affiliate) would enter into a sub-lease with the Team pursuant to which the Team would play Home Games at the Stadium following completion of the Stadium;

WHEREAS, the Authority and StadCo anticipate that each of them will enter into a stadium management agreement(s) with an Affiliate of StadCo (the “Stadium Manager”), as the same may be amended from time to time (the “Stadium Management Agreement”), pursuant to which the Stadium Manager will manage the operation of the Stadium year round on behalf of

the Authority and StadCo for the term and on the basis specified in the Stadium Management Agreement;

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the Authority has reviewed and certified that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing (the "Final Environmental Impact Report"), and the Final Environmental Impact Report has served as the environmental documentation for the Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement;

WHEREAS, the Authority and StadCo desire to engage the Pre-Opening Concessionaire to perform certain specified pre-opening services with respect to the Stadium and the concession services, and the Pre-Opening Concessionaire desires to accept such engagement.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of all of which are hereby recognized, the parties agree as follows

1. **Engagement of the Pre-Opening Concessionaire as Independent Contractor; Concessions Operating Agreement.** The Authority and StadCo hereby engage the Pre-Opening Concessionaire as an independent contractor to perform the pre-opening services described herein during the Term. In no event will the Pre-Opening Concessionaire hold itself out as, act as, or be the agent or employee of the Authority or StadCo or a joint-venturer of either or both of them. The Authority and StadCo intend, subject to the terms of this Agreement, to engage the Pre-Opening Concessionaire as the Stadium concessions operator ("Concessionaire") under a Concessions Operating Agreement, a preliminary form of which is attached as Exhibit A hereto, pursuant to which agreement (in its final, execution form) the Pre-Opening Concessionaire, as Concessionaire, would be granted the right to provide, and would agree to provide, the Food and Beverage Services and Merchandise Services described in such Concessions Operating Agreement, subject to the terms and conditions set forth therein and the applicable terms and conditions of the Stadium Lease and Stadium Management Agreement. StadCo and the Pre-Opening Concessionaire acknowledge and agree that the form of Concessions Operation Agreement attached hereto as Exhibit A contains the essential, agreed-upon terms of the definitive Concessions Operation Agreement, and only such terms that remain open as of the date of this Agreement or arise as a result of an unanticipated change in circumstances will be negotiated and agreed prior to the execution and delivery of the final Concessions Operation Agreement.

2. **Pre-Opening Services.** Subject to Sections 4 and 8(b)(vi), during the period from the Effective Date through the Commencement Date, as defined in the Concessions Operating Agreement (the "Pre-Opening Period" or the "Term"), in order to facilitate a proper and orderly opening of the Stadium, the Pre-Opening Concessionaire shall perform the following services (collectively, the "Pre-Opening Services"):

(a) **Active Consultation.** The Pre-Opening Concessionaire shall, and shall cause its consultants, architects and other advisors to, actively participate and consult with the Authority and StadCo, their employees and the architects, consultants and other

advisors engaged by them from time to time with respect to the design, construction and equipping of the Stadium, including by participating in Stadium improvement design reviews and related work streams; attend all conferences and teleconferences with the Authority and StadCo, their employees and the architects, consultants and other advisors engaged by them; assist with and comment on (but not produce) criteria, studies, analyses, reports, comments, drawings and other documents as requested by the Authority and StadCo; resolve any problems that may arise concerning the Pre-Opening Concessionaire's responsibilities and work, provide clarifying details as required by the Authority and StadCo; and make recommendations regarding the design and location of areas of the Stadium for which services would be provided by Concessionaire under the Concessions Operating Agreement. When necessary, and to the extent requested by the Authority and StadCo, the Pre-Opening Concessionaire shall consult with public agencies and other organizations. The Pre-Opening Concessionaire shall attend all Stadium design, development, interface and coordination meetings which may be required by the City or other governmental entities and their departments to review matters related to the Stadium, promote the mutual understanding of the work in progress, and expedite the completion of the work.

(b) ***Operating Standard.*** The Pre-Opening Concessionaire shall: (i) take all pre-opening actions reasonably necessary to cause the Stadium to be opened (A) in accordance with such standards, policies, and programs as the Authority and StadCo may, in their sole discretion, choose to implement, including standards and policies applicable to all phases of operation and programs such as purchasing programs, sales, marketing and promotion programs, accounting programs and methods, and quality improvement programs; and (B) as a first class, state of the art stadium which is at least comparable, in the sole discretion of the Authority and StadCo, to three (3) existing multi-purpose stadiums which host NFL games chosen by the Authority and StadCo; and (ii) comply with all rules, regulations and policies implemented, from time to time, by the NFL, related to use or operation of the Stadium.

(c) ***Personnel.*** The Pre-Opening Concessionaire shall perform the following responsibilities to allow the Pre-Opening Concessionaire to satisfy its obligations hereunder:

(i) identify and engage a Pre-Opening Concessionaire Management Team (as defined below) and such other Concessions personnel as are necessary or advisable for the proper staffing of the Food and Beverage Services and Merchandise Services in accordance with the terms and conditions of the Concessions Operating Agreement (the anticipated "Pre-Opening Concessionaire Management Team" being attached hereto as Exhibit B);

(ii) obtain the prior, written consent of the Authority and StadCo for any and all changes in the Pre-Opening Concessionaire Management Team; and, within fifteen (15) business days of the removal of a Pre-Opening Concessionaire Management Team member, provide the Authority and StadCo with the resume of a qualified, proposed replacement, the appointment of which the Authority and StadCo may in their sole discretion, reject; and

(iii) if requested by the Authority and StadCo, arrange for other personnel with stadium experience to assist with the opening of the Stadium.

In all human resources matters, including but not limited to those relating to the Pre-Opening Concessionaire Management Team, contemplated by this Agreement, the Pre-Opening Concessionaire agrees to: (i) perform such responsibilities in the same manner as will be required of Concessionaire by the terms of the Concessions Operating Agreement regarding job training, employment, hiring, security and staffing (including any exhibits referred to therein); and (ii) comply with all applicable Legal Requirements in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

(d) **Expense Reporting.** Within a reasonable time following a written request submitted to the Pre-Opening Concessionaire by the Authority or StadCo, the Pre-Opening Concessionaire shall submit a report to StadCo detailing all costs and expenses actually incurred by the Pre-Opening Concessionaire in the fulfillment of its obligations under this Agreement (collectively, "Pre-Opening Expenses") during the period set forth in the aforementioned written request. Such report shall be in a form to be agreed between StadCo and the Pre-Opening Concessionaire.

(e) **Initial Inventory; Equipment.** The Pre-Opening Concessionaire shall, as requested by the Authority and StadCo, prepare a plan for, and, as requested by the Authority and StadCo assist in the acquisition of, all initial inventory to be located in the Stadium and will use its negotiating and buying power with respect to Equipment (including Portables) and Smallwares to ensure that the Authority and StadCo obtain the best available pricing for such goods. The Pre-Opening Concessionaire shall, as requested by the Authority and StadCo, assist the Authority and StadCo in the acquisition of the Equipment and Smallwares to be set forth on Exhibit D to the Concessions Operating Agreement, which will allow for the full operation of the Stadium on and after the Commencement Date.

(f) **Licenses and Permits.** As and to the extent requested by the Authority and StadCo, the Pre-Opening Concessionaire shall apply for and procure (in the name of the party designated by the Authority and StadCo, unless otherwise required by the applicable governmental authority) prior to the Commencement Date all licenses and permits required for providing Food and Beverage Services and Merchandise Services.

(g) **Computer Services.** To the extent that any of the computer services required to be provided under the Concessions Operating Agreement are needed to be implemented, installed and/or tested during the Pre-Opening Period to accommodate the timely and orderly opening of the Stadium on the Commencement Date, the Pre-Opening Concessionaire will, as and to the extent requested by the Authority and StadCo, provide such services not less than sixty (60) days prior to the close of the Pre-Opening Period.

(h) **Initial Budget.** On or before March 31, 2012, the Pre-Opening Concessionaire shall prepare and deliver to the Authority and StadCo and their designees

and consultants for the Authority and StadCo's review, a proposed operating plan and budget for the Concessionaire's initial Fiscal Year of the term of the Concessions Operating Agreement, including financial and operational goals for the Branded Products, Catered Events, Club Areas, General Concessions Sales, Premium Concessions Sales, Suites and vending machines market segments, and itemized tactics directed at meeting each such goal.

(i) ***Development of Unique Food and Beverage Services and Merchandise Sales Concepts.*** The Pre-Opening Concessionaire shall use its best efforts to develop (in cooperation with the Authority and StadCo and such other designees and consultants for the Authority and StadCo that may be engaged in their discretion, including third-party chefs, food and beverage product providers and merchandise providers) unique food and beverage offerings, Food and Beverage Services concepts and Merchandise Sales concepts for the Stadium (collectively, "Proprietary Stadium F-B-M Concepts"). All Proprietary Stadium F-B-M Concepts shall be sufficiently documented by the Pre-Opening Concessionaire in such detail (descriptive and graphical) as shall be satisfactory to the Authority and StadCo, with copies filed with the Authority and StadCo. The Pre-Opening Concessionaire further agrees that it shall not utilize or implement, and will not permit to be utilized or implemented, any Proprietary Stadium F-B-M Concept, in whole or in substantially similar fashion, in or at any stadium, arena, ballpark or other facility located within a one hundred- (100) mile radius of the Stadium and at which the Pre-Opening Concessionaire (or any Affiliate) provides or contracts in the future to provide services, and the Pre-Opening Concessionaire hereby grants to each of the Authority and StadCo an exclusive, perpetual, transferable, sub-licensable, royalty-free and fully-paid up license to utilize, implement, copy or reproduce the Proprietary Stadium F-B-M Concepts, create derivative works based on the Proprietary Stadium F-B-M Concepts ("Derivative Concepts"), utilize and implement the Derivative Concepts, and incorporate the Proprietary Stadium F-B-M Concepts and Derivative Concepts into one or more collective new concepts and reproduce the Proprietary Stadium F-B-M Concepts and Derivative Concepts as incorporated into such collective concepts, the above rights being exercisable only at the Stadium and in the Outside Areas (including but not limited to at and around the San Francisco 49ers practice facility in Santa Clara, California), except with respect to Proprietary Stadium F-B-M Concepts which are mobile in nature (to the extent agreed by the parties), in such manner and applications as the Authority and StadCo shall determine in their sole discretion. StadCo and the Pre-Opening Concessionaire further acknowledge and agree that their respective obligations set forth in the immediately preceding sentence shall survive the termination of this Agreement.

3. **Payments by the Pre-Opening Concessionaire; Audit Rights.**

(a) ***Payment of Pre-Opening Expenses.*** The Pre-Opening Concessionaire shall be responsible for all of its Pre-Opening Expenses and all other costs and expenses necessary and advisable to fulfill its obligations under this Agreement.

(b) ***Audit Rights.*** The Authority and StadCo and the Authority and StadCo's designees and consultants shall, at any time throughout the Term of this Agreement and during the six (6) months following the expiration or termination of this Agreement, have

the right upon reasonable prior written notice to the Pre-Opening Concessionaire, for the purpose of verifying Pre-Opening Expenses, to audit and verify all books and records of the Pre-Opening Concessionaire pertaining to Pre-Opening Expenses. Any audit and verification pursuant to this Section shall be conducted in such a fashion as to interfere as little as reasonably practicable with the Pre-Opening Concessionaire's normal business operations and during normal business hours. The Pre-Opening Concessionaire shall cooperate with the Authority and StadCo and their respective auditors in connection with such audit and shall promptly make available to the Authority and StadCo and their respective auditors any and all information relating to the Stadium that they may reasonably request in connection with such audit.

4. Expiration; Termination.

(a) Unless this Agreement is terminated in accordance with this Section 4 or Section 8(b)(vi) and the Exhibits relating thereto, or is extended by agreement of the parties, this Agreement shall expire on April 1, 2015 (the "Expiration Date"). Without limiting Section 8(b)(vi) and the Exhibits relating thereto, the Authority and StadCo may at any time, in their sole discretion, terminate this Agreement upon written notice to the Pre-Opening Concessionaire. Upon the exercise of such right of termination, negotiation of the Concessions Operating Agreement with the Pre-Opening Concessionaire shall cease, the Authority and StadCo shall have no obligation whatsoever to enter into the Concessions Operating Agreement with the Pre-Opening Concessionaire or any Affiliate thereof, and the Pre-Opening Concessionaire shall be entitled to receive from StadCo, in addition to certain expenses described hereinbelow (and payable therewith), a "breakage fee" of \$75,000. Upon receipt of such notice, the Pre-Opening Concessionaire shall, unless otherwise directed by the Authority and StadCo, immediately discontinue any and all activities in connection with the performance of its obligations under this Agreement and deliver to StadCo all documents, materials, software, plans, equipment, and other works or things produced or caused to be produced by the Pre-Opening Concessionaire and its consultants, architects and other advisors in connection with the Pre-Opening Concessionaire's performance under this Agreement or in anticipation of the requirements of the Concessions Operating Agreement. Additionally, the Pre-Opening Concessionaire shall prepare and deliver to the Authority and StadCo, within fifteen (15) days following the date of such termination or the Expiration Date, as the case may be, a detailed report of Concessionaire's reasonable and necessary out-of-pocket costs incurred to such date in the performance of the Pre-Opening Concessionaire's obligations under this Agreement. Subject to Section 5(a), within thirty (30) days following the delivery of such report, Pre-Opening Concessionaire shall be reimbursed by StadCo for all reasonable, necessary and documented out-of-pocket costs incurred in connection with this Agreement.

(b) Unless this Agreement expires or is terminated as provided in Section 4(a) or is terminated pursuant to the terms of Exhibit C hereto, this Agreement shall terminate upon the full execution and delivery of a definitive Concessions Operating Agreement without reimbursement to the Pre-Opening Concessionaire for any of the Pre-Opening Concessionaire's out-of-pocket costs and expenses incurred in connection with this Agreement.

5. **Assignments.**

(a) *Assignment by the Pre-Opening Concessionaire.* The Pre-Opening Concessionaire shall not, without the prior written consent of the Authority and StadCo, which consent may be given or withheld in their sole discretion, directly or indirectly transfer (as defined below) or permit any transfer of this Agreement or any of its rights, duties or obligations hereunder, and any purported or attempted transfer in violation of this provision shall be void; provided, that the Pre-Opening Concessionaire may, with thirty (30) days' prior written notice to Authority and StadCo and their consent, which consent may not be unreasonably withheld, conditioned or delayed, pledge, assign or transfer this Agreement to an Affiliate, or to an assignee or transferee of all or substantially all of the business of the Pre-Opening Concessionaire, or any part thereof, whether by contract (upon acceptance of such assignee's creditworthiness, such acceptance not to be unreasonably withheld, conditioned or delayed) or by operation of law, so long as there is no change in the Pre-Opening Concessionaire's executive leadership, including Desmond Hague, Bill Greathouse and John Sergi, in connection with, or as a result of said pledge, assignment or transfer.

(b) *Assignment by the Authority or StadCo.* The Authority and StadCo may sell, assign, pledge and otherwise transfer or encumber (each, a "transfer") this Agreement and any or all of their rights and obligations hereunder to any other Person, including any source of or guarantor or insurer of financing or any trustee, collateral agent or other Person appointed in connection with such financing (each, an "Assignee"), whether by security agreement, collateral assignment, transfer or otherwise; provided, that such transfer shall not relieve the Authority and StadCo of their obligations under this Agreement except to the extent any such Assignee assumes in writing the Authority or StadCo's obligations under this Agreement and provided that such Assignee succeeds to the Authority or StadCo's rights with respect to the Stadium. Upon reasonable prior notice from the Authority or StadCo, the Pre-Opening Concessionaire shall deliver any documents that the Authority and StadCo or any Assignee may reasonably request to acknowledge and confirm that upon any such transfer, this Agreement will remain in full force and effect, will continue to be a legal, valid and binding obligation of the Pre-Opening Concessionaire enforceable in accordance with its terms (subject to applicable bankruptcy or insolvency laws and general principles of equity), and that (to the extent accurate and correct) neither the Pre-Opening Concessionaire, nor to the Pre-Opening Concessionaire's knowledge, the Authority and StadCo are in material breach or violation of this Agreement.

(c) *Subordination.* The Pre-Opening Concessionaire hereby agrees to subordinate its rights pursuant to this Agreement to the provisions of the financing arrangements to be entered into by the Authority and/or StadCo or any of their Affiliates for the purpose of developing the Stadium.

6. **Applicable Law.** This Agreement shall be governed by the laws of the State of California applicable to agreements made and to be performed entirely in the State of California. The federal and state courts located in Santa Clara County, California (together, the "Designated Courts") shall have exclusive jurisdiction over the parties with respect to any

dispute or controversy between them arising under or in connection with this Agreement and by execution and delivery of this Agreement, each Party submits to the exclusive jurisdiction of those courts, including the in personam jurisdiction of those courts, waives any objection to such jurisdiction on the grounds of venue or forum non conveniens or the absence of in personam jurisdiction and any similar grounds, consents to service of process on its registered agent by mail (in accordance with Section 8(g) or any other manner permitted by law), and irrevocably agrees to be bound by any judgment rendered thereby, subject to all applicable rights of appeal. So far as is permitted under Legal Requirements, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in the manner specified in this Section 6 or as otherwise permitted by law, shall be necessary in order to confer personal jurisdiction over the Parties in any of the Designated Courts. Each Party agrees that any final judgment against it from which it has not or may not appeal or further appeal in any suit, action or proceeding brought in a Designated Court of competent subject matter jurisdiction may, so far as permitted under Legal Requirements, be enforced in the courts of any jurisdiction of which such Party is subject by a suit upon such judgment. Service of any process, summons or notice upon a Party shall be sufficient if made in accordance with Section 8(g), below. Nothing in this Section 6 shall affect the right of any party to serve legal process in any other manner sufficient under law. Each Party further agrees that it shall not commence any legal action against any other Party relating to or arising under this Agreement in any court that is not one of the Designated Courts, unless the Designated Courts shall have determined that they lack subject matter jurisdiction to hear such action.

7. Indemnity by Parties.

(a) Indemnity.

(i) The Pre-Opening Concessionaire shall indemnify, defend and hold harmless the Authority and StadCo, and their respective officers, directors, managers, members, partners, owners and employees, from and against all losses, costs, suits, actions, claims, damages, amounts paid in settlement, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of (i) any breach by the Pre-Opening Concessionaire under this Agreement, (ii) the use or occupancy of the Stadium or Outside Areas and, while the Stadium is being constructed, the City land upon which the Stadium is being constructed and adjacent areas, by the Pre-Opening Concessionaire or its employees, agents or contractors, (iii) any activity, inactivity, work or thing done or permitted by the Pre-Opening Concessionaire or its employees, agents or contractors in or upon the Stadium or Outside Areas, or (iv) any injury or damage to any Person or to the property of any Person caused by any action or omission of the Pre-Opening Concessionaire or its employees, agents or contractors.

(ii) StadCo shall indemnify, defend and hold harmless the Pre-Opening Concessionaire and its officers, directors, managers, members, partners, owners and employees from and against all Losses resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the

parties) in connection with or arising out of any injury or damage to any Person or to the property of any Person caused by the negligence or willful misconduct of StadCo or its employees, agents or contractors (other than the Pre-Opening Concessionaire and its Affiliates).

(b) **Third Party Claims.** If any claim, demand, action or proceeding is made or commenced by any third party (a "Third Party Claims") against any Party that is entitled to be indemnified with respect thereto under this Section 7 (the "Indemnified Party"), the Indemnified Party shall give the party obligated to provide the indemnity (the "Indemnifying Party") prompt notice thereof; the failure to give such notice shall not affect the liability of the Indemnifying Party under this Agreement except to the extent the failure materially and adversely affects the ability of the Indemnifying Party to defend the Third Party Claim. The Indemnifying Party shall have the right to assume the defense and resolution of the Third Party Claim, provided that (i) the Indemnified Party shall have the right to participate in the defense of the Third Party Claim at its own expense through counsel of its choice (control of the defense will remain with the Indemnifying Party), (ii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that would require any act or forbearance on the part of the Indemnified Party or which does not unconditionally release the Indemnified Party from all liability in respect of the Third Party Claim, or otherwise result in a settlement which would bring dishonor or disrepute upon the Authority, StadCo, their respective Affiliates, or the NFL, without the prior written consent of the Indemnified Party, and (iii) the Indemnified Party may undertake the defense of the Third Party Claim, at the Indemnifying Party's expense, if the Indemnifying Party fails to (A) assume the defense within ten (10) business days after notice from the Indemnified Party or (B) diligently prosecute the defense.

8. **Miscellaneous.**

(a) **Interpretation.**

(i) **Recitals.** The Recitals set forth at the beginning of this Agreement and Exhibits A through E attached to this Agreement are hereby incorporated in and made a part of this Agreement.

(ii) **Covenants Versus Condition.** Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

(iii) **Certain Terms.** The use of the terms "including," "include," and "includes" followed by one or more examples is intended to be illustrative and shall not be deemed or construed to limit the scope of the classification or category to the examples listed.

(iv) *Section References.* In this Agreement, any reference to a Section or an Article is a reference to a Section of this Agreement, unless otherwise specified.

(b) *Representations and Warranties of the Pre-Opening Concessionaire.* The Pre-Opening Concessionaire represents and warrants to and covenants with the Authority and StadCo as of the Effective Date as follows:

(i) *Due Organization, Etc.* The Pre-Opening Concessionaire is duly organized, validly existing, and in good standing, is duly qualified to do business in California, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement. The Pre-Opening Concessionaire's execution, delivery, and performance of this Agreement have been duly authorized.

(ii) *Valid and Binding Obligations.* This Agreement constitutes the valid and binding obligations of the Pre-Opening Concessionaire and does not and will not constitute a breach of or default under the corporate documents or bylaws of the Pre-Opening Concessionaire or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which the Pre-Opening Concessionaire is a party or by which it or any of its assets is bound or affected.

(iii) *No Third Party Approval Required.* No approval of any third party is required for the Pre-Opening Concessionaire's execution or performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(iv) *Maintaining Legal Existence.* The Pre-Opening Concessionaire shall, at its own expense, keep in full force and effect throughout the Term of this Agreement its legal existence and the rights required for it timely to observe all of the terms and conditions of this Agreement.

(v) *No Adverse Litigation.* There is no litigation or proceeding pending or, to the Pre-Opening Concessionaire's knowledge, threatened against the Pre-Opening Concessionaire or any of its Affiliates that could adversely affect the validity of this Agreement or the ability of the Pre-Opening Concessionaire to comply with its obligations under this Agreement.

(vi) *Ethical Standards.* The Pre-Opening Concessionaire, or its legal and authorized representative charged with such matters, has (A) read Exhibit C, entitled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California"; and (B) in evidence of its understanding of the terms of such Exhibit D and in connection with the execution and delivery of this Agreement, separately executed and delivered Exhibit D, entitled "Affidavit of Compliance with Ethical Standards."

(c) ***Representations and Warranties of the Authority.*** The Authority represents and warrants to the Pre-Opening Concessionaire as of the Effective Date, as follows:

(i) ***Due Organization, Etc.*** The Authority is a joint powers authority formed by, and comprised of, the City, the Agency and the BNPEA, duly organized, validly existing, and in good standing and is duly qualified to do business in California, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement. The Authority's execution, delivery, and performance of this Agreement have been duly authorized.

(ii) ***Valid and Binding Obligation.*** This Agreement constitutes valid and binding obligations of the Authority and does not constitute a breach of or default under the constitutive documents of the Authority, as applicable, or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which the Authority, as applicable, is a party or by which it or any of its assets is bound or affected.

(iii) ***No Third Party Approval Required.*** No approval of any third party is required for the Authority's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(d) ***Representations and Warranties of StadCo.*** StadCo represents and warrants to the Pre-Opening Concessionaire as of the Effective Date, as follows:

(i) ***Due Organization, Etc.*** StadCo is duly organized, validly existing, and in good standing and is duly qualified to do business in California, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement. StadCo's execution, delivery, and performance of this Agreement have been duly authorized.

(ii) ***Valid and Binding Obligation.*** This Agreement constitutes valid and binding obligations of StadCo and does not constitute a breach of or default under the constitutive documents of StadCo, as applicable, or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which StadCo, as applicable, is a party or by which it or any of its assets is bound or affected.

(iii) ***No Third Party Approval Required.*** No approval of any third party is required for StadCo's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(e) ***Waivers, Modifications, Remedies.*** No failure or delay by a Party to insist on the strict performance of any term of this Agreement or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived or terminated (unless as otherwise provided hereunder)

except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver, or termination is sought. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

(f) **Severability of Provisions.** If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

(g) **Notices.** Notices, consents, determinations, requests, approvals, demands, reports, objections, directions and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective on the date on which such communications are delivered by personal delivery, by facsimile transmission (with telephonic confirmation of receipt), DHL, Federal Express, or other similar courier service or by the United States Postal Service or its successor after being deposited with the United States Postal Service as Express Mail or as registered or certified matter, postage prepaid, return receipt requested, addressed to the Parties at the addresses specified below, or at such other address as the Party to whom the notice is sent has designated in accordance with this Section. Any notice to be given under this Agreement may also be delivered via electronic mail or such other means as current technology would permit, provided such electronic delivery includes the ability to confirm delivery of such notice, via read receipt or other, similar means. All such communications shall be deemed to have been received by the intended recipient (i) in the case of air courier services, on the next business day after deposit with such air courier service with a request for next day service; (ii) in the case of a facsimile transmission, on the business day such transmission was sent, or if not a business day or if transmitted after 4:00 p.m. local time, then on the next business day; and (iii) in the case of first-class mail, three (3) business days after the deposit with the United States Postal Service. Until a Party provides a change in address in accordance with this Section, notices will be sent to the following addresses:

To the Pre-Opening
Concessionaire:

Attn: _____

With a copy to:

Attn: _____

To the Authority: _____

Attn: _____

With a copy to: _____

Attn: _____

To StadCo:

L. Mac NEIL V.P.
FORTY NINE'S STADIUM LLC
4949 CENTENNIAL BLVD
ATTN: SANRA CLARA CA 95054

With a copy to:

DLA PIPER LLP
555 MISSION ST #2400
SAN FRANCISCO CA 9405
Attn: NATHAN TREN

(h) **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding on the successors and permitted assigns of the Parties, and the terms "Authority", "StadCo" and "Pre-Opening Concessionaire" as used in this Agreement shall include all permitted successors and assigns of the original Parties.

(i) **Estoppel Certificates.** On request at any time and from time to time prior to the Opening Date, the Pre-Opening Concessionaire shall execute, acknowledge, and deliver to the Authority, StadCo or any financing party associated with the development of the Stadium, within 20 days following the Pre-Opening Concessionaire's receipt of written request therefor, a certificate: (i) certifying that this Agreement has not been modified and is in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and specifying the modifications); (ii) stating whether, to the best knowledge of the signatory of such certificate, any default exists, including any Event of Default, and if so, specifying each default of which the signatory may have knowledge; and (iii) providing any additional information and statements reasonably requested by the Authority, StadCo or such financing party; provided, however, that in no event shall the Pre-Opening Concessionaire be required to agree to any modifications or waivers with respect to this Agreement.

(j) **Entire Agreement.** This Agreement (including the attached Exhibits, which are incorporated into this Agreement by this reference), and the Non-Disclosure and Confidentiality Agreement dated February 2011 by and between StadCo and the Pre-Opening Concessionaire (the “Confidentiality Agreement”), the entirety of which Confidentiality Agreement shall remain in full force and effect for the Term of this Agreement (but for the obligations of StadCo and the Pre-Opening Concessionaire under the Confidentiality Agreement which expressly survive the termination or expiration of the Confidentiality Agreement), constitute the entire agreement among the Parties relating to the Pre-Opening Services and supersede all prior contracts and understandings, written or oral. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the execution of this Agreement except as expressly stated in this Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other Party on which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that Party’s only remedy shall be for breach of contract as provided in this Agreement.

(k) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(l) **Relationship of the Parties.** The Pre-Opening Concessionaire, StadCo and the Authority acknowledge and agree that this Agreement creates an independent contractor relationship and that: (i) the Pre-Opening Concessionaire’s authority is subject to the terms and conditions of this Agreement; and (ii) nothing contained in this Agreement shall create an agency coupled with an interest. Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership, joint venture, or lease among the Pre-Opening Concessionaire, StadCo and the Authority (or between any two of such parties) with respect to the Stadium or the operation thereof. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Stadium or any other land used in connection with the Stadium, or any Equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Stadium or the operation thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall the Pre-Opening Concessionaire have any right to bind the Authority or StadCo except as expressly set forth in this Agreement.

(m) **Further Assurance.** The Parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the Parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement. The Authority hereby consents to the execution and delivery by the Authority and StadCo and the Pre-Opening Concessionaire of this Agreement.

(n) **Survivability.** The indemnity, hold harmless and defense obligations contained in this Agreement, as well as any provision that by its nature requires performance after termination of this Agreement, shall survive the termination of this Agreement.

(o) **Delivery of Information for Consents or Approvals Generally.** With respect to consents or approvals to be obtained from any of the Authority, StadCo or the Pre-Opening Concessionaire hereunder, the applicable time period within which the party receiving the request (the "Receiving Party") is required to give its consent, approval or disapproval shall not commence until after the Receiving Party has received (i) a written request for its consent or approval, which shall expressly set forth all items (with specificity) for which the Receiving Party's consent or approval is requested; and (ii) all reasonable information that the Receiving Party has requested in order to deliver its consent, approval or disapproval.

(p) **Limitation on Encumbrances.** The Pre-Opening Concessionaire covenants and agrees that it shall not create, assume or suffer to exist any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (a "security interest") upon the Stadium or the property upon which the Stadium is to be constructed; provided, however, that in the event a lien is filed against the Stadium as a result of the Pre-Opening Concessionaire's actions or inactions hereunder, the Pre-Opening Concessionaire shall, within 45 days after the filing thereof; (i) take such action as necessary to cause the removal of such lien; or (ii) provide a bond to indemnify against such lien in accordance with the requirements of the applicable California statute. In any event, the Pre-Opening Concessionaire shall cause the removal of such lien prior to the foreclosure thereof.

(q) **Exhibits.** The Exhibits attached to and made a part of this Agreement are as follows:

Exhibit A	Form of Concessions Operating Agreement
Exhibit B	Pre-Opening Concessionaire Management Team
Exhibit C	Ethical Standards for Contractors Seeking to Enter into an Agreement with the Santa Clara Stadium Authority
Exhibit D	Affidavit of Compliance with Ethical Standards
Exhibit E	Pre-Opening Concessionaire's Insurance Coverage Requirements

9. **Guarantee by Centerplate, Inc.** Centerplate, Inc., a Delaware corporation (the "Guarantor"), represents and warrants to the Authority and StadCo that it is the parent

corporation of the Pre-Opening Concessionaire and owns all of the equity in the Pre-Opening Concessionaire. Guarantor hereby unconditionally and irrevocably guarantees to the Authority and StadCo the full and timely performance of all of the Pre-Opening Concessionaire's obligations under this Agreement from and after the Effective Date and throughout the entire Term and for any survival period pursuant to which the Pre-Opening Concessionaire would have any unfulfilled or executory obligations hereunder, including, but not limited to, the timely payment of all amounts due and owing, if any to the Authority or StadCo under this Agreement (collectively, the "Concessionaire Guaranteed Obligations"). Guarantor agrees to pay to the Authority or StadCo, as the case may be, the amount of any payments made to the Authority or StadCo, as the case may be, in connection with any of the Concessionaire Guaranteed Obligations that are recovered from the Authority or StadCo, as the case may be, by a trustee, receiver, creditor or other party acting in respect of the Pre-Opening Concessionaire or Guarantor or their respective assets pursuant to applicable law. These guarantee amounts and obligations are and shall for all purposes be a guarantee of payment and performance, and not merely a guarantee of collection. If the Pre-Opening Concessionaire fails to perform any of the Concessionaire Guaranteed Obligations, and such failure continues beyond any cure period applicable under the terms of this Agreement, Guarantor shall pay or perform such obligation and Guarantor unconditionally and irrevocably waives each and every defense that, under the principles of guarantee or suretyship law, would otherwise operate to impair or diminish such liability, and nothing whatsoever except actual full payment and performance to the Authority or StadCo, as the case may be, of the Concessionaire Guaranteed Obligations shall operate to discharge Guarantor's liability hereunder; provided, however, that Guarantor shall enjoy (jointly with the Pre-Opening Concessionaire) any and all defenses of the Pre-Opening Concessionaire with respect to any Force Majeure or any failure by the Authority or StadCo to perform any of their respective obligations arising out of this Agreement (but specifically excluding, without limitation, any and all defenses arising at law, in equity or otherwise out of the financial incapacity of the Pre-Opening Concessionaire or the filing of a bankruptcy petition by or against the Pre-Opening Concessionaire).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

SANTA CLARA STADIUM AUTHORITY,
a California joint powers authority

APPROVED AS TO FORM:

ELIZABETH H. SILVER
Interim Authority Attorney

JENNIFER SPARACINO
Authority Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210

ATTEST:

ROD DIRIDON, JR.
Authority Clerk

FORTY NINERS STADIUM, LLC

By: 
Name: LAWRENCE MAUNELL
Title: VP. & CFO

VOLUME SERVICES, INC., a Delaware corporation, doing business as Centerplate

By: 
Name: GERALD E. MCNAMEE
Title: VP + CFO

Accepted and agreed by:

CENTERPLATE, INC. a Delaware corporation,
as Guarantor

By: 
Name: GERALD E. MCNAMEE
Title: VP + CFO

EXHIBIT A
FORM OF CONCESSIONS OPERATING AGREEMENT

CONCESSIONS OPERATING AGREEMENT

By And Between

[____ STADIUM MANAGEMENT COMPANY]

And

[CONCESSIONAIRE]

Dated _____, [2015]

Table of Contents

	Page
ARTICLE I Definitions	2
ARTICLE II Stadium Construction; Leasehold Improvements	10
2.1 Manager’s Responsibilities.	10
2.2 Concessionaire’s Responsibilities.	11
ARTICLE III Grant of Operating Rights and Obligations; Term.....	12
3.1 Scope of Operating Rights and Obligations; Reservation of Rights.	12
3.2 Permission to Occupy and Use Facilities and Equipment.	18
3.3 Term.	19
ARTICLE IV Certain Responsibilities of Manager and of Concessionaire.....	20
4.1 Maintenance; Repair; Replacement.	20
4.2 Access.	20
4.3 Security.	20
4.4 Utility Services; Telecommunications.	21
4.5 Parking.	22
ARTICLE V Payments; Reports.....	22
5.1 Payments.	22
5.2 Collection Responsibility.	24
5.3 Records; Accounting; Audits.	24
ARTICLE VI Additional Duties of Concessionaire	27
6.1 Management of Operations.	27
6.2 Personnel.	28
6.3 Licenses and Permits.	30
6.4 Compliance with Laws, Policies and Programs.	31
6.5 Failure to Maintain Licenses and Permits.	31
6.6 Hours of Operation.	31
6.7 Special Events.	32
6.8 Cleaning and Refuse.	32
6.9 Deliveries.	35
6.10 Liens.	35
6.11 Products and Prices.	35
6.12 Branded Products; Licensed Products.	36
6.13 Approval Procedure.	37
6.14 Alterations; No Rights in Facilities.	37
6.15 Advertising Restrictions.	38
6.16 Website.	39
6.17 Safety Plan.	39
6.18 Addition of Professional Team	39
ARTICLE VII Indemnification and Insurance	40

7.1	Indemnification	40
7.2	Concessionaire’s Insurance	41
ARTICLE VIII Assignment.....		45
8.1	Concessionaire’s Assignment	45
8.2	Manager Assignment	45
ARTICLE IX Termination.....		46
9.1	Termination by Manager	46
9.2	Effect of Termination	46
9.3	Guarantee by Centerplate, Inc.	47
ARTICLE X Casualty Event.....		48
ARTICLE XI Miscellaneous.....		48
11.1	Applicable Law	48
11.2	No Waiver	49
11.3	No Brokers	49
11.4	Binding Effect	49
11.5	Whole Agreement; Captions	49
11.6	No Joint Venture	50
11.7	Notices; Approvals	50
11.8	Invalidity	51
11.9	No Third Party Beneficiary	52
11.10	Limitation of Liability	52
11.11	Specific Performance	52
11.12	Subordination	52
11.13	Suite License	52
11.14	Further Acts	53

EXHIBITS:

- EXHIBIT A — Drawings and Plans**
- EXHIBIT B — [Direct Operating Costs]**
- EXHIBIT C — Outside Areas**
- EXHIBIT D — Equipment and Smallwares**
- EXHIBIT E — Uniforms, Office Equipment, Etc.**
- EXHIBIT F — Service Levels**
- EXHIBIT G — Manger Commissions**
- EXHIBIT H — Concessionaire Management Team**
- EXHIBIT I — Employee Training Program(s)**
- EXHIBIT J — Ethical Standards for Concessionaire**
- EXHIBIT K — Affidavit of Compliance with Ethical Standards**

CONCESSIONS OPERATING AGREEMENT

This CONCESSIONS OPERATING AGREEMENT (this “**Agreement**”) is made as of _____, 20__ and is by and between [_____ Stadium Management Company] (“**Manager**”), and Volume Services, Inc., a Delaware corporation, doing business as Centerplate (“**Concessionaire**”).

WITNESSETH:

WHEREAS, the Santa Clara Stadium Authority (the “**Authority**”) has developed and constructed a new multi-purpose stadium (the “**Stadium**”) located in Santa Clara, California;

WHEREAS, the Authority and Forty Niners Stadium, LLC, a Delaware limited liability Company, anticipate that they (or in Forty Niners Stadium, LLC’s case, an Affiliate of Forty Niners Stadium, LLC) will enter into a lease, as the same may be amended from time to time (the “**Stadium Lease**”), pursuant to which it is anticipated that Forty Niners Stadium, LLC (or an Affiliate thereof) will be granted the right, for approximately one-half of each year (from August 1 to January 31) during the term of the Stadium Lease, to use and occupy the Stadium; except for certain designated areas that Forty Niners Stadium, LLC or its Affiliate will lease year-round, the Authority will retain the right to lease or otherwise use the Stadium for the other one-half of each year during the term of the Stadium Lease;

WHEREAS, the Authority and Forty Niners Stadium, LLC anticipate that Forty Niners Stadium, LLC (or its Affiliate) would enter into a sub-lease with the Team pursuant to which the Team would play home games at the Stadium following its completion;

WHEREAS, the Authority and Forty Niners Stadium, LLC anticipate that each of them will enter into a stadium management agreement(s) with an Affiliate of Forty Niners Stadium, LLC (the “**Stadium Manager**”, which may be one and the same as Manager), as the same may be amended from time to time (the “**Stadium Management Agreement**”), pursuant to which the Stadium Manager will manage the operation of the Stadium year round on behalf of the Authority and Forty Niners Stadium, LLC for the term and on the basis specified in the Stadium Management Agreement;

WHEREAS, Concessionaire is engaged in the concession and catering business and is experienced in (i) selling food, alcoholic and non-alcoholic beverages and other products, (ii) providing premium quality concession and catering services at arenas, stadiums and other sports entertainment facilities throughout the United States and (iii) merchandising and selling novelties, souvenirs, programs, scorecards and the like at arenas, stadiums and other sports entertainment facilities throughout the United States; and

WHEREAS, the parties desire to enter into this Agreement whereby Concessionaire shall have the right to provide, and Concessionaire agrees to provide, certain food, beverage, catering and merchandise services at the Stadium, subject to the terms and conditions of this Agreement and of the Stadium Lease and Stadium Management Agreement.

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

ARTICLE I

Definitions

The following terms shall have the meanings set forth below:

Accounting Period: shall mean a consecutive four (4) or five (5) week fiscal period employed by Concessionaire of which there must be twelve (12) within each full Fiscal Year.

Additional Indemnitees: shall mean the Authority's Affiliates (including without limitation, the Authority's Board of Directors, the City, its City Council, the Santa Clara Redevelopment Agency, its Board of Directors, and all City or Agency commissions, officers, employees, volunteers and agents), the Bayshore North Project Enhancement Authority, [Forty Niners Stadium, LLC] and its Affiliates, the Team and each Additional Team (and their respective Affiliates), Manager's Affiliates (if not any of the previously mentioned Persons), each other tenant of the Stadium and each Event promoter, and any mortgagee, bond trustee or other financial institution from time to time holding a lien or indenture upon Manager's interest in the Stadium, the Stadium Lease or the Stadium Management Agreement.

Additional Team: shall have the meaning set forth in Section 6.18.

Affiliate: shall mean any Person directly or indirectly controlling or controlled by or under direct or indirect common control with a Person. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: shall have the meaning set forth in the recitals to this Agreement.

Alcoholic Beverage Policy: shall mean the rules, policies and procedures established from time to time by Manager in respect of the sale, distribution, promotion and consumption of Alcoholic Beverages at the Stadium.

Alcoholic Beverages: shall mean all alcoholic drinks, including liquors, beers and wines and other malt or brewed beverages.

All-Inclusive F&B Service Areas: shall have the meaning set forth in Section 3.1(d).

Annual Minimum Payment: shall mean the annual minimum amount that Concessionaire is required to pay Manager each Fiscal Year (or as adjusted for any partial Fiscal Year) during the Term commencing with the first Fiscal Year during which NFL regular season games are played at the Stadium. For each Fiscal Year (or as adjusted for any partial Fiscal Year) during the Term, the Annual Minimum Payment shall be \$6,800,000. If fewer than ten

(10) Home Games occur in any season, the Annual Minimum Payment shall decrease by \$680,000 for each such Home Game.

Architectural Drawings: shall mean certain design and architectural drawings for the Stadium, including the Food and Beverage Facilities, Merchandise Facilities, the Leasehold Improvements and Equipment, as more fully identified on **Exhibit A**, and as amended by the Authority, Manager, or their respective Affiliates.

Assignee: shall have the meaning set forth in Section 8.2.

Authority: shall have the meaning set forth in the recitals to this Agreement.

Branded Products: shall mean food or beverage products identified by a unique brand which are specifically required by Manager (for example, a brand such as “Coke” or “Pepsi”).

Catered Event(s): shall mean any event or activity, including but not limited to events or activities held before, during and after Events, that is not open or available to the general public and where services are to be paid for on a group basis by a Person (provided that Gross Receipts from Catered Events shall include receipts from any cash bar associated with such event), including activities such as weddings, parties, receptions and meetings, to be held in one or more areas within the Stadium such as conference, banquet, bar, lounge, meeting, catering and event facilities as Manager or its designee shall deem appropriate under the circumstances.

Caterer: shall have the meaning set forth in Section 3.1(e).

Celebrity Chef and Celebrity Chef Program: shall have the respective meanings set forth in Section 3.1(j).

City: The City of Santa Clara, Santa Clara County, California.

Club Areas: shall mean the premium areas identified in the Architectural Drawings as the “Club Level” or any named “Club” areas within the Stadium.

CMMS: shall have the meaning set forth in Section 6.8(f).

Commencement Date: shall mean the date of the first Event or Catered Event held in the Stadium, whichever is scheduled to occur first by the Authority or Manager.

Common Areas: shall mean all loading docks and facilities, freight elevators, common passage areas, employee locker rooms, employee rest rooms, and appurtenant easement and access areas thereto in the Stadium, provided such Common Areas are reasonably necessary for Concessionaire’s operation of the Food and Beverage Services and Merchandise Services, but shall not include any Excluded Areas.

Concessions RFP: shall refer to the Request for Proposal for the food, beverage and merchandise services at Stadium distributed April 25, 2011.

Concession Sales: shall mean all sales of Refreshments to customers in the Stadium and Outside Areas, whether from permanent concession stands, Portables or roving vendors, but excluding sales in respect of Catered Events and to customers in Club Areas and Suites.

Concessionaire: shall have the meaning set forth in the recitals to this Agreement.

Concessionaire Guaranteed Obligations: shall have the meaning set forth in Section 9.3.

Confidentiality Agreement: shall have the meaning set forth in Section 11.5.

Customer Information: shall have the meaning set forth in Section 5.3(j).

Customer Surveys: shall mean the customer surveys developed and implemented in accordance with Section 3.1(g).

Default Rate: shall mean a rate per annum equal to the lesser of (i) fifteen percent (15.0%) and (ii) the maximum non-usurious rate permitted by applicable law, with adjustments in that varying rate to be made on the same date as any change in that rate.

Direct Operating Costs: shall mean, collectively, Concessionaire's (i) cost of goods sold and (ii) labor costs incurred in connection with Concessionaire's operation of the Food and Beverage Services and Merchandise Services at the Stadium and the Outside Areas in accordance with the terms of this Agreement, each as reported by Concessionaire to Manager on a monthly basis; provided, that Concessionaire's "labor costs" may be presented in chart form with (x) staffing levels indicated for each category of Event and Catered Event and (y) staffing rates indicated for each category of Concessionaire employee by job title.

East Field VIP Club: shall mean the Club Area identified as the "East Field VIP Club" in the Architectural Drawings.

Effective Date: shall mean the date of execution of this Agreement.

Employee Meal Program: shall have the meaning set forth in Section 3.1(b).

Employee Training Programs: shall have the meaning set forth in Section 6.2(c).

Environmental Laws: shall mean any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

Equipment: shall mean all equipment, machinery, furniture, Point of Sale Devices, cash registers, security equipment, major appliances, Portables, and other tangible property, other than Smallwares, Leasehold Improvements and Office Equipment, used or needed to receive, store,

freeze or refrigerate, transport, prepare, cook, display, merchandise, sell and account for Refreshments at the Stadium.

Event(s): shall mean any event open to the public at large held at the Stadium.

Excluded Areas: shall mean Team and visiting team locker rooms, offices of the Authority, Manager or any of their respective Affiliates, back of house dressing rooms and staging areas, and other similar areas designated from time to time by the Authority or Manager, exercising reasonable discretion.

Fiscal Year: shall mean the twelve (12) month period commencing [] 1 of each year after the execution of this Agreement, except that the first Fiscal Year will commence on [_____, 20__] and end on [_____, 20__]. If this Agreement expires or terminates on a date other than [] of a particular year, there shall be a partial last Fiscal Year ending on the date of such termination.

Food and Beverage Facilities: shall mean all of those areas within the Stadium or the Outside Areas to be occupied and used by Concessionaire in connection with the performance of its obligations hereunder relating to Food and Beverage Services, including Concessionaire's kitchen and commissary and food and beverage service storage areas, food and beverage wash areas, pantry areas, food preparation and food and beverage cleaning areas, cafeterias, concession stands, bars, buffets, vending areas, portable stands, condiments stands, cooking, preparation, display and other back-of-house areas for Club Areas and lounges, administrative offices, money counting and record-keeping rooms dedicated to Concessionaire's operations located within the Stadium, all as shown as Concessionaire's areas on **Exhibit A** (as the same may be modified from time to time by the Authority or Manager), but shall not include any Service Areas (except for purposes of properly controlling the sale and consumption of Alcoholic Beverages within such Service Areas), Common Areas or Excluded Areas; and all Leasehold Improvements constructed as part thereof in accordance with the Architectural Drawings.

Food and Beverage Services: shall mean the procurement, preparation, transportation, storage, service and sale of Refreshments by Concessionaire at the Stadium and Outside Areas in accordance with this Agreement, including club level concessions, services provided in lounges, Suites and restaurants, and all game day and non-game day catering at the Stadium and Outside Areas.

Force Majeure: shall mean an act of God, riot, invasion, fire, flood, earthquake, tornado, storm, accident, strike, employee lockout or walk-out, or government interference, regulation, appropriation or rationing or any other event or condition similar to those enumerated above, that would render impossible a party's ability to perform hereunder; provided, that any NFL strike or other NFL work stoppage shall not be considered a "Force Majeure" event as applied to Manager.

General Concessions Sales: shall mean [_____].

Governmental Authority: shall mean any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental or

quasigovernmental unit (federal, state, county, district or municipal), whether now or hereafter in existence.

Gross Receipts: shall mean the total amounts received or charged by Concessionaire or any agent or employee of Concessionaire from operations conducted throughout the Stadium and the Outside Areas hereunder, less Sales Taxes, gratuities and Service Charges paid out to Concessionaire's employees, Concessionaire employee meals, and items sold at cost and/or discount with the prior approval of Manager; "Gross Receipts" shall include the amounts received by Concessionaire from third party subcontractors, but not the amount of gross receipts generated by such subcontractors.

Guarantor: shall have the meaning set forth in Section 9.3.

Hazardous Substance: shall mean, as of any date: (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs); (b) any chemicals or other materials or substances which as of such date are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," "infectious wastes," "pollutants" or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which or use of which as of such date is prohibited, limited or regulated under any Environmental Law.

Home Game: shall mean those NFL games played at the Stadium by the San Francisco 49ers professional football team (such San Francisco 49ers players not to constitute "replacement players" or similar players).

House Charges: shall have the meaning set forth in Section 3.1(c).

IPTV: shall have the meaning set forth in Section 6.11(b).

Leasehold Improvements: shall mean all equipment, fixtures, finishes, cabinetry, and construction results that are included in the Food and Beverage Facilities and Merchandise Facilities and attached to the physical building structure by more than an electrical or gas connection and all necessary and adequate Utility Systems for the Food and Beverage Facilities and Merchandise Facilities.

Legacy Club(s): shall mean the Club Area(s) identified as the "Legacy Club(s)" in the Architectural Drawings.

Legal Requirements: shall mean any and all applicable present and future laws, statutes, ordinances, decisions, decrees, rulings, rules, codes, procedures, orders, regulations, permits, certificates, licenses, and any other requirements of any Governmental Authority including any safety laws, health laws, Environmental Laws and laws regarding the rights of and obligations of the handicapped and disabled, including the Occupational Safety and Health Act and the Americans with Disabilities Act, each as amended from time to time.

Licensed Products: shall mean any products that Manager requires Concessionaire to sell or services Concessionaire is required to use and for which Concessionaire is required to pay a Licensed or Branded Products Charge. Only such products or services which Manager specifically requires shall qualify as Licensed Products.

Licensed or Branded Products Charges: shall mean the royalty, franchise and/or license charges and advertising contributions and other similar charges actually paid by Concessionaire to the holder of any intellectual property rights (such as a trademark owner) in connection with the sale or use of any Licensed Products or Branded Products required by Manager.

Manager: shall have the meaning set forth in the recitals to this Agreement.

Manager Commissions: shall have the meaning set forth in Section 5.1(a).

Management Team: shall mean the management team employed by Concessionaire at the Stadium, which shall include (but shall not be limited to) a [General Manager/Director of Operations, a Concessions Manager, a Premium Services Manager, [four (4)] Club Managers, a Food and Beverage Manager, a Suites Manager, a Catering Manager, a Catering Sales Manager, an Executive Chef, an Executive Sous Chef, a Purchasing/Warehouse Manager certified in applicable sanitation procedures and standards, a Controller/Office Manager and a Human Resources/Training Manager]. The job description for each of the foregoing employees will be subject to Manager's approval, provided that the parties acknowledge that the scope of job responsibilities and titles may vary by mutual agreement from time to time.

Mortgage: shall have the meaning set forth in Section 11.12.

Merchandise: shall mean [novelties, souvenirs, programs, scorecards and the like].

Merchandise Facilities: shall mean all of those areas within the Stadium or the Outside Areas to be occupied and used by Concessionaire in connection with the performance of its obligations hereunder relating to Merchandise Services[, including Concessionaire's Merchandise storage areas, Merchandise stands, Merchandise vending areas, portable stands, display and other back-of-house areas for Club Areas and lounges, administrative offices, money counting and record-keeping rooms dedicated to Concessionaire's operations located within the Stadium, all as shown as Concessionaire's areas on **Exhibit A** (as the same may be modified from time to time by the Authority or Manager), but shall not include any Service Areas (except for purposes of properly controlling the sale of Merchandise within such Service Areas), Common Areas or Excluded Areas; and all Leasehold Improvements constructed as part thereof in accordance with the Architectural Drawings].

Merchandise Sales: shall mean [all sales of Merchandise to customers in the Stadium and Outside Areas, whether from permanent Merchandise stands and stores, Portables or roving vendors].

Merchandise Services: shall mean [the procurement, preparation, transportation, storage, service and sale of Merchandise by Concessionaire at the Stadium and Outside Areas in

accordance with this Agreement, including game day and non-game day Merchandise Sales at the Stadium and Outside Areas].

Naming Rights Suite: shall mean the Suite identified as the “Naming Rights Suite” in the Architectural Drawings.

NFL: shall mean the National Football League.

Office Equipment: shall mean all office furnishings and equipment, including all computers, software, security equipment, fax machines and copiers, that are necessary or desirable to enable Concessionaire to fulfill its obligations under this Agreement.

Outside Areas: shall mean [those areas surrounding the Stadium, including plazas, parking lots and grounds controlled by the Authority or Manager on days during which Events are held, shown on **Exhibit C**, excepting Excluded Areas].

Owners Club: shall mean the Club Area identified as the “Owners Club” in the Architectural Drawings.

Owners Suites: shall mean those Suites identified as the “Owners Suites” in the Architectural Drawings.

Person: shall mean any individual, corporation, partnership, limited liability company, association, trust or other entity whatsoever.

Point of Sale Devices: means the specific technological devices used to receive payment for Food and Beverage Services and Merchandise Sales as provided by Manager for use by Concessionaire throughout the Term; it being understood that such devices may include, without limitation, computerized cash registers, credit/debit card swipe terminals and tags, hand held wireless transponders, radio frequency identification devices and any other type of device (current or future) that can track and store sale data at a point of sale.

Portables: shall mean any portable concession stands and bars, carts and kiosks used for the Food and Beverage Services or Merchandise Sales, as applicable.

Premium Concessions Sales: shall mean [_____].

Premium Concessions Services: shall have the meaning set forth in Section 3.1(e).

Refreshments: shall mean all food and Alcoholic and non-Alcoholic beverage products, including meals, snacks, confections, candies and all other food and beverage products.

Renewal and Replacement Account: shall have the meaning set forth in Section 5.1(b).

Renewal and Replacement Amount: shall mean, on an annual basis during each Fiscal Year of the Term, two and one-half percent (2.5%) of Gross Receipts to fund ongoing improvements of food and beverage and merchandise projects and to market and promote the Stadium.

Sales Taxes: shall mean any and all taxes assessed based on the sales price of Refreshments or services rendered hereunder (other than any income or franchise taxes), whether assessed against the customer and collected by Concessionaire for the government or otherwise, including but not limited to any and all value added taxes that may be assessed hereafter.

Service Areas: shall mean the common areas in which Food and Beverage Services are provided to customers in accordance with this Agreement, including the Suites, Club Areas, lounges, bars and areas in which Catered Events are held, but excluding the Excluded Areas.

Service Charges: shall mean the amounts charged for Catered Events and the sale of Refreshments in the Suites or Club Areas or in other areas where such charges are deemed to be commercially reasonable by Concessionaire and Manager; provided, that any such charges that are greater than twenty percent (20%) of the amount of the invoice or the amount of the sale shall require Manager approval.

Smallwares: shall mean the kitchen tools of the trade, table top appliances, and chafing dishes, serviceware, portable fixtures, utensils, pots, pans, crockery, glassware, dishware, linens, display carts, table skirting, cutlery and recycling and composting containers used or reasonably necessary for use in providing the Food and Beverage Services under this Agreement.

Stadium: shall have the meaning set forth in the recitals to this Agreement.

Stadium Lease: shall have the meaning set forth in the recitals to this Agreement.

Stadium Management Agreement: shall have the meaning set forth in the recitals to this Agreement.

[Stadium Safety and Security Plan: shall [mean _____][have the meaning set forth in the [Stadium Lease][Stadium Management Agreement]].]

Stadium Rights: shall mean all intellectual, industrial and other proprietary rights in and to (1) the design, structure or image of the Stadium or any entertainment facility therein; (2) Events held at the Stadium, including the right to copy, reproduce or otherwise utilize the same, and the copyrights and trademarks related thereto; and (3) the naming, sponsorship or other rights for the Stadium, the Team or Events.

Start-Up and Pre-Opening Investment: shall mean the up-front investment made by Concessionaire in the Stadium project, in an amount not to exceed \$1,000,000. The Start-Up and Pre-Opening Investment shall be depreciated and/or amortized on a five-year schedule on a straight-line basis, beginning on the Commencement Date.

Suites: shall mean the private viewing boxes identified as "Suites" in the Architectural Drawings.

Team: shall mean, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.

Team Suite: shall mean the Suite identified as the [“Owner Suite”] in the Architectural Drawings.

Team Marketing Suite: shall mean the Suite identified as the [“Marketing Suite”] in the Architectural Drawings.

Term: shall have the meaning set forth in Section 3.3.

Utility Systems: Any water, sewage (including but not limited to all permit fees and tap fees), gas, plumbing and general lighting, electrical service, sprinkler and fire safety, telephone and telecommunication and security facilities (including telephone and telecommunications equipment), piping (including storm and waste drains and all lines, drops and heads for sprinklers), ductwork, grease extraction ductwork, conduit, wiring (including all electrical panel boards and transformers), outlets and connections and mechanicals (as applicable); heating, ventilating, and air conditioning equipment, ductwork, fans and electrical components; all applicable elevators and escalators; all alcoholic and non-alcoholic beverage conduit; and all chases and drains, and electrical lines related thereto. “**Utility Services**” shall mean water, gas and electricity services directly related to Food and Beverage Services and Merchandise Services. As used herein, water shall mean water fit for human consumption and in compliance with all applicable laws, rules, regulations and orders.

Waste Reduction and Recycling Plan: shall have the meaning set forth in Section 6.8(b).

West Field Club: shall mean the Club Area identified as the “West Field Club” in the Architectural Drawings.

ARTICLE II

Stadium Construction; Leasehold Improvements

2.1 **Manager’s Responsibilities.**

(a) On or before the Commencement Date, the Stadium, including all Food and Beverage Facilities, Merchandise Facilities and all Service Areas and the Leasehold Improvements therein, shall have been constructed and made ready for use, substantially as described in the Architectural Drawings and related construction specifications, with such changes or amendments thereto as the Authority, Manager and their respective Affiliates shall deem necessary or advisable. In the event the seating capacity within the constructed Stadium is 61,000 or less, the parties agree to equitably adjust the Annual Minimum Payment and the Manager Commissions.

(b) On or before the Commencement Date, all Equipment and Smallwares referenced on **Exhibit D** shall have been purchased and installed at the Stadium so that such Equipment and Smallwares will be available for their intended use by Concessionaire on the Commencement Date. Concessionaire acknowledges that it was involved in the selection of the Equipment and Smallwares, and Concessionaire agrees that, if the aggregate cost of the Equipment and Smallwares as referenced on Exhibit D

(including any applicable sales taxes) exceeds approximately \$26,000,000, unless due to act of God, riot, invasion, fire, flood, earthquake, tornado, storm or accident, Concessionaire shall be responsible for any Equipment and Smallwares costs in excess of such amount and shall reimburse Manager for such excess costs within thirty (30) days after receipt of sufficient evidence of such costs and expenses; provided, that if such excess costs are the result of design changes to the Stadium that result in material differences from the Stadium schematics, designs, related Architectural Drawings and construction specifications set forth in the Concessions RFP, Concessionaire's responsibility for such additional costs shall be subject to its prior approval.

(c) Manager agrees and acknowledges that it will provide or cause to be provided during the Term designated office and storage space within the Stadium for use by Concessionaire. The location of such office and storage space shall be in the sole discretion of Manager, and Manager may direct that the office and storage space be moved to a new location within the Stadium from time to time as it deems necessary. Should Manager exercise its right under this Section 2.1(c), Manager shall find suitable substitute space for the office and storage space then occupied by Concessionaire, and Manager shall, with reasonable assistance and oversight from Concessionaire, be responsible for dismantling Office Equipment and storage equipment, packing, carting, unpacking, re-assembly and all similar aspects of any move.

2.2 Concessionaire's Responsibilities.

(a) On an ongoing basis during the Term, as requested Concessionaire shall, and shall cause its consultants, architects and other advisors to, regularly consult, actively participate with, and assist the Authority, Manager and their respective Affiliates, architects, consultants and other advisors with respect to the design, construction and equipping of the Food and Beverage Facilities and Merchandise Facilities as provided in the Architectural Drawings and any other drawings and plans for improvements and alterations to the Stadium developed from time to time after the Effective Date, including by participating in Stadium construction and improvement design reviews and related work streams.

(b) Concessionaire shall, on an annual basis and on a date designated by Manager, present to Manager a program containing a specific proposal for financial and operational goals for the Branded Products, Catered Events, Club Areas, General Concessions Sales, Premium Concessions Sales, Merchandise Sales, Suites and vending machines segments, and such other segments as Manager may from time to time identify and designate, as well as itemized tactics directed at meeting each goal identified within a one-year period from the date designated by Manager under this Section 2.2(b). While the parties shall negotiate in good faith in establishing agreed-upon pricing for each market segment, Manager shall have the ultimate right of approval or disapproval of each and every pricing term.

(c) Concessionaire shall pay for all costs and expenses, including but not limited to the Start-Up and Pre-Opening Investment, necessary to fulfill its obligations

under this Agreement. Concessionaire shall provide the uniforms, Office Equipment, warehouse and transportation equipment, as referenced on **Exhibit E**.

ARTICLE III

Grant of Operating Rights and Obligations: Term

3.1 **Scope of Operating Rights and Obligations; Reservation of Rights.**

(a) Subject to the terms of this Agreement, Manager hereby grants Concessionaire the exclusive rights to provide, and Concessionaire hereby agrees to provide, (x) the Food and Beverage Services in the Stadium and throughout the Outside Areas for all Events and Catered Events held at the Stadium during the Term at the levels of service identified in **Exhibit F** and (y) Merchandise Services in the Stadium and throughout the Outside Areas for all Events and Catered Events held at the Stadium during the Term, and Concessionaire acknowledges that such agreement includes the requirement that, on or before the Commencement Date, Concessionaire shall have procured and secured all personnel, Refreshments, Smallwares and any additional Equipment necessary to provide Food and Beverage Services and Merchandise Services in the Stadium and, as applicable, throughout the Outside Areas for the Event and/or Catered Event(s) occurring on the Commencement Date in first-class manner. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the grant to Concessionaire shall not include any right to (i) provide Food and Beverage Services or Merchandise Services in any Excluded Area unless otherwise requested by the Authority, Manager, any of their respective Affiliates or, with the consent of Manager, authorized promoters of an Event or licensees or lessees of the Stadium; (ii) preclude the Authority, Manager, any of their respective Affiliates or, with the consent of Manager, other licensees or lessees of the Stadium or their sponsors from providing, from time to time, free samples of Refreshments, (iii) receive any membership dues or other similar payments collected at the Stadium in respect of Club Areas, Suites or any other services or activities and (iv) preclude or inhibit, in any manner, Manager's exercise of its rights under this Section 3.1.

(b) Concessionaire shall provide a mutually agreed Event-day meal service to those employees and contractors of Concessionaire, the Authority, Manager and any of their respective Affiliates engaged in work at the Stadium in a dining area on the Service Level of the Stadium adjacent to the employee check-in area, as depicted in the Architectural Drawings (the "**Employee Meal Program**"). The Employee Meal Program shall consist of entrées and sides, which shall be prepared in an economical and efficient manner consistent with the expectations of Manager. Concessionaire shall charge the employees and contractors the fixed per-customer price for the Employee Meal Program of the cost of the meal plus ten percent (10%). In addition, Concessionaire shall provide officers and executives of Manager and any of its Affiliates with fifty percent (50%) off the retail price of Refreshments and forty percent (40%) off the retail price for any services in respect of a Catered Event requested by any of them. All charges for the Employee Meal Program and Refreshments under this Section 3.1(b) shall be payable by the applicable employees and contractors by an agreed upon unique

identifier (with payment assurance reasonably acceptable to Concessionaire), cash or credit card (or by such other method of payment that is then commonly accepted for any retail sale), and not the Authority, Manager or any of their respective Affiliates (unless they elect to pay for their employees or contractors or other designated Persons). Concessionaire's charges for a Catered Event that was requested by Authority, Manager or any of their respective Affiliates shall be invoiced to the requesting Person within two (2) days following such Catered Event; any such invoice shall set forth in reasonable detail all food and beverage items provided and the application of the discount specified above, and such invoice shall be paid within thirty (30) days of receipt. Except as may otherwise be approved by Manager, Concessionaire shall not sell Refreshments to Manager's Event-day employees or contractors at a concession stand or public outlet during any time that the Stadium is open to the general public.

(c) Concessionaire shall provide Food and Beverage Services: (i) in the Team Suite and Team Marketing Suite, (ii) for members of the media on Event days in media areas and media dining areas selected by Manager, and (iii) to the Authority, Manager, and their respective Affiliates at meetings, events and functions conducted by any of them at the Stadium. The Food and Beverage Services to be provided in each case under clauses (i) through (iii) shall be charged at the cost of such Refreshments plus ten percent (10%), except with respect to the Authority and its Affiliates, who shall each be charged prevailing prices. Such Food and Beverage Services shall be provided as requested by the Authority, Manager or their respective Affiliates, as the case may be, and shall be billed to (A) Manager, in the case of the Team Suite and Team Marketing Suite and the media on the date of the Team's game following such Event, and (B) the applicable party (the Authority, Manager or the applicable Affiliate of either) conducting the meeting, event or function under clause (iii) above. All revenues received by Concessionaire pursuant to this Section 3.1(c) shall be deemed "**House Charges**" for purposes of this Agreement. Manager and Concessionaire shall jointly develop a system to ensure the correct accounting for such House Charges. House Charges shall be payable to Concessionaire by the applicable Person to whom they are billed as indicated above, within thirty (30) days after billing. Concessionaire shall not offer any discounts (other than those reflected in House Charges) to customers at the Stadium without the prior written approval of Manager.

(d) Upon the request of Manager, Concessionaire shall provide Food and Beverage Services in the Owners Club, Legacy Club(s), East Field VIP Club, and West Field Club, and in such other areas as Manager and Concessionaire may designate from time to time by mutual agreement (collectively, when used on an all-inclusive basis, the "**All-Inclusive F&B Service Areas**"), on an "all-inclusive" basis for designated Events. Concessionaire shall, with input from and the approval of Manager, develop the menus and determine the product selection and service setup for such all-inclusive services. Concessionaire and Manager shall mutually agree on the price per person for all-inclusive services at All-Inclusive F&B Service Areas operated by Concessionaire; provided, that such pricing shall be sufficient to cover Concessionaire's reasonable, direct costs of providing Food and Beverage Services to the All-Inclusive F&B Service Areas plus ten percent (10%). A separate invoice shall be rendered for such all-inclusive services after each Event, which invoice shall include such back-up cost documentation as Manager

may reasonably request. Manager may elect to exclude certain Refreshments (such as Alcoholic Beverages) from the all-inclusive services, in which event Concessionaire shall provide for direct payment by customers, by cash, credit card or an agreed upon unique identifier (with payment assurance reasonably acceptable to Concessionaire), for those Refreshments specifically excluded from the all-inclusive services. Incremental revenues from all sales of Refreshments and merchandise in All-Inclusive F&B Service Areas, and all revenues from sales of excluded items, shall be included in Gross Receipts.

(e) Concessionaire may, with the approval of Manager and with respect to any Event or Catered Event, establish and maintain premium Food and Beverage Services (“**Premium Concessions Services**”) in one or more of the Club Areas and in such other areas of the Stadium as may be designated by Manager from time to time. In connection with the provision of Premium Concessions Services, Concessionaire shall take all actions necessary to train its personnel, create menus and provide such other services as may be necessary or useful in connection therewith, including the development and ongoing operation of the Celebrity Chef Program described in Section 3.1(j). Concessionaire may be required by Manager to, or may elect to with the consent of Manager, utilize the services of a catering service approved or designated from time to time by Manager (“**Caterer**”) in connection with providing Premium Concessions Services. Concessionaire shall, and shall cooperate with any Caterer to, book Catered Events and shall, and shall cause Caterer to, use commercially reasonable efforts to maximize opportunities for Catered Events; provided, however, that no Catered Event may be booked without the prior written approval of Manager. Manager may book Catered Events itself or through other Persons and may utilize (or cause to be utilized) the services of Concessionaire, Caterer, either or both of them, or any other service provider for such Catered Events. As necessary under the agreement for a particular Catered Event, Concessionaire shall provide, by renting from a third party (which rental costs may be passed on to customers), all Smallwares (not otherwise provided pursuant to this Agreement) and other supplies and equipment necessary to provide Food and Beverage Services at each Catered Event. Concessionaire shall be entitled to receive from each customer holding a Catered Event fees for Food and Beverage Services provided by Concessionaire based upon a pricing schedule agreed upon by Manager and Concessionaire, which fees shall be included in Gross Receipts for purposes of this Agreement. All other amounts payable by the customer with respect to the Catered Event, including any facility use fee, shall be determined by and payable exclusively to Manager.

(f) Concessionaire shall provide the Food and Beverage Services and Merchandise Services in a professional, first class and innovative manner and in accordance with (i) the terms of this Agreement, (ii) all applicable Legal Requirements, (iii) all standards implemented, from time to time, by Manager relating to health, safety, quality and operating issues (subject to Section 6.2 with respect to employment matters), and (iv) all rules, regulations and policies implemented, from time to time, by the NFL, related to use or operation of the Stadium, and Concessionaire acknowledges that, without limiting any other provision of this Agreement, the foregoing requirement is a “material obligation” for purposes of Section 9.1. All Refreshments served in connection with any Food and Beverage Services shall be of premium quality and freshness and shall

be prepared, stored and served in a healthful and gracious manner, with due regard for providing a premium level of service. Concessionaire shall use commercially reasonable efforts in locally sourcing all Refreshments and products utilized in connection with any Food and Beverage Services.

(g) Concessionaire shall cause an unaffiliated third party approved by Manager to prepare and conduct customer surveys to measure the customers' satisfaction with the quality of the Refreshments and Food and Beverage Services and Merchandise Services provided at the Stadium ("**Customer Surveys**"). The cost of such Customer Surveys shall be shared equally by Manager and Concessionaire. Manager and Concessionaire shall mutually agree on the number of Customer Surveys to be conducted during each Fiscal Year, but the number of Customer Surveys shall be: (i) at least four (4) for each Fiscal Year, (ii) at least two (2) during the period designated by the NFL as the "regular season" for NFL games and (iii) at least two (2) during the remaining portion(s) of each Fiscal Year. The content, implementation, timing, location, data gathering methodology and other terms and procedures of such Customer Surveys shall be created by the applicable unaffiliated third party in consultation with Manager and Concessionaire, and must be approved in advance by Manager. The Customer Surveys shall be conducted in all areas of the Stadium (including the Suites and Club Areas), and shall include a methodology designed to determine Concessionaire's overall approval rating for purposes of evaluating quality and service. The hard and soft copies and results of all Customer Surveys shall be the property of Manager and shall be promptly surrendered to Manager upon request.

(h) All Food and Beverage Services shall be conducted from the Food and Beverage Facilities and in a manner which is consistent with the Stadium Lease and Stadium Management Agreement. In connection therewith, Concessionaire acknowledges that the use of the Stadium and Outside Areas are subject to the terms and conditions of, and Concessionaire agrees to conduct all Food and Beverage Services in accordance with, the Stadium Lease, Stadium Management Agreement and any other applicable agreements. Furthermore, Concessionaire agrees to conduct all Merchandise Services in accordance with the Stadium Lease, Stadium Management Agreement and any other applicable agreements.

(i) Concessionaire shall, at all times, abide by the Alcoholic Beverage Policy. The decision as to whether or not Alcoholic Beverages may be sold at an Event, at any time during the conduct of an Event, or in any particular area or areas of the Stadium shall be at the sole discretion of Manager or Manager's designee for a particular Event. Chewing gum and tobacco products, except those products sold with Manager's approval as part of a themed smoking area such as a "cigar bar", may not be sold by Concessionaire in the Stadium or Outside Areas, and Manager reserves the right during the Term to specify other products and services which may not be sold by Concessionaire and agrees to provide notice to Concessionaire of any such prohibition.

(j) Manager, and any Affiliate thereof, may from time to time during the Term, and in connection with not more than two (2) NFL games in each Fiscal Year of the Term, require Concessionaire to engage a chef and/or other cooking and food

products and beverage personnel (each designated Person, for purposes of this Agreement, a “**Celebrity Chef**”) designated by them to prepare meals or provide beverages (including Alcoholic Beverages) in the Owners Club (e.g., as part of a special culinary or beverage experience program; each, a “**Celebrity Chef Program**”). The Celebrity Chef Program shall be designed as a marketing and amenity program to deliver signature dishes of the Celebrity Chef’s making and/or wine or other specialty beverages, as the case may be, to patrons in the designated areas. The costs of such Celebrity Chef and other personnel shall be paid by Concessionaire, unless Manager elects to pay such costs, and Concessionaire shall provide kitchen facilities, implements, support personnel, and ingredients as required by Manager to facilitate said Celebrity Chef Program and such other related services; provided, that Concessionaire shall be reimbursed for its costs and expenses incurred in connection with such provision, subject to Manager’s receipt of sufficient evidence of such costs and expenses.

(k) Manager expressly reserves the right to require Concessionaire to modify its Food and Beverage Services (including the normal selection of and pricing for Refreshments) and Merchandise Services on an Event by Event (and Catered Event) basis or during an Event or Catered Event, and Concessionaire shall make such modifications as requested.

(l) No off-site or subcontracting of any Food and Beverage Services or Merchandise Services shall be undertaken or permitted by Concessionaire without the prior written approval of Manager.

(m) Concessionaire shall use exclusively permanent Smallwares in the [specified Club Areas and Suites and private dining areas], the Team Suite, Team Marketing Suite and Naming Rights Suite and, unless specified by Manager, for all Catered Events. Concessionaire may use disposable Smallwares in the general concession areas and in all other Suites and Club Areas. All Smallwares (permanent and disposable) must be approved by Manager, and Manager may require higher quality items in certain areas. All disposable items shall meet the intent and policy of the Stadium recycling, sustainability and composting program. All items not considered permanent Smallwares will be recyclable or compostable items. Concessionaire shall provide and at all times maintain a sufficient stock of all Smallwares inventory. Concessionaire shall be responsible for setting up and tearing down Smallwares and Equipment for all Events and Catered Events, including any work tables supplied or requested by Manager.

(n) Concessionaire shall be responsible for all Food and Beverage Services and Merchandise Services operating costs, including the costs of Refreshment items [and Merchandise], items used in preparation and service of food and beverages, replenishing the supply of uniforms and Smallwares, the maintenance and repair of Equipment as described herein and all applicable taxes, staffing (including all managerial and Event staff), training and goods for resale. As described in greater detail in Section 6.8, Concessionaire agrees to fully abide by all sustainability and reuse programs established for or applicable to the Stadium, as each may be modified from time to time following the Effective Date.

(o) Without limiting the generality of any other provision in this Agreement, Concessionaire's provision of the Food and Beverage Services and Merchandise Services shall be subject to the reasonable prior approval of Manager acting in conjunction with Concessionaire, including but not limited to staffing, number of service areas, menu portions, pricing, products, sources of supply, brand selection, manner of Concessionaire's performance, selection of subcontractors and Concessionaire's execution of any contract or agreement with a subcontractor. Concessionaire shall not offer exclusivity to any supplier without the prior written approval of Manager.

(p) If at any time, Concessionaire fails or is otherwise prevented from providing all or any portion of the Food and Beverage Services or Merchandise Services whether due to a suspension or termination of any licenses or permits, Force Majeure or otherwise, then, in addition to any other right of Manager, Manager shall have the right, in its sole discretion, without the payment of any kind to Concessionaire, to provide through any available means the Food and Beverage Services or Merchandise Services, or any portion thereof, until such time as Concessionaire has resumed its provision of the Food and Beverage Services or Merchandise Services, or a portion thereof. In the event Manager exercises its rights pursuant to this Section 3.1(p), Concessionaire shall, and shall cause its employees and the Management Team, to cooperate and assist Manager in providing the Food and Beverage Services and/or Merchandise Services.

(q) Concessionaire shall not interfere with the free distribution of samples of Refreshments [or of Merchandise] as authorized under this Agreement.

(r) Concessionaire shall provide a written report twenty-four (24) hours prior to each Event and Catered Event of any Equipment that will not be fully operational during such Event or Catered Event. Each report shall provide the potential mitigation programs and the estimated time that it will take for such Equipment to once again become operational.

(s) Upon the request of Manager, Concessionaire shall provide unique Food and Beverage Services which may or may not be prepared by Concessionaire and may be provided by other mutually agreed vendors or caterers, including kosher, Indian or other ethnic and specially prepared foods, as regular specialty menu items or with respect to specified Events or functions.

(t) Manager expressly reserves the right to pursue, develop, and establish a reasonable number of arrangements relating to the sale of food, beverages and/or merchandise through select third parties, as follows: a limited number of established local restaurants, a limited number of branded franchises in connection with Stadium sponsorship arrangements, and third-party lease space programmed on the exterior of the Stadium building. Manager may establish such arrangements on its own or may request that Concessionaire accept as a third party subcontractor any such Person. However, Concessionaire shall not be forced to enter into franchise or license agreements with third parties, and Manager agrees that Concessionaire shall be protected and/or reimbursed against cost, price, quality and/or quantity changes for similar items due to Manager's arrangements with third parties. Furthermore, in the event the arrangements described in

this Section 3.1(t) reduce Gross Receipts in the aggregate by ten percent (10%) or more in any Fiscal Year of the Term, the parties agree to equitably adjust the Annual Minimum Payment.

(u) Concessionaire shall establish a complete inventory of all Equipment and Smallwares and shall at all times maintain an accurate inventory of the location of these items within the Stadium. As a part of its ongoing responsibility for maintenance and repair of the Equipment, Concessionaire shall at all times maintain full and complete electronic records of maintenance and repair activities with respect to each piece of Equipment. Copies of these inventory and maintenance records shall be provided to Manager on an ongoing basis.

3.2 Permission to Occupy and Use Facilities and Equipment.

(a) Subject to the terms and conditions of this Agreement (including, without limitation, Sections 3.1(a), (e), (j), (p), (s) and (t)), and subject to any restrictions imposed by the Authority or any of its Affiliates, including pursuant to the Stadium Lease and Stadium Management Agreement, Manager hereby grants Concessionaire permission to occupy and use during the Term (and at such earlier time following the Effective Date as Manager deems necessary) all Food and Beverage Facilities, Merchandise Facilities and Equipment, whether now existing or hereafter constructed or located within the Stadium, in conjunction with Concessionaire's exercise of its right to operate the Food and Beverage Services and Merchandise Services, as applicable. Concessionaire agrees to distribute the vertical transportation of the Food and Beverage Services so as to not transport items through a public or premium area. Manager also hereby grants Concessionaire permission to occupy and use, during the Term and at such earlier time following the Effective Date as Manager deems necessary, all Common Areas and Service Areas, and appurtenant easements and access areas thereto, to the Food and Beverage Facilities to the extent necessary for the customary and reasonable operation of the Food and Beverage Services and to the Merchandise Facilities to the extent necessary for the customary and reasonable operation of the Merchandise Services. Notwithstanding such use of the Service Areas, the parties hereto acknowledge that Concessionaire shall have control over such areas during Events to the extent required to enforce all laws, rules and regulations of the State of California, and the California Department of Alcoholic Beverage Control related to the service of Alcoholic Beverages, all as more particularly described in Section 6.4 below. The use by Concessionaire of all Common Areas shall be subject to all Legal Requirements and any rules, regulations and policies established by the Authority and/or Manager from time to time, including scheduling rules, regulations and policies.

(b) Notwithstanding the foregoing, and subject to any restrictions imposed by the Authority, including pursuant to the Stadium Lease and Stadium Management Agreement, Manager and its designated agents reserve the right of access to all areas Concessionaire is permitted to access, use and occupy hereunder for purposes of operating, inspecting, maintaining and repairing the Stadium (and all improvements therein or thereon and all Utility Systems related thereto) and for the purpose of determining whether the terms, covenants and conditions contained in this Agreement are

being fully and faithfully observed and performed by Concessionaire. Use of any space or property Concessionaire is permitted to access, use and occupy hereunder for purposes other than the operations to be conducted under this Agreement, without prior written approval of Manager in its sole discretion, is prohibited. Concessionaire shall not interfere with any other contractor, licensee or employee of the Authority, Manager or any other Person working at the Stadium.

(c) The location(s) of all movable or temporary tables, carts, servers or other equipment and any auxiliary storage space required by Concessionaire, from time to time, must be approved by Manager in writing. Concessionaire shall acquire no rights to such locations if assigned, and Manager reserves the right to require Concessionaire to move such tables, carts, servers or other equipment and to relocate items to or from any auxiliary or common storage space when Manager determines that the needs of Events, Catered Events or similar matters require the use of same. Concessionaire shall be solely responsible for packing, carting, unpacking, re-assembly and all similar aspects of any move of such tables, carts, servers or other equipment and all costs related thereto, and each such move shall be executed within the time period prescribed by Manager and without damage to any portion of the Stadium or any Leasehold Improvements or Equipment.

(d) Subject to the rights of Concessionaire as set forth in Section 3.1(a), the other Sections of this Agreement and the terms and conditions of the Stadium Lease (including the lessee's rights thereunder) and Stadium Management Agreement, the Authority shall at all times own the Leasehold Improvements constructed, installed or placed in the Stadium as specified in the Stadium Lease, regardless of when or by whom such Leasehold Improvements were constructed, placed or installed, and all Equipment, Smallwares and uniforms provided by Manager (or any Affiliate thereof), by Concessionaire or otherwise pursuant to this Agreement and/or as required by the Stadium Lease or Stadium Management Agreement. Upon the termination or expiration of this Agreement, Concessionaire acknowledges and confirms that it shall have no permission to access, occupy or use the Stadium or any part thereof and no right, easement, license, lien or other interest, by implication, constructive or otherwise, in the Stadium generally, any Leasehold Improvements, or any Equipment, Smallwares or uniforms provided by Manager (or any Affiliate thereof) or by Concessionaire.

3.3 **Term.**

The "**Term**" of this Agreement shall commence on the Commencement Date and terminate without the need for notice or other action by either party on the completion of the fifth (5th) Fiscal Year after the Commencement Date (including the Fiscal Year during which the Commencement Date occurs), unless sooner terminated under Article IX. Although the Term does not commence until the Commencement Date, this Agreement shall be effective, and the parties hereto shall have certain rights and obligations, from the Effective Date. Manager shall have the option, in its sole discretion, to extend the Term of the Agreement for five (5) additional two (2) year periods by notifying Concessionaire in writing of its desire to exercise said option(s) not more than one hundred twenty (120) days prior to the expiration of the then-current Term.

ARTICLE IV

Certain Responsibilities of Manager and of Concessionaire

4.1 **Maintenance; Repair; Replacement.**

Concessionaire shall be responsible for (a) all maintenance and repair of the Food and Beverage Facilities and Merchandise Facilities (including Leasehold Improvements) and associated Service Areas and (b) the replenishment of Equipment, Smallwares and uniforms in the ordinary course of providing the Food and Beverage Services and Merchandise Services, and the costs of such maintenance and repairs and of replenishing Equipment, Smallwares and uniforms shall be payable, in accordance with Section 5.1(b), out of amounts on deposit in the Renewal and Replacement Account. If Concessionaire determines in its reasonable judgment that the Smallwares or uniforms, or any item of Equipment, Office Equipment or warehouse or transportation equipment require replacement, it will seek Manager's approval to replace such items. With the approval of Manager, Concessionaire shall purchase such replacement items at its expense. If Manager determines any such items are in need of replacement, Manager may purchase such replacement items within a reasonable period of time, or Manager may elect to require the Concessionaire to purchase such replacement items. If Manager purchases any such replacement items, all costs incurred by Manager for the purchase of the replacement items shall be invoiced to Concessionaire by Manager, and any such invoice shall be paid within thirty (30) days of Concessionaire's receipt thereof.

4.2 **Access.**

Concessionaire's authorized personnel who are scheduled to work at Events and Catered Events shall be provided with ingress to and egress from the Stadium through a gate or gates designated for such purpose by Manager, without charge, during all days on which Events are held and Catered Events are scheduled and at all other times necessary to enable Concessionaire to prepare for Events and Catered Events and fulfill its other responsibilities under this Agreement. Concessionaire shall be bound by and comply with all rules, policies and procedures relating to security and access rights, including requirements related to screening and identification of Concessionaire's personnel, established from time to time by Manager. Nothing herein contained shall be held to limit or qualify the right of the Authority or Manager to a free and unobstructed use, occupation and control of the Stadium and ingress and egress for itself, its lessees and the public.

4.3 **Security.**

(a) Manager's Responsibility. Subject to Concessionaire's obligations set forth below and elsewhere in this Agreement and the obligations of the Authority under the Stadium Lease and Stadium Management Agreement, Manager shall be responsible for implementing the [Stadium Safety and Security Plan].

(b) Concessionaire's Responsibility. Concessionaire shall be responsible for (a) all emergency preparedness and security measures necessary to secure the Food and Beverage Facilities, Merchandise Facilities, Equipment, Refreshments, its cash room

and the transporting of all cash thereto and therefrom and its bank deposits, which security measures Manager may require Concessionaire to coordinate with Stadium security, and (b) the security of its own sales locations and for monitoring the acquisition, movement, storage and sale (including properly identifying customers as legal purchasers) of Alcoholic Beverages to comply with all applicable Legal Requirements and the Alcoholic Beverage Policy. All security services provided by Concessionaire pursuant to the immediately preceding sentence shall be subject to, and Concessionaire shall comply and otherwise abide by, all emergency and security procedures and protocols of the Authority, Manager, the Team, the NFL and promoters of Events as the Authority, Manager or such other Persons shall adopt from time to time. Such procedures and protocols may include, without limitation, (i) employee pat-down and screening, (ii) presentment by Concessionaire's employees of identification cards or badges issued by Manager, which may include reporting criteria such as bar codes, "Mag Stripes", "RFID" or other identifier systems; (iii) restricting access to certain parts of the Food and Beverage Facilities and Merchandise Facilities to employees of Concessionaire as reasonably approved by the Authority or Manager (with respect to security clearance standards); and/or (iv) conduct by Concessionaire, at its sole expense, of Team-specified minimum background and such other security screening checks on all of Concessionaire's employees as the Authority or Manager shall request from time to time, which checks may vary as to job function. The Authority and Manager shall have the right to enter the Food and Beverage Facilities and Merchandise Facilities at will to install any equipment or other device designed for the purpose of protecting the Food and Beverage Facilities or and Merchandise Facilities, as applicable, from theft, burglary or vandalism or for any other purpose deemed appropriate by the Authority or Manager.

4.4 **Utility Services; Telecommunications.**

(a) Utility Services to Be Provided. Concessionaire shall be provided with the use of all Utility Systems and Utility Services, including, but not limited to gas for cooking, electricity, water, heat, ventilation, air conditioning and sewer service as necessary for Concessionaire's Food and Beverage Services and Merchandise Services at the Stadium.

(b) Concessionaire's Responsibility for Utility Services. Concessionaire shall be responsible to pay, and hereby agrees to pay, for all Utility Services directly relating to its operations, and shall be invoiced monthly for such usage of the Utility Services. Concessionaire shall purchase any and all special and other equipment necessary for its operations to be connected to the Utility Systems, provided that all such equipments must be compatible with the Utility Systems. Concessionaire agrees to support, promote and abide by all programs and measures implemented by Manager from time to time (including programs and measures promulgated by the Authority, the City and Santa Clara County) to reduce waste and increase the efficiency of the Stadium. Concessionaire acknowledges that neither the Authority nor Manager can control the availability of any Utility Service to the Stadium at any given time, and in no event shall the Authority or Manager be liable or responsible to Concessionaire, in damages or otherwise, including for any consequential or special damages or economic or property losses, for any interruption of such services.

Concessionaire shall, and shall cause its employees, agents, subcontractors and invitees to, at all times utilize prudent energy and water management. Concessionaire shall be responsible for the cost to repair or replace any Utility Service or lines damaged due to the negligence or an act or omission of Concessionaire or any of its employees or contractors under the insurance policies maintained or required to be maintained by Concessionaire under this Agreement. Sewer lines within the Food and Beverage Facilities and Merchandise Facilities shall be maintained by Concessionaire to the satisfaction of Manager. Concessionaire shall (i) take all precautionary measures necessary to assure that no grease, residue, Hazardous Substance or other by-product resulting from the provision of Food and Beverage Services or Merchandise Services is discharged into the sewer lines within the Stadium and (ii) be responsible for the removal and remediation of any grease, residue, Hazardous Substance or other by-product resulting from the provision of Food and Beverage Services or Merchandise Services discharged through the sewer lines within the Stadium notwithstanding such precautionary efforts.

(c) Telecommunications. Concessionaire shall have access to the Stadium's telephone and connectivity or broadband service. Concessionaire shall be responsible to pay all charges for connection services and shall be invoiced monthly for usage of Authority telecommunications and broadband systems, including long distance charges, loss or replacement of equipment and special services. Concessionaire shall purchase handsets and other equipment connected to the Stadium telephone service that is compatible with the Stadium system.

4.5 Parking.

Manager will provide Concessionaire, on pricing terms comparable to those applicable to employees of Manager, with parking permits for members of the Management Team pursuant to rules and regulations, and in parking accommodations, to be established by the Authority or Manager from time to time. Manager will further provide parking at a discounted rate for Concessionaire's employees scheduled to work at an Event or Catered Event in designated off-site parking locations. If walking time from a particular parking area (or areas) designated for Concessionaire's employees scheduled to work at an Event or Catered Event is reasonably estimated by Manager to exceed twenty (20) minutes, transportation to and from the site from such locations, and the cost of such transportation shall be includable in the parking rate charged for use of such area(s). Concessionaire shall adopt and enforce policies requiring its employees to park only in employee parking facilities designated by Manager and to otherwise comply with the Authority's and Manager's parking rules and regulations.

ARTICLE V

Payments; Reports

5.1 Payments.

(a) In consideration of the rights granted to it under this Agreement, for each Fiscal Year during the Term, Concessionaire shall pay to Manager (or its designee(s)), in

accordance with Section 5.1(c), an amount equal to the greater of (i) the Annual Minimum Payment and (ii) the amounts resulting from the percentage calculations set forth on **Exhibit G** hereto (the “**Manager Commissions**,” which for each category are indicated as a percentage of Gross Receipts).

(b) Concessionaire shall, not later than sixty (60) days prior to the Commencement Date, establish and maintain a trust account (requiring the signature of Manager for withdrawals) at a federally insured institution having offices in the State of California for the deposit and disbursement of amounts to be deposited for the periodic repair and replacement of Equipment and Smallwares and marketing and promotion (the “**Renewal and Replacement Account**”). For each Accounting Period, Concessionaire shall, after the payment to Manager of the applicable portion of the Annual Minimum Payment or Manager Commissions deposit into the Renewal and Replacement Account the applicable portion of Renewal and Replacement Amount. If at any time the amount on deposit in the Renewal and Replacement Account is not sufficient to pay all presently incurred costs of repair and replacement of Equipment and Smallwares, Manager shall have the right to demand immediate payment from Concessionaire of the amount of such difference (up to 100% of the Renewal and Replacement Amount budgeted or projected for that Fiscal Year), and Concessionaire shall immediately make such payment. Any funds remaining in the Renewal and Replacement Account at the end of a Fiscal Year shall be maintained in the account, and rolled forward through the Term. Monies shall be disbursed from the Renewal and Replacement Account for repair and replacement of Equipment and Smallwares as identified in **Exhibit D**, in Manager’s sole discretion. Upon the withdrawal of amounts from the Renewal and Replacement Fund, such amounts shall be restored to such account in the manner specified above. Upon the termination of this Agreement, all funds on deposit in the Renewal and Replacement Account shall be the property of Manager and shall remain on deposit therein until withdrawn at the discretion of Manager.

(c) Not later than the fifteenth (15th) day after the end of each Accounting Period (including the last Accounting Period in each Fiscal Year), Concessionaire shall (i) pay Manager (or its designee(s)) by wire transfer of immediately available funds, to the account(s) designated to Concessionaire in writing by Manager, an amount equal to the Manager Commissions payable to Manager for such Accounting Period under Section 5.1(a); and (ii) contemporaneously deliver to Manager the accounting reports described in Section 5.3(e)(iii) below. Together with its payment of the Manager Commissions under Section 5.1(a) for the last Accounting Period in a Fiscal Year (including the last Fiscal Year of the Term), Concessionaire shall pay Manager the amount (if any) by which the Annual Minimum Payment exceeds the sum of all Manager Commissions paid to Manager with respect to such Fiscal Year. Not later than the sixtieth (60th) day after the end of each Fiscal Year (including the last Fiscal Year of the Term), Concessionaire shall contemporaneously deliver to Manager the accounting reports described in Section 5.3(c) below.

(d) If Manager does not receive any payment when due, it shall have the right, in addition to its other rights and remedies as a result of non-payment, to assess a late

payment charge equal to the amount of such payment multiplied by the Default Rate for the period from and including the due date through the payment date.

5.2 Collection Responsibility.

(a) Concessionaire shall have sole responsibility for the collection of all revenues and charges resulting from the Food and Beverage Services and Merchandise Services provided at Events and, if Concessionaire has been designated to collect therefor, Catered Events, including, without limitation, all Gross Receipts and all sales and/or use taxes attributable thereto, for the timely payment of all such taxes to the appropriate Governmental Authorities, and for the invoicing and collection of all charges for Food and Beverage Services and Merchandise Services provided to the Suites. All collection methods and procedures shall be consistent with such standards as may be established (and modified) from time to time by the Authority and/or Manager. Neither Concessionaire nor any of its employees, contractors or other individuals subject to its control, shall actively solicit any gratuities from customers in the Stadium (e.g., through the use of signage, tip cups or otherwise) or any other charges of any type on account of the Food and Beverage Services except the Service Charges. Except for the Service Charges, Concessionaire shall not charge a tip, gratuity, labor charge, service charge or similar charge without Manager's prior written approval. Concessionaire acknowledges and agrees that Manager shall in its sole discretion determine whether Service Charges will be reduced, waived or otherwise modified for (i) any particular Event or Catered Event, (ii) any Service Area or Service Areas or (iii) any Excluded Area or Excluded Areas where Food and Beverages Services and/or Merchandise Services have been requested, and Concessionaire shall abide by each such determination of Manager.

(b) Concessionaire shall use Point of Sale Devices in connection with all sales relating to the Food and Beverage Services and Merchandise Services including, without limitation, non-stationary Concession Sales and Merchandise Sales. Manager and Concessionaire shall periodically consult with each other about technology changes and technology-based upgrades and replacements to existing Point of Sale Devices for purposes of enhancing customer service and improving financial results. Concessionaire must accept cash, all major credit cards and loyalty cards, as well as such other methods of payment that are then commonly accepted or any other methods instituted by the Authority or Manager for any retail sale, at all Concession Sales and Merchandise Sales locations, portable and permanent.

5.3 Records; Accounting; Audits.

(a) Concessionaire will keep at the Stadium true and complete accounting books and records prepared in accordance with GAAP of all business and transactions conducted under this Agreement, for all periods included within the Term. Such records shall include, without limitation, the daily receipts, the daily bank deposits, the daily sales and business done by Concessionaire, the point of sale and staffing reports, and details of and documentary support for all amounts deducted in calculating Gross Receipts or included in calculating Direct Operating Costs, and shall preserve and make available for audit and examination by Manager all records relating to Gross Receipts and Direct

Operating Costs. All sales and accounting records and management reports shall be prepared and kept in mutually agreeable paper and electronic format directed by Manager. Such records will be maintained at the Stadium for a period of three (3) years after the Fiscal Year to which they relate or such longer period as may be required to enable Manager and Concessionaire to comply with applicable Legal Requirements.

(b) Concessionaire shall maintain such accounting records on a fiscal year basis consistent with the definition of “**Fiscal Year**” in this Agreement.

(c) Concessionaire shall submit to Manager, within sixty (60) days after the end of each Fiscal Year, a report in mutually agreeable paper and electronic formats showing in reasonable detail all Gross Receipts and all Direct Operating Costs, any and all expenditures or other amounts, and any Annual Minimum Payment. In addition, within ninety (90) days after the end of each Fiscal Year, Concessionaire shall provide a similar report of the same information to Manager, which report shall be reviewed in accordance with AICPA Statements on Standards for Accounting and Review Services by an independent accounting firm reasonably acceptable to Manager.

(d) The Authority and Manager shall have the right from time to time to audit Concessionaire’s books and records related in any way to Gross Receipts, Direct Operating Costs, Manager Commissions and any other amounts payable by or to Manager under this Agreement. Such audit shall be conducted by the Authority or Manager with its internal staff or outside auditors. If a deficiency or deficiencies in payments is detected for any period, pursuant to such audit or otherwise, Concessionaire shall pay to Manager the amount of any payment deficiency, with interest thereon at the Default Rate from the date the monies were originally due until the date paid, within twenty (20) days following receipt of notice thereof from Manager. If such payment deficiency is in excess of one percent (1.0%) of the aggregate amount reported, Manager shall have the right, in its sole discretion and without limiting any of its other rights hereunder, to terminate this Agreement and the cost of the audit shall be immediately due and payable by Concessionaire.

(e) In addition to its other information obligations under this Agreement, Concessionaire must submit the following information to Manager, each in mutually agreeable paper and electronic formats and to the persons directed by Manager:

(i) A flash report of Gross Receipts by 12 p.m. (California time) on the day following each Event and, if Concessionaire has been designated to collect therefor, each Catered Event. Such report shall include, but not be limited to: total sales, sales by location, sales by product type, itemization of total cash, credit card and alternative method of payment sales.

(ii) A summary of each Event and, if Concessionaire has been designated to collect therefor, each Catered Event, and daily sales and staffing reports and a copy of deposit slips of Gross Receipts for each Event and Catered Event, within 48 hours following completion of the Event.

(iii) An Accounting Period summary showing Gross Receipts (by category and by Event and, if Concessionaire has been designated to collect therefor, by each Catered Event), Manager Commissions payable therefore, Direct Operating Costs (by category), and any House Charges (by category and Event and Catered Event) incurred by Manager, on or before the 15th day after the end of each Accounting Period.

(iv) All Sales Taxes paid to the State of California as a result of sales conducted at the Stadium, and all taxes paid to the State of California related to the sale of Alcoholic Beverages, in each case on a Fiscal Year basis. All such information shall be submitted to Manager on or before the sixtieth (60th) day following each Fiscal Year (or, as applicable, partial Fiscal Year) during the Term. The Authority and Manager shall have the right to audit such tax records with auditors selected by them, provided either the Authority or Manager exercises such right within thirty-six (36) months following receipt of such information.

(v) Such other daily, monthly, annual or other periodic budgets, reports or summaries as the Authority or Manager may reasonably request.

(f) Concessionaire shall at all times on and following the Effective Date and throughout the Term (i) utilize hardware and software approved by Manager as compatible with Manager's systems and technology and fully importable into Manager's software formats, and accounting software approved by Manager as compatible with Manager systems and technology in preparing and maintaining records relating to sales, inventory, costs of goods sold, shrinkage, advance sales, premium Catering and Suite sales records, proposals, contracts and invoices, and for all accounting functions relating or incidental to the Food and Beverage Services and Merchandise Services to the extent that reporting is electronic; (ii) provide Manager with real-time computer access to all sales and ordering transactions with respect to Events, if the Authority or Manager provides Point of Sale Devices for use by Concessionaire which have such capability; and (iii) implement such systems and technology as are deemed necessary by Manager to afford the acceptance of any payment system reasonably directed towards providing a more efficient and expedient transactional experience, whether in existence at the Effective Date or thereafter developed, including, but not limited to systems and technology supporting loyalty programs, gift cards, loaded tickets, and payment via mobile device.

(g) Concessionaire shall work with due haste and in good faith with Manager to develop and implement real-time data and inventory management systems with the capacity for instantaneous inventory and pricing decisions and execution, whether in existence at the Effective Date or thereafter developed.

(h) Concessionaire shall maintain a separate depository bank account in a Manager-approved bank for all sales deposits, all credit or debit card transactions and all transactions made through other means of payment.

(i) All obligations of Concessionaire under this Article V regarding payments and reporting shall survive the expiration or termination of this Agreement with respect to periods prior to such expiration or termination.

(j) Notwithstanding anything in this Agreement to the contrary, unless otherwise expressly agreed to in advance in writing by Manager, Concessionaire shall make no use or disclosure of any customer data, including personally identifiable information, histories and preferences generated in connection with the provision of the Food and Beverage Services and Merchandise Services (collectively, “**Customer Information**”), other than as directed by Manager in connection with the performance of Concessionaire’s obligations under this Agreement. As used herein, “personally identifiable information” shall mean any information, as regulated by the standard on credit transactions set forth in the then applicable requirements of the PCI Security Standards Council, regarding or that identifies (or that could be used to identify) any individual, including, for example and without limitation, any individual customer name, postal address, email address, age, credit, debit or other payment card information, social security numbers and any other information or combination of information that would make the identity of the individual easily traceable or that would allow for contact of that individual. Concessionaire shall store and process the Customer Information in conformance with any commercially reasonable policies, procedures and instructions or direction provided by Manager from time to time. As between the parties, all Customer Information shall be owned solely and exclusively by Manager (on behalf of the Authority, its tenants and any Event promoter) and shall be deemed proprietary to, and the confidential information of, Manager, the Authority, its tenants or Event promoters, as the case may be.

ARTICLE VI

Additional Duties of Concessionaire

6.1 Management of Operations.

(a) Concessionaire shall manage and operate all of its operations in a first class, professional manner so as to ensure that it will provide consistent, prompt and courteous Food and Beverage Services and Merchandise Services to the public in accordance with all Legal Requirements, this Agreement, the policies and procedures issued by the Authority or Manager relating to Food and Beverage Services, Merchandise Services, the general operating procedures of the Authority, and all applicable rules, regulations and policies implemented, from time to time, by the NFL. Concessionaire shall at all times maintain a sufficient number of qualified personnel at the Stadium for the performance of all of Concessionaire’s obligations under this Agreement, including but not limited to the obligations expressly set forth in this Article VI. Concessionaire shall cause the members of the Management Team to attend meetings to be scheduled by Manager at the Stadium from time to time during the Term to review the Food and Beverage Services operations and Merchandise Services operations at the Stadium and to implement Manager’s reasonable recommendations and directives for improving such operations.

(b) Without limiting any other obligation of Concessionaire under this Agreement, for each Event, Concessionaire shall ensure that: (i) points of service are open and fully staffed as mutually agreed by Manager and Concessionaire, (ii) at a minimum, (A) there are not less than three (3) attendants in the Team Suite, (B) there is not less than one (1) attendant in each Owners Suite, (C) there is not less than one (1) attendant for every two (2) remaining Suites, (D) there are such number of attendants in the Club spaces as reasonably directed by Manager, and (E) there is not less than one (1) vendor selling Refreshments for every one thousand guests in the seating bowl at all Events, and (iii) concession stands are staffed to enable each customer to be served, on average, within sixty seconds of ordering at a portable cart service counter and within sixty seconds of ordering at any permanent concession stand service counter. Concessionaire shall submit in writing to Manager the anticipated staffing levels and active points of service for each Event not less than one week prior to such Event and an updated schedule of the staffing levels not less than twenty four (24) hours prior to such Event. Manager shall have the exclusive right to approve specific staffing levels at each location of the Stadium for Events, and Concessionaire shall make such modifications to its staffing levels as Manager may reasonably request. Staffing levels in the all-inclusive areas will be subject to mutual agreement between the parties, with regular reviews of the appropriateness of the staffing by the Event.

(c) Concessionaire shall pay promptly all authorized bills, payroll and other expenses incurred in connection with its operations and pursuant to this Agreement.

(d) Concessionaire shall pay when due all license fees, taxes and all retail sales taxes on the products or services which Concessionaire provides hereunder or Concessionaire's rights or interest hereunder, including all federal, state and local taxes, workers' compensation payments, social security, unemployment insurance, payroll and other taxes with respect to products or services provided under this Agreement, but shall not pay taxes related to real property or possessory interests.

(e) Concessionaire shall provide all necessary working capital and perishable and non-durable inventory required for the Food and Beverage Services, including but not limited to Refreshments, paper products, and start-up and design costs, and Concessionaire shall provide all necessary working capital and inventory required for the Merchandise Services.

(f) Concessionaire shall comply with Stadium operating policies and directives established and as modified from time to time by the Authority, Manager, the designees of either of them, or the NFL.

6.2 Personnel.

(a) Concessionaire shall hire, employ, train, supervise and discipline any and all persons necessary to operate the Food and Beverage Facilities and Merchandise Facilities and to provide the Food and Beverage Services and Merchandise Services in accordance with the terms of this Agreement and shall use its best efforts to ensure that its employees continually practice the high standards of cleanliness, safety, courtesy and

service customarily followed in the conduct of a first-class operation. Concessionaire shall use its best efforts to select qualified, competent and trustworthy employees. Any and all persons who furnish services under this Agreement, whether or not employed by Concessionaire prior to the Effective Date, are exclusively employees, subcontractors and/or non-affiliated third parties employed by Concessionaire and are not employees of the Authority or Manager. Such persons furnishing services under this Agreement shall be subject to appearance standards mutually acceptable to the parties hereto and as permitted by Legal Requirements, and shall wear, at all times while working at the Stadium, neat and clean uniforms provided by Concessionaire and approved by Manager. Such uniforms shall bear such lettering and insignia (including the name and logo of the Stadium, the Stadium naming rights sponsor, if required, and the location of the employee's assignment (e.g., a Club Area or Suite area) as Manager may require and shall be of a design reasonably satisfactory to Manager. Concessionaire shall cause its employees to conduct themselves in a professional and courteous manner, and not to unreasonably disturb or interfere with Events. Manager and Concessionaire acknowledge that Concessionaire is an independent contractor for all services required to be performed under this Agreement. Manager shall not have control over the method or manner in which Concessionaire's employees perform the services required under this Agreement. All liabilities that may arise as a result of Concessionaire's status as an employer shall be borne exclusively by Concessionaire, including liability relating to payments required to be made under, and documents to be filed with respect to, the Federal Insurance Contribution Act and the Federal Unemployment Tax Act or any similar federal, state, City or local legislation or other Legal Requirements. Concessionaire shall at all times maintain accurate records of the names, addresses, employment history and other legal identification of those to whom Concessionaire issues employee badges, uniforms or other identifying items to ensure the proper identification and legal working status of Concessionaire's employees at the Stadium. Concessionaire shall conduct such background and other security screening checks on its employees as Manager shall reasonably request from time to time and shall not knowingly hire any person who has been previously terminated by the Authority, Manager or any of their respective Affiliates or contractors. Upon Manager's request, and so long as any such action shall not be contrary to law, Concessionaire shall immediately remove from the Stadium any employee, agent, contractor or invitee of Concessionaire and permanently revoke such person's access credentials.

(b) Concessionaire shall employ the Management Team, identified herein on **Exhibit H**, on a full-time, year round basis and shall cause the members of the Management Team to be located at the Stadium. Concessionaire shall cause the members of the Management Team to be at the Stadium during all Events and during reasonable business hours. All changes in the Management Team shall require the prior written approval of Manager. Concessionaire shall, within fifteen (15) business days of the removal of a Management Team member, provide Manager with the resumes of not less than three (3) suitable candidates to replace the removed employee. The Management Team shall, on and following the Effective Date and during the Term, be exclusively responsible for the provision of services under this Agreement and shall hold no job-related responsibilities relating to any other venue or site without Manager's prior written approval.

(c) Concessionaire shall conduct regularly scheduled employee training programs for all of its employees working in the Stadium (the “**Employee Training Programs**”), a detailed summary of which appears as **Exhibit I** hereto. The Employee Training Programs will be mandatory for all employees, agents and subcontractors of Concessionaire and, at a minimum, will include alcohol management techniques, customer service, guest interaction, cash handling, security procedures and specific job skills training, and will be conducted in such frequency as may be approved or directed by Manager. Concessionaire shall develop additional modules for each premium area position, including, at a minimum, banquet and serving technique, buffet and display arrangement, and wine and beverage service. The programs shall be prepared and conducted by personnel specialists and must be approved by Manager in advance. Concessionaire shall cause all Employee Training Programs to be periodically reviewed (no less frequently than annually) and updated to the extent necessary to maintain the standard of service requested by Manager. All employees of Concessionaire shall also be required to attend such policy and procedures training sessions as may be held by the Authority and Manager, as well as the Stadium orientation tour and training conducted by the Authority or Manager. Concessionaire shall not permit any employee, agent or subcontractor to work at an Event prior to his or her completion of the prescribed training sessions and Employee Training Programs.

(d) In performing under this Agreement, Concessionaire shall comply with all applicable Legal Requirements in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

(e) Concessionaire shall promptly notify Manager upon voluntary or involuntary termination of employment of its employees or contractors and ensure that each such terminated individual is denied further access to the Stadium. In no event shall the Authority or Manager be liable, and Concessionaire shall indemnify and hold the Authority and Manager harmless, for Concessionaire’s record keeping (or lack of record keeping), including the legal identification and working status of the Concessionaire’s employees and subcontractors, or for any other matters relating to Concessionaire’s employees or subcontractors.

6.3 Licenses and Permits.

(a) Concessionaire shall obtain on or before the Commencement Date and shall thereafter maintain throughout the Term, at its cost and in its name, all licenses and permits necessary for the operation of the Food and Beverage Services and the sale of Refreshments and Alcoholic Beverages at the Stadium, permits for the sale of Merchandise at the Stadium and any and all other licenses and permits required to be obtained by Concessionaire by the terms of the Stadium Lease.

(b) Manager shall cooperate with Concessionaire in connection with applications submitted by Concessionaire for any and all licenses and permits and renewals thereof. Concessionaire shall not submit any application for a permit or license without first providing Manager a reasonable opportunity to review it.

(c) Concessionaire shall furnish Manager with copies of such licenses and permits and renewals thereof as are physically maintained at the Stadium, and all other licenses or permits otherwise required under Legal Requirements or this Agreement, and shall surrender all licenses and permits to Manager upon termination of this Agreement.

6.4 Compliance with Laws, Policies and Programs.

(a) In connection with the exercise of its rights and the performance of its obligations hereunder, Concessionaire shall in good faith comply and faithfully observe all Legal Requirements (including all fire, building, health, sanitation and environmental codes and regulations and liquor control laws and regulations).

(b) With respect to the sale of Alcoholic Beverages, Concessionaire shall:

(i) enforce all Legal Requirements, including all State California, County of Santa Clara and City of Santa Clara laws, rules, regulations or orders relating to the premises licensed pursuant to this Agreement and enforce all rules, regulations or orders of the California Department of Alcoholic Beverage Control or other regulatory agencies relating to the licenses; and

(ii) take any and all actions necessary to enable and to ensure compliance with all Legal Requirements concerning the sale and consumption of Alcoholic Beverages in the Service Areas and Food and Beverage Facilities.

(c) The decision to serve or refuse service of Alcoholic Beverages to any individual at an Event and in an area at which Alcoholic Beverages may be served in accordance with the terms of this Agreement shall be the sole responsibility of Concessionaire.

6.5 Failure to Maintain Licenses and Permits.

In the event that Concessionaire fails to obtain or maintain in full force and effect any material license or permit necessary for the operation of the Food and Beverage Services (including the service of Alcoholic Beverages), for the operation of the Merchandise Services or for the performance of its other obligations under this Agreement, including upon a suspension applicable to an Event or revocation thereof, (a) Manager shall have the right (but no obligation) to perform or have another Person perform the applicable obligation without compensation to Concessionaire and, whether or not Manager exercises that right or its termination rights, Concessionaire shall be responsible to Manager for the loss of income and all other damages, including consequential and special damages, suffered by Manager as the result of Concessionaire's breach of this Agreement, including any loss of income; and (b) Concessionaire shall be considered in material breach of this Agreement, and Manager may, in addition to any other rights or remedies it may have, immediately terminate this Agreement.

6.6 Hours of Operation.

Subject to the prior approval or direction of Manager and to the provisions of Section 3.1, Concessionaire shall (a) open and operate the Food and Beverage Facilities and Merchandise

Facilities sufficiently prior to the opening of the Stadium to the public for each Event and, as requested, each Catered Event in order to properly prepare and serve Refreshments, and (b) provide Food and Beverage Services and Merchandise Services from the time of such opening until each such Event ends, including the requirements for any pre-Event functions and post-Event functions, or such further time as may be reasonably necessary to adequately meet public demand, subject to Manager's requirements regarding the sale of Alcoholic Beverages and compliance with the Stadium Lease and Stadium Management Agreement. Concessionaire shall cooperate with Manager in the creative and efficient operation of the Food and Beverage Facilities and Merchandise Facilities to attract Stadium guests to participate in pre-Event and post-Event activities.

6.7 Special Events.

Concessionaire shall modify its operations at Manager's request to accommodate a particular Event or Catered Event when such modifications are reasonably required to obtain or stage such Event or Catered Event.

6.8 Cleaning and Refuse.

(a) Concessionaire shall keep and maintain in a clean, sanitary, hygienic and orderly fashion, and in connection with such maintenance, repair and replace (except with respect to capital repairs to Leasehold Improvements), consistent with prevailing policies, procedures and standards for the Stadium, (i) all Food and Beverage Facilities, Merchandise Facilities, Service Areas (including all table tops, bars, and the like) and condiment stands and (ii) all uniforms, Smallwares and Equipment. In furtherance of the foregoing, Concessionaire shall, among other things, provide sterilization services for all reusable Smallwares and tabletops and other surfaces upon which Refreshments items are eaten, placed, prepared or stored. Concessionaire shall complete the cleaning of the subject areas in the time frame following an Event or Catered Event. Concessionaire shall maintain all Food and Beverage Facilities as prescribed herein, including, but not limited to maintaining fire suppression systems, changing filters on all equipment and air scrubbers, and cleaning the grease interceptors, stove hoods, fans, ducts and grease traps, drain systems, floor sinks and sanitary traps and its storage areas using approved and accepted maintenance and cleaning techniques, and at regularly scheduled intervals, approved or designated by Manager, and in all events to a level sufficient to comply with and protect warranties and comply with supplier agreements and otherwise promote the commercially reasonable useful life of such items. Manager may require the use of its in-house maintenance staff for such maintenance activities if the use of such personnel does not void any manufacturer or similar warranty and provided that such work can be performed in a competent manner at competitive market rates on a timely basis, and any use of Manager's in-house maintenance staff for such maintenance activities shall be charged to Concessionaire at then prevailing rates. Concessionaire shall abide by any and all labor agreements in effect at the Stadium for all applicable work performed under this Agreement.

(b) Concessionaire shall provide consistent janitorial service to the Food and Beverage Facilities, Merchandise Facilities, Services Areas (including all table tops, bars,

and the like), condiment stands, and the Equipment, and shall otherwise keep the Food and Beverage Facilities, Merchandise Facilities, Services Areas, condiment stands and Equipment in a neat, clean, sanitary, hygienic and safe condition satisfactory to Manager and in compliance with all Legal Requirements. Concessionaire shall be responsible for all sanitation and maintenance of the Food and Beverage Facilities, Merchandise Facilities, Services Areas, condiment stands and Equipment. Concessionaire shall comply in all respects with the Santa Clara Business and Commercial Recycling Program, as the same shall be amended from time to time, and shall, in partnership with Manager, prepare and implement a plan (the “**Waste Reduction and Recycling Plan**”) that targets 100% diversion of solid waste from all Events and Catered Events, including composting or other diversion of compostable organics. Concessionaire shall train its employees in the methods and objectives of the Waste Reduction and Recycling Plan and shall direct and cause its employees to not dispose of or discharge recyclables, compostables, waste, garbage, refuse or Hazardous Substances in any area in or outside the Stadium other than in areas specifically designated therefor. Concessionaire shall be responsible for expeditiously collecting, separating, recycling, bagging and delivering recyclables, compostables, trash and garbage generated within the Food and Beverage Facilities, Merchandise Facilities, Service Areas and all applicable adjacent areas to such areas within the Stadium that Manager shall designate from time to time, and Concessionaire shall cause its employees to deposit such recyclables, compostables, trash and garbage in appropriate containers or equipment in the locations specified by Manager, whereupon Manager shall be responsible for the further delivery and ultimate disposal of such recyclables, compostables, trash and garbage; provided, Concessionaire shall be responsible to pay, and agrees to pay, all charges for delivery and ultimate disposal of such recyclables, compostables, trash and garbage relating to its operations, and shall be invoiced monthly for such delivery and disposal, including any extraordinary charges and costs for special services. Concessionaire shall purchase any and all special and other equipment necessary for its operations to be connected to the Utility Systems, provided that all such equipments must be compatible with the Utility Systems. In addition, Concessionaire shall separate, compact and recycle its trash on non-Event days. Concessionaire shall take all action necessary to: (i) ensure that all such recyclables, compostables, trash and garbage are placed in bags and/or the appropriate receptacles or other containers (which receptacles and containers shall be provided by Concessionaire) that are durable for transport and not easily susceptible to breakage or leakage, (ii) notify Manager when the centralized Stadium recyclable, compostable and garbage receptacles are full and need to be emptied, (iii) prevent recyclables, compostables and trash from piling up around the outside of the receptacles and from using the Stadium receptacles in lieu of transferring the recyclables, compostables and trash to the required locations as described herein and (iv) use the Equipment in such a manner as to ensure that recyclables, compostables and trash do not spill out prior to or during transport. Concessionaire agrees to and is fully committed to participating in the separation and recycling of refuse in the Stadium and to minimize the amount of non-recyclable and non-compostable refuse to be removed from the Stadium. All recyclable, compostable, trash and garbage receptacles within the areas controlled by Concessionaire shall be provided by Concessionaire and shall be cleaned and sanitized by Concessionaire in accordance with the standards reasonably set from time to time by the Authority and/or

Manager, to ensure a consistently high standard of sanitation meeting or exceeding the standards set by the Santa Clara County Public Health Department and/or the City. Concessionaire will comply with all federal, state and local recycling and composting requirements and such recycling and composting programs implemented from time to time by the Authority and/or Manager and all rules and regulations applicable to the Stadium's adherence to, and/or certification by, the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. Concessionaire shall indemnify Manager and make Manager whole for any out of pocket costs incurred by Manager which are solely attributable to any negligence or intentional act or omission of Concessionaire or any of its employees with respect to the recycling or trash removal program, including the expense of returned or rejected recyclable, compostable and trash removals due to mixing or contaminating the trash flow in violation of Legal Requirements or specific directives provided to Concessionaire in writing as part of the Stadium's sustainability and recycling, composting or trash removal programs. Manager will determine the type, appearance and location of the recyclable, compostable and trash receptacles.

(c) Concessionaire agrees not to use Hazardous Substances at the Stadium, except in accordance with applicable Legal Requirements, and agrees to indemnify, defend, and hold the Authority, Manager, their respective Affiliates, all tenants of the Stadium and all Event promoters harmless for all losses, costs, damages, liabilities and expenses arising out of its use, generation or storage of Hazardous Substances at the Stadium.

(d) Concessionaire shall engage the services of an exterminator approved or designated by Manager to control vermin and pests within the Food and Beverage Facilities not less frequently than on a monthly basis; provided, however, that at Manager's sole option, Manager shall have the right to assume responsibility for exterminator services in the Food and Beverage Facilities, in which case it may bill Concessionaire for such services at the cost of such services.

(e) Concessionaire shall immediately clean up any spills caused by its employees in Common Areas used by Concessionaire to transport Refreshments, trash or garbage.

(f) Concessionaire shall maintain all Equipment, Smallwares, and Food and Beverage Facilities and Merchandise Facilities (including Leasehold Improvements) following the manufacturer suggested maintenance protocol and any requirements of the Authority or Manager, as adjusted from time to time, including the use of Computerized Maintenance Management Software ("CMMS") to schedule, track and memorialize the preventative and reactive maintenance on each element. Concessionaire shall provide and set up the CMMS, and train its employees to use the CMMS, all at no cost to Manager. Upon request by Manager, Management Team shall assist in the set up of the CMMS system with respect to Concessionaire's operations, including, but not limited to the placing of inventory and coded decals on each element and the recording of all work orders and maintenance records of all work performed within Manager's master CMMS data base. Concessionaire shall maintain through the proper use and execution of the

CMMS system the maintenance, service, and inspection logs/records and shall provide copies thereof to Manager upon request.

6.9 Deliveries.

All deliveries of Refreshments and other items used or sold by Concessionaire at the Stadium shall be made only during normal operating hours (as communicated to Concessionaire by Manager) and shall be made through a gate or gates designated by Manager. Concessionaire shall prevent the entry of any unauthorized persons into the Stadium through such gate or gates when open for purpose of such deliveries. Deliveries shall be scheduled to avoid the day or evening of, or otherwise conflicting with, an Event to the greatest extent possible. Concessionaire shall follow Manager's policies and procedures of the delivery and acceptance of goods into the Stadium. Concessionaire agrees to expeditiously and with commercially reasonable methods take delivery of and deliver within the Stadium the Refreshments and other items from the assigned unloading areas.

6.10 Liens.

Concessionaire shall at all times protect and keep the Food and Beverage Facilities, Merchandise Facilities and Equipment and all other areas of the Stadium free and clear of all mechanics and other liens, attachments, encumbrances, or claims arising out of Concessionaire's operations hereunder, its performance under this Agreement and/or its use of the foregoing. In the event any such lien is placed, or such attachments, encumbrances or claims created or made, Concessionaire shall cause their prompt removal, and if necessary, shall provide the party asserting such lien, attachment, encumbrance or claim, or a court of competent jurisdiction, with a performance bond or other reasonable security in scope and amounts necessary to cause such removal.

6.11 Products and Prices.

(a) Concessionaire agrees that it will have available at all times sufficient quantities and varieties of wholesome Refreshments. Title to the Refreshments shall remain vested in Concessionaire. Consumables shall be first quality, wholesome, fresh and pure, and all products on hand shall be stored and handled with due regard for sanitation. Prices, portions, sources of supply, quality, product selection and specific brands shall be subject to Manager's prior approval, provided that the use of a particular brand does not conflict with or violate any Legal Requirements or Stadium Right(s). Manager shall have the right, in its sole discretion, to cause Concessionaire to change prices and to run promotions directed at consumers which may include the sale of Refreshments.

(b) Fixed menus and menu boards (static or electronic), to feature prices, graphics and theme elements for the Food and Beverage Services, will be installed in conspicuous places in or adjacent to the Food and Beverage Facilities and Service Areas. Concessionaire shall be solely responsible for programming and maintaining all Concessions-related menus, graphics, and animations used within the Stadium Internet Protocol Television ("IPTV") system, subject to the approval of Manager of any and all

such menus, graphics, and animations. Concessionaire shall coordinate its IPTV programming with all other users of the IPTV system and as otherwise directed by Manager, including but not limited to the periodic expression of graphics, animations and other advertising material. Concessionaire shall produce and maintain in each Suite at least one printed menu (in a form approved or designated by Manager), and provide additional copies for Suite holders, and shall produce and maintain in each Club Area an appropriate number of printed menus (in a form approved or designated by Manager).

(c) Prior to each NFL season during the Term, Concessionaire shall provide a tasting of all Refreshments proposed to be offered in the Suites for the upcoming season at a reception for all Suite holders and media partners to be held at a time and place in the Stadium designated by Manager. These Refreshments shall be provided by Concessionaire at no cost to the Suite holders. Manager and Concessionaire shall consider modifications to the proposed menu based upon the responses of the Suite holders at the reception.

(d) Except as otherwise provided in this Agreement, all Refreshments will be served from and in serviceware and containers approved by Manager.

6.12 Branded Products; Licensed Products.

(a) Manager shall have the right to require Concessionaire to sell exclusively certain designated brands of specific types of Branded Products and to otherwise take innovative action to increase sales and/or improve customer satisfaction. Concessionaire acknowledges that nothing in this Agreement grants Concessionaire any right to sell sponsorships or advertising space at the Stadium or any signage related thereto or to take any action that would violate any provision of the Stadium Rights. All sums paid or payable by the provider or supplier of a Branded Product specified by Manager shall be the sole property of Manager. All providers or suppliers of Branded Products must be able to meet industry standards for delivery, quantity, price and quality of products.

(b) Manager shall have the right to require Concessionaire to sell certain Licensed Products pursuant to any arrangements Manager shall make with the licensor of such Licensed Products, unless as otherwise indicated in Section 5.1(a). All sums paid or payable by the provider or sponsor of Licensed Products shall be the sole property of Manager. All providers or sponsors of Licensed Products must be able to meet industry standards for delivery, quantity and quality of products. All revenues derived from Licensed Products shall be included in Gross Receipts. At Concessionaire's request, Manager, in its sole discretion, may approve for sale other "name brand" products, but such products shall not be considered Licensed Products for the purpose of this Agreement, and Concessionaire shall be solely responsible for any charges related to such "name brand" products. All sums paid or payable by the provider or sponsor of such "name brand" products shall be the sole property of Manager.

6.13 Annual Plans; Approval Procedure.

Not less than sixty (60) days prior to the commencement of each Fiscal Year during the Term, Concessionaire shall provide Manager with: (i) its financial business plan, in a form reasonably acceptable to Manager, including projected operating budgets, Direct Operating Costs and proposed purchases of Equipment, uniforms and Smallwares, for the ensuing Fiscal Year, (ii) its Food and Beverage Services plan for such Fiscal Year, including the menu, portion size, dietary information, branding and pricing schedule for the Stadium by type of location, or as otherwise directed by Manager, and (iii) its Merchandise Services plan for such Fiscal Year, including the branding and pricing schedule for the Stadium by type of location, or as otherwise directed by Manager. Manager shall notify Concessionaire of changes it desires within thirty (30) days following receipt of Concessionaire's financial business plan, Food and Beverage Service plan, or Merchandise Services plan, as applicable, and Concessionaire shall promptly make all such changes. Any anticipated variance in a budgeted line item that exceeds the greater of: (i) \$25,000, or (ii) ten percent (10.0%) of the applicable line item, shall be promptly reported to, and subject to the prior approval of, Manager.

6.14 Alterations; No Rights in Facilities.

(a) Concessionaire shall not alter or add to the Food and Beverage Facilities, Merchandise Facilities, Service Areas or Equipment or make any material installations without having first obtained the written consent of Manager. All permitted alterations and installations shall (i) be performed by qualified and experienced contractors that meet all Legal Requirements, adhere to all applicable policies and procedures of the Authority and are reasonably acceptable to Manager, (ii) conform to and be made in accordance with all applicable Legal Requirements using first quality materials and workmanship and otherwise consistent with any standards established by the Authority and/or Manager, and (iii) be effected during times that do not interfere with any Events, Catered Events or other operations at the Stadium. [Subject only to the Stadium Lease,] Manager reserves the right to make and/or cause to be made all changes, alterations, additions, improvements, repairs or replacements to the Stadium as the Authority and/or Manager deems necessary or desirable. Manager shall use reasonable efforts to minimize interference with Concessionaire's use of the Food and Beverage Facilities and Merchandise Facilities during the making of such changes, alterations, additions, improvements, repairs or replacements, provided that neither the Authority nor Manager shall have any obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever.

(b) Notwithstanding anything to the contrary in this Agreement, the location of all Food and Beverage Facilities, Merchandise Facilities and Service Areas, whether temporary or permanent, shall be determined by Manager and may be changed by Manager from time to time. Concessionaire shall not acquire any rights to such areas or to any Equipment, which shall remain the sole property of Manager, except as may be set forth in this Agreement.

6.15 Advertising Restrictions.

(a) Concessionaire acknowledges that all advertising rights at the Stadium belong to the Authority and the tenants of the Stadium. Concessionaire shall not, without the written approval of Manager, (i) advertise any brand names in the Stadium; (ii) use the name or logo of the Stadium on any material; (iii) place advertising of any kind on Concessionaire's or a third party's equipment; (iv) use the name or logo of Concessionaire at the Stadium or in materials that refer to the Stadium; or (v) advertise in or about the Stadium in any manner or form, or elsewhere with respect to its activities at the Stadium.

(b) Manager may require Concessionaire to use specially designed logoed uniforms, sales material, printed and IPTV menus, cups, napkins, stationary and other materials, including but not limited to concession signage; in the event the cost of any of such items is greater than the cost of a standard item of that category, Manager agrees to pay the incremental difference in such costs, subject to Manager's receipt of sufficient evidence of such costs. Without limiting the generality of the preceding sentence, as directed (and approved) by Manager, all Smallwares used throughout the Stadium (including Club Areas) shall bear the name, logo or marks of the Stadium naming rights sponsor, and all Smallwares used in a particular Club Area (or other Service Area, as designated by Manager) shall bear the name, logo or marks of the applicable Club (or other) sponsor. Manager shall provide any required logo design to Concessionaire. Without limiting Manager's right of approval, Concessionaire shall include pre-approved references to (or as instructed by) Manager in all media or publicity relating to the Stadium or the Food and Beverages Services. Concessionaire must provide printed and IPTV Catered Event and Suite menus approved by Manager, utilizing the Authority's and, for Manager (and its Affiliates') events, Manager's (or its Affiliates') logos, used exclusively for the Stadium, in sufficient quantities for use by Manager's and Concessionaire's marketing staffs.

(c) Except as provided in Section 6.15(b), Concessionaire shall have no right to use the Stadium Rights or trademarks, symbols or trade names of the Authority, Manager or their respective Affiliates, or Stadium tenants or their Affiliates or other Event performers directly or indirectly, in connection with any production, promotion, service or publication, without the written approval of Manager.

(d) Notwithstanding anything herein to the contrary, the Authority and the Stadium tenants may sell advertising and sponsorship packages for the Stadium, which may include product availability rights at the Stadium, where legally permissible. Subject to Section 6.12, such rights may be granted in connection with Branded Products, Licensed Products or otherwise. Accordingly, Manager reserves the final right of approval of Concessionaire's sources of product supply, and Concessionaire shall honor all rights granted by the Authority or Manager to their respective advertisers and sponsors; in the event the cost of any of such products is greater than the cost of a standard product of that category, Manager agrees to pay the incremental difference in such costs, subject to Manager's receipt of sufficient evidence of such costs.

6.16 Website.

Concessionaire shall assist the Authority, Manager and their respective Affiliates and all Stadium tenants in developing and maintaining food and beverage sections in their respective websites. Such assistance shall include, without limitation, (a) creating effective means of promoting the sale of Refreshments at Events and the use of the Stadium for Catered Events, (b) providing access to menus in different areas of the Stadium, (c) providing a means to book Catered Events online and through other modes of then-current information technology, and (d) providing a means for Suite licensees to place Refreshment orders online and through other modes of then-current information technology prior to Events.

6.17 Safety Plan.

Not less than sixty (60) days prior to the Commencement Date, Concessionaire shall submit to Manager for its approval a written plan describing Concessionaire's procedures for the (i) transport of materials and supplies, such as carbon dioxide bottles and beer kegs, during Events, including, without limitation, the routes and locations for movement and storage, and methods of handling such materials and supplies; (ii) storage of materials and supplies in the Stadium; and (iii) use and maintenance of all motorized vehicles of any type which are owned or operated by Concessionaire in the Stadium, including, without limitation, the type of fuel used to power such vehicles, maximum speeds of operation, routes and locations of travel and storage, maintenance schedules and procedures, and training procedures for Concessionaire personnel using such vehicles. Concessionaire shall make such modifications to any written plan covered by this Section 6.17 as Manager shall reasonably request from time to time.

6.18 Addition of Professional NFL Team.

Concessionaire recognizes and acknowledges that the Authority and Manager reasonably anticipate the addition of additional NFL franchises as resident or "home" teams at the Stadium (each an "**Additional Team**"). Concessionaire acknowledges and agrees that it will exercise its best efforts and act in good faith in cooperating and assisting the Authority and Manager in the promotion, development, and establishment of additional NFL franchises resident in the Stadium, including in amending Concessionaire's Annual Minimum Payment, and other obligations established in this Agreement to reflect such new commercial circumstances as may arise in connection with any such addition, upon the request of Manager.

6.19 Ethical Standards for Concessionaire.

Concessionaire represents and warrants to and covenants with Manager as of the Effective Date that Concessionaire, or its legal and authorized representative charged with such matters, has: (A) read Exhibit J, entitled "**Ethical Standards for Concessionaire**"; and (B) in evidence of its understanding of the terms of such Exhibit J and in connection with the execution and delivery of this Agreement, separately executed and delivered Exhibit K, entitled "**Affidavit of Compliance with Ethical Standards.**"

ARTICLE VII

Indemnification and Insurance

7.1 Indemnification.

(a) Concessionaire shall indemnify, defend and hold harmless the Authority, Manager and the Additional Indemnitees, and their respective officers, directors, managers, members, partners, owners and employees from and against all losses, costs, suits, actions, claims, damages, amounts paid in settlement, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "**Losses**"), resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of (i) any breach by Concessionaire under this Agreement, (ii) the use or occupancy of the Stadium or Outside Areas by Concessionaire or its employees, agents or contractors, (iii) any activity, inactivity, work or thing done or permitted by Concessionaire or its employees, agents or contractors in or upon the Stadium or Outside Areas, including the performance of the Food and Beverage Services or Merchandise Services, or (iv) any injury or damage to any Person or to the property of any Person caused by any action or omission of Concessionaire or its employees, agents or contractors.

(b) Manager shall indemnify, defend and hold harmless Concessionaire and its officers, directors, managers, members, partners, owners and employees from and against all Losses resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of any (i) injury or damage to any Person or to the property of any Person caused by the negligence or willful misconduct of Manager or its employees, agents or contractors (other than Concessionaire and its Affiliates) and (ii) material breach by Manager of any of its obligations under this Agreement.

(c) If any claim, demand, action or proceeding is made or commenced by any third party (a "**Third Party Claims**") against any party that is entitled to be indemnified with respect thereto under this Section 7.1 (the "**Indemnified Party**"), the Indemnified Party shall give the party obligated to provide the indemnity (the "**Indemnifying Party**") prompt notice thereof; the failure to give such notice shall not affect the liability of the Indemnifying Party under this Agreement except to the extent the failure materially and adversely affects the ability of the Indemnifying Party to defend the Third Party Claim. The Indemnifying Party shall have the right to assume the defense and resolution of the Third Party Claim, provided that (i) the Indemnified Party shall have the right to participate in the defense of the Third Party Claim at its own expense through counsel of its choice (control of the defense will remain with the Indemnifying Party), (ii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that would require any act or forbearance on the part of the Indemnified Party or which does not unconditionally release the Indemnified Party from all liability in respect of the Third Party Claim or would otherwise bring dishonor or disrepute upon Authority, Manager, any of their respective Affiliates, without the prior written consent of the Indemnified Party, and (iii) the Indemnified Party may undertake the defense of the

Third Party Claim, at the Indemnifying Party's expense, if the Indemnifying Party fails to (A) assume the defense within ten (10) business days after notice from the Indemnified Party or (B) diligently prosecute the defense.

7.2 Concessionaire's Insurance.

(a) Throughout this Section 7.2, and as otherwise used in the Agreement, capitalized, insurance-related terms are intended to have those respective meanings as are used consistently throughout the commercial insurance industry in the United States. Except as otherwise set forth in this Section 7.2, on or within a commercially practicable time following the Effective Date and prior to commencing any work or activity at the Stadium pursuant to this Agreement, Concessionaire shall obtain and thereafter continue to maintain until the end of the Term the following insurance coverage, which shall be in form and substance reasonably satisfactory to Manager:

Type of Insurance	Minimum Liability Limits
1. Workers' Compensation Insurance	As required by applicable law
2. Employer's Liability Insurance	\$1,000,000 per occurrence \$1,000,000 per employee \$1,000,000 annual aggregate
3. Commercial Automobile Liability Insurance	\$2,000,000 per occurrence
4. Commercial General Liability Insurance	\$5,000,000 per occurrence \$10,000,000 annual aggregate
5. Liquor Liability/Dram Shop Liability Insurance	\$1,000,000 per occurrence
6. Environmental Liability Insurance	[\$5,000,000] per occurrence
7. Crime Insurance	\$5,000,000 per occurrence
8. Event Cancellation Insurance	[\$5,000,000] per occurrence
9. Acts of Terror	Liability and Property coverages shall provide coverage for acts of terrorism to the broadest extent possible, as available under the Terrorism Risk Insurance Act and/or stand-alone policies providing such coverage
10. All Risks Property Insurance	As required to replace (on a replacement cost basis) all of Manager's personal property at the Stadium
11. Umbrella Liability Insurance	\$50,000,000 per occurrence

The limits of liability required for Commercial General Liability, Liquor Liability and Dram Shop Liability and Umbrella Liability may be satisfied by a combination of various primary and umbrella limits. Any such combination must be fully disclosed to and approved by Manager. Approval by Manager of any such combination of policies shall not release Concessionaire from its obligations regarding required coverage and limits related thereto.

(b) Concessionaire shall deliver to Manager at least thirty (30) days prior to the Commencement Date, and again at least thirty (30) days prior to the expiration date of any then existing policies, (i) a certificate or certificates evidencing that such insurance coverages are in effect for a period of not less than one (1) year from the date of such certificate, and (ii) a certificate or certificates of insurance (or copies of policies, if requested by Manager) naming Manager and each Indemnified Party (also referred to as an "Additional Indemnitee") as additional insureds, using Insurance Services Office ("ISO") Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent. All such policies shall contain a waiver of the insurer's right of subrogation in favor of the Additional Insureds (including their respective Affiliates, agents, representatives, directors, partners, owners, officers, and employees). Concessionaire shall, for any subcontractor or independent contractor engaged in furtherance of its obligations under this Agreement, provide evidence to Manager that such subcontractor or independent contractor is compliant with the insurance requirements enumerated herein prior to commencement of work or delivery of services by any such party. Concessionaire agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. All policies shall contain a clause providing that such policies shall not be cancelled or any material provisions thereof amended adversely to the named insureds unless the insurance carrier shall have endeavored to give Manager at least thirty (30) days' advance written notice of such termination or of any such proposed amendment. If any policy expires or is cancelled, Concessionaire shall immediately furnish a new certificate evidencing renewal or replacement.

(c) Employer's Liability Insurance, Commercial Automobile Liability Insurance, Commercial General Liability Insurance, Environmental Liability, and Liquor Liability/Dram Shop Liability Insurance shall be provided on a standalone basis with no deductibles or deductibles as reasonably approved by Manager.

(d) Commercial General Liability Insurance, providing coverage at least as broad as ISO form CG 00 01, including coverage for (i) bodily injury and property damage, (ii) personal and advertising injury, (iii) products and (iv) completed and premises operations, all on an occurrence basis. Such policy shall not contain any exclusions except those customarily contained in such policies. Additional insured status shall expressly apply to products and completed operations as well as to premises operations coverage. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

(e) Commercial Automobile Liability Insurance, providing coverage at least as broad as ISO form CA 00 01, including bodily injury and property damage for all owned, non-owned, or hired vehicles used by Concessionaire in performing its obligations under this Agreement.

(f) Workers' Compensation Insurance provided under the terms of this Agreement shall comply with all statutes, rules and regulations of the State of California, and shall cover employees, volunteers, temporary workers, and leased workers. To the extent permitted by law, an Alternate Employer Endorsement shall be endorsed to the policy and shall be evidenced on any required Certificate of Insurance. The indemnification and hold harmless obligations of Concessionaire included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Concessionaire or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

(g) Employer's Liability Insurance provided under the terms of this Agreement shall cover all employees, volunteers, temporary workers, and leased employees.

(h) Crime Insurance provided under the terms of this Agreement shall apply to acts of employee dishonesty and theft both inside and outside the Stadium, and shall provide coverage to funds and property held by Concessionaire on behalf of Manager and/or the Authority.

(i) Environmental Liability Insurance provided under the terms of this Agreement shall include bodily injury, property damage, and clean-up costs, including coverage for any claim, suit, or demand brought by any third party or on behalf of any governmental agency or authority, as a result of the actual, alleged, or threatened discharge, disposal, seepage, migration, release, or escape of any Hazardous Substance or pollutant. The policy shall name both Concessionaire and Authority as insureds. Any self-insured retention amounts shall be the sole responsibility of Concessionaire.

(j) All Risks Property Insurance provided under the terms of this Agreement shall include coverage in an amount sufficient to replace Concessionaire's personal property, including but not limited to: furniture, fixtures, equipment, and inventory, and shall include coverage against the perils of, but not be limited to, earthquake, flood, windstorm or other weather event, and acts of terrorism, whether committed by domestic or foreign entities, available under the Federal Terrorism Risk Insurance Act ("TRIA") and/or purchased under standalone policies; provided, however, that earthquake coverage and terrorism risk coverage shall only be required to be obtained to the extent that either such coverage is available on commercially reasonable terms.

(k) Umbrella or Excess Liability insurance provided under the terms of this Agreement will provide limits above the required Commercial General Liability, Commercial Automobile Liability, Liquor Liability/Dram Shop Liability and Employer's Liability primary limits.

(l) The insurance required by Section 7.2(a) shall be primary insurance, and each insurance policy provided by Concessionaire shall contain language or be endorsed to contain wording indicating that the insurer shall be liable for the full amount of any loss up to the total limit of liability required without the right of contribution of any other insurance coverage held by Manager or the Additional Indemnitees.

(m) Neither the Authority nor Manager, nor any Additional Indemnitee, shall be liable to Concessionaire, and Concessionaire waives all claims and rights of recovery it or any party claiming by, through or under Concessionaire may have against the Authority, Manager, the Additional Indemnitees and their respective officers, directors, managers, members, partners, owners, employees and agents, by subrogation or otherwise, for any Loss suffered or incurred by Concessionaire or such other party to the extent of any proceeds actually received by Concessionaire from any insurance policy that Concessionaire has in effect or is required to have in effect at the time of the Loss. Concessionaire shall not be liable to Manager or to the Team and their Affiliates, and Manager waives (and will cause its Affiliates to waive and will use commercially reasonable efforts to cause the Authority to waive) all claims and rights of recovery it or any party claiming by, through or under Manager or its Affiliates or, to the extent possible, the Authority, may have against Concessionaire and its officers, directors, managers, members, partners, owners, employees and agents, by subrogation or otherwise, for any Loss suffered or incurred by Manager or its Affiliates or, to the extent possible, the Authority, or such other party to the extent such Loss is actually paid from proceeds under any insurance policy that Manager or its Affiliates or the Authority has in effect or is required to have in effect at the time of the Loss. Concessionaire and Manager shall cause their insurance carriers to include provisions in the applicable policies authorizing the foregoing waivers, and Manager will use commercially reasonable efforts to cause the Authority to cause its insurance carrier(s) to include provisions in the applicable policies authorizing the foregoing waiver.

(n) All insurance carriers providing the above coverage for Concessionaire must be licensed to do so in the State of California. All such carriers must also be rated no lower than A-VIII by the most recent Best's Key Rating Guide or Best's Agent's Guide or must be otherwise acceptable to Manager.

(o) It is expressly understood and agreed by Concessionaire that the insurance requirements specified above require the use of occurrence liability forms.

(p) Concessionaire agrees that neither the Authority nor Manager, nor any Additional Indemnitee, shall be liable for, and Concessionaire, in consideration of Manager's execution of this Agreement, hereby releases Manager and such other Persons from, all claims for damage to property or business sustained by Concessionaire resulting from any act or omission of any tenants, licensees, permittees, or other occupants of the Stadium. The foregoing waiver and release is intended by Manager and Concessionaire to be absolute, unconditional and without exception.

(q) All of the limits of insurance required hereunder shall be subject to review by Manager and, in connection therewith, Concessionaire shall carry or cause to be

carried such commercially reasonable and available additional amounts as Manager may reasonably require from time to time (whether by reason of changes in the consumer price index, claims made under certain insurance policies or otherwise).

(r) Should Concessionaire fail to procure, maintain, or pay for the insurance coverage required under this Section 7.2, the Authority and Manager, individually, shall have the right, but not the duty or obligation, to procure such insurance and pay the subject premiums. Concessionaire shall have the obligation to repay the Authority or Manager, as the case may be, immediately upon demand for all sums so paid by the Authority or Manager, including any interest, costs, and expenses associated with such payments by the Authority or Manager.

(s) Manager shall have the right to obtain alternate quotes for coverages described herein and the right to cause Concessionaire to be added to its policies, if possible.

ARTICLE VIII

Assignment

8.1 Concessionaire's Assignment.

Concessionaire shall not, without the prior written consent of Manager, directly or indirectly transfer (as defined in Section 8.2) or permit any transfer of this Agreement or any of its rights, duties or obligations hereunder, and any purported or attempted transfer in violation of this provision shall be void; provided, that Concessionaire may, with thirty (30) days' prior written notice to Manager and Manager's consent, which consent may not be unreasonably withheld, conditioned or delayed, pledge, assign or transfer this Agreement to an Affiliate, or to an assignee or transferee of all or substantially all of the business of Concessionaire, or any part thereof, whether by contract (upon acceptance of such assignee's creditworthiness, such acceptance not to be unreasonably withheld, conditioned or delayed) or by operation of law, so long as there is no change in Concessionaire's executive leadership, including Desmond Hague and Bill Greathouse, in connection with, or as a result of said pledge, assignment or transfer.

8.2 Manager Assignment.

Manager may sell, assign, pledge and otherwise transfer or encumber (each, a "**transfer**") this Agreement and any or all of its rights and obligations hereunder to any other Person, including any source of or guarantor or insurer of financing or any trustee, collateral agent or other Person appointed in connection with such financing (each, an "**Assignee**"), whether by security agreement, collateral assignment, transfer or otherwise; provided, that such transfer shall not relieve Manager of its obligations under this Agreement unless such Assignee assumes in writing Manager's obligations under this Agreement. Upon reasonable prior notice from Manager, Concessionaire shall make any payments due hereunder to such Assignee and shall execute and deliver any documents that Manager or any Assignee may reasonably request to acknowledge and confirm that upon any such transfer, this Agreement will remain in full force and effect, will continue to be a legal, valid and binding obligation of Concessionaire enforceable

in accordance with its terms (subject to applicable bankruptcy or insolvency laws and general principles of equity), and that (to the extent accurate and correct) neither Concessionaire, nor to Concessionaire's knowledge, Manager is in material breach or violation of this Agreement.

ARTICLE IX

Termination

9.1 **Termination by Manager.**

Subject to the terms of Section 9.3 below, in addition to any other rights or remedies Manager may have, including without limitation under the provisions of Section 6.19 and the Exhibits relating thereto, Manager may terminate this Agreement by written notice to Concessionaire if: (a) Concessionaire fails to remit, for a period of fifteen (15) days after receipt of written notice of demand therefor, any sums due and owing to Manager under this Agreement; (b) Concessionaire fails to correct to the reasonable satisfaction of Manager any condition created or controlled by Concessionaire that, in Manager's reasonable judgment, poses a hazardous condition to occupants of the Stadium or the Outside Areas within twenty-four (24) hours after receipt of written notice from Manager; (c) subject to the last sentence of this Section 9.1, Concessionaire fails to perform any material obligation under this Agreement and such failure continues unremedied for a period of thirty (30) days after receipt of written notice from Manager of the particular failure to perform; (d) Concessionaire is placed into bankruptcy either voluntarily or involuntarily (and such involuntary proceeding is not dismissed within sixty (60) days), becomes financially insolvent, takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; (e) Concessionaire transfers or permits a transfer of this Agreement in violation of Section 8.1; (f) an audit of amounts due to Manager under Section 5.1 discloses an underpayment of more than five percent (5.0%) of the amount due; (g) Concessionaire fails to obtain and/or maintain required licenses and permits under Section 6.3; (h) Concessionaire receives an overall approval rating of less than eighty-five percent (85%) in two (2) consecutive Customer Surveys; (i) Concessionaire fails to work cooperatively and in good faith with the Authority, Manager, any of their respective Affiliates or any of subcontractors of any of the foregoing; or (j) the Stadium Management Agreement has been terminated. Concessionaire and Manager acknowledge and agree that except for the circumstances described in clause (j) of the immediately preceding sentence, termination of this Agreement by Manager pursuant to this Section 9.1 shall be "for cause." If any failure that would otherwise entitle Manager to terminate this Agreement under Section 9.1(c) is the result of a Force Majeure, Manager shall not have a termination right under such Section 9.1(c) unless the failure continues unremedied until the earlier of (i) thirty (30) days after the condition constituting the Force Majeure has terminated or (ii) one hundred eighty (180) days from the commencement of such Force Majeure.

9.2 **Effect of Termination or Expiration.**

(a) Upon the termination or expiration of this Agreement, (i) Concessionaire shall immediately surrender possession of the Food and Beverage Facilities and Merchandise Facilities (including all Leasehold Improvements and any other

improvements therein), Smallwares, uniforms, Customer Surveys and Equipment (and related manuals and software) to Manager, (ii) Concessionaire shall immediately assign to Manager or its designee(s) all right, title and interest of Concessionaire in and to all customer deposits and agreements relating to Catered Events and, subject to clause (iii) below, all other items purchased by Concessionaire in connection with the Food and Beverage Services and Merchandise Services (including uniforms, Smallwares, Office Equipment and warehouse and transportation equipment), (iii) Manager or its designee shall purchase from Concessionaire all Refreshments, paper products and other supplies purchased by Concessionaire in connection with the Food and Beverage Services and Merchandise Services that Manager reasonably determines are saleable or usable in the ordinary course, at Concessionaire's cost, (iv) Concessionaire shall make all payments required to be made by Concessionaire under this Agreement, (v) to the extent permitted by applicable law, Concessionaire shall immediately surrender possession of and assign to Manager all permits and licenses acquired by Concessionaire in compliance with Section 6.3 and any Legal Requirements, and (vi) all matters, rights and liabilities existing on the date of termination between the parties hereto shall be determined as of such termination date (except as described above), and discharged as promptly as possible thereafter, including any known claims for damages either party may have against the other for breach of the terms and conditions hereof. Any such surrender shall require delivery of possession in good condition, reasonable and ordinary wear and tear excepted and otherwise in compliance with the terms of this Agreement.

(b) Concessionaire and Manager agree that, if this Agreement expires, or terminates without cause in accordance with Section 9.1, the unamortized portion of the Start-Up and Pre-Opening Investment will be reimbursed to Concessionaire by Manager within thirty (30) days of the date of such expiration or termination, as the case may be.

(c) Upon Manager's receipt of notice that the Authority intends to terminate the Stadium Management Agreement, Manager shall immediately notify Concessionaire.

(d) Notwithstanding any termination or expiration of this Agreement, all liabilities and obligations of the parties will survive until they are fully satisfied.

9.3 **Guarantee by Centerplate, Inc.**

Centerplate, Inc., a Delaware corporation (the "**Guarantor**"), represents and warrants to Manager that it is the parent corporation of the Concessionaire and owns all of the equity in Concessionaire. Guarantor hereby unconditionally and irrevocably guarantees to Manager the full and timely performance of all of Concessionaire's obligations under this Agreement from and after the Effective Date and throughout the entire Term and for any survival period pursuant to which Concessionaire would have any unfulfilled or executory obligations hereunder, including, but not limited to, the timely payment of all amounts due and owing to Manager under this Agreement (collectively, the "**Concessionaire Guaranteed Obligations**"). Guarantor agrees to pay to Manager the amount of any payments made to Manager in connection with any of the Concessionaire Guaranteed Obligations that are recovered from Manager by a trustee, receiver, creditor or other party acting in respect of the Concessionaire or Guarantor or their respective assets pursuant to applicable law. These guarantee amounts and obligations are and

shall for all purposes be a guarantee of payment and performance, and not merely a guarantee of collection. If Concessionaire fails to perform any of the Concessionaire Guaranteed Obligations, and such failure continues beyond any cure period applicable under the terms of this Agreement, Guarantor shall pay or perform such obligation and Guarantor unconditionally and irrevocably waives each and every defense that, under the principles of guarantee or suretyship law, would otherwise operate to impair or diminish such liability, and nothing whatsoever except actual full payment and performance to Manager of the Concessionaire Guaranteed Obligations shall operate to discharge Guarantor's liability hereunder; provided, however, that Guarantor shall enjoy (jointly with Concessionaire) any and all defenses of Concessionaire with respect to any Force Majeure or any failure by Manager to perform any obligation arising out of this Agreement (but specifically excluding, without limitation, any and all defenses arising at law, in equity or otherwise out of the financial incapacity of Concessionaire or the filing of a bankruptcy petition by or against Concessionaire).

ARTICLE X

Casualty Event

If the Stadium is destroyed or otherwise rendered unusable for more than thirty (30) days for any reason (a "**Casualty Event**"), Manager shall give Concessionaire a notice within ninety (90) days after the Casualty Event stating that the Authority intends to rebuild or restore the Stadium. If the notice states that the Authority will not rebuild or restore the Stadium, this Agreement shall be terminated. If the notice states that the Authority intends to rebuild or restore the Stadium, the parties' obligations hereunder shall be abated during that period. If such notice states that the Authority reasonably believes that it will take longer than two (2) years to restore or rebuild the Stadium or, if a shorter amount of time, such amount of time is longer than the remainder of the Term, either party shall have the option of terminating this Agreement by written notice to the other at any time within one hundred and eighty (180) days after Manager gives such notice, and such termination shall be effective one hundred twenty (120) days after the other party's receipt of such notice. Concessionaire shall not be entitled to any monetary or other damages or compensation from Manager in the event of a Casualty Event.

ARTICLE XI

Miscellaneous

11.1 **Applicable Law.**

(a) This Agreement shall be governed by the laws of the State of California applicable to agreements made and to be performed entirely in the State of California.

(b) The federal and state courts located in Santa Clara County, California (together, the "**Designated Courts**") shall have exclusive jurisdiction over the parties with respect to any dispute or controversy between them arising under or in connection with this Agreement and by execution and delivery of this Agreement, each of Manager and Concessionaire submits to the exclusive jurisdiction of those courts, including the in personam jurisdiction of those courts, waives any objection to such jurisdiction on the

grounds of venue or forum non conveniens or the absence of in personam jurisdiction and any similar grounds, consents to service of process on its registered agent by mail (in accordance with Section 11.7 or any other manner permitted by law), and irrevocably agrees to be bound by any judgment rendered thereby, subject to all applicable rights of appeal. So far as is permitted under Legal Requirements, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in the manner specified in this Section 11.1(b) or as otherwise permitted by law, shall be necessary in order to confer personal jurisdiction over Manager or Concessionaire in any of the Designated Courts. Each party agrees that any final judgment against it from which it has not or may not appeal or further appeal in any suit, action or proceeding brought in a Designated Court of competent subject matter jurisdiction may, so far as permitted under Legal Requirements, be enforced in the courts of any jurisdiction of which such party is subject by a suit upon such judgment. Service of any process, summons or notice upon a party shall be sufficient if made in accordance with Section 11.7 below. Nothing in this Section 11.1(b) shall affect the right of any party to serve legal process in any other manner sufficient under law. Each party further agrees that it shall not commence any legal action against any other party relating to or arising under this Agreement in any court that is not one of the Designated Courts, unless the Designated Courts shall have determined that they lack subject matter jurisdiction to hear such action.

11.2 No Waiver.

No provision of this Agreement shall be deemed to have been waived by either party hereto unless such waiver is in writing and is signed by the party hereto against whom such waiver is asserted, and any such waiver shall be effective only for the specific purpose and in the specific instance in which given. The failure of either party hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Agreement or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

11.3 No Brokers.

Concessionaire and Manager represent and warrant to each other that they have not dealt with any brokers or similar parties in connection with this Agreement and each party hereby indemnifies, defends and holds the other harmless from all costs, expenses or liabilities resulting from a breach by such party of its foregoing representation.

11.4 Binding Effect.

Subject to Article VIII, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.5 Whole Agreement; Captions.

This Agreement, the recitals hereto and the exhibits attached hereto, and the Non-Disclosure and Confidentiality Agreement dated February 2011 by and between Manager (as

assignee of Forty Niners Stadium, LLC) and Concessionaire (the “**Confidentiality Agreement**”), the entirety of which Confidentiality Agreement shall remain in full force and effect for the Term of this Agreement (but for the obligations of Manager and Concessionaire under the Confidentiality Agreement which expressly survive the termination or expiration of the Confidentiality Agreement) contain all of the covenants, promises and agreements between the parties concerning the subject matter hereof. It supersedes all prior agreements, arrangements or understandings, whether written or oral. This Agreement may not be amended or modified except in writing signed by the parties. Except as set forth in this Section 11.5, all prior agreements between the parties are hereby superseded and terminated in all respects. The term “including”, whenever used in any provision of this Agreement, means including but without limiting the generality of any description preceding or succeeding that term. Captions and titles in this Agreement are for convenience of reference only and shall not be deemed part of this Agreement or used in its interpretation.

11.6 No Joint Venture.

Concessionaire is an independent contractor. Nothing in this Agreement shall be deemed to create a co-employer, partnership, joint venture or principal agent relationship between Manager and Concessionaire, or any of their respective Affiliates. Neither party hereto shall hold itself out to be anything other than an independent contractor, and neither party hereto shall incur or purport to incur liability on behalf of the other.

11.7 Notices; Approvals.

(a) Any and all notices, requests, demands, consents, approvals or other communications required to be given pursuant to this Agreement by any party shall be in writing and shall be validly given or made to the other party if served personally, sent by certified or registered mail, sent by facsimile transmission (with confirmation of successful transmission), sent by electronic mail or such other electronic means then currently available to both parties that permits confirmation of delivery, or sent by recognized national courier service. If the notice, request, demand or other communications are served personally, or by nationally recognized courier service, service shall be conclusively deemed to be made at the time of service. If the notice, request, demand or other communications are sent by electronic mail or such other electronic means then available, service shall be conclusively deemed to be made at the time confirmation of delivery is received by the sender. If the notice, request, demand or other communications are sent by facsimile transmission, service shall be conclusively deemed made the first business day following successful transmission. If the notice, demand or other communications are given by certified or registered mail, service shall be conclusively deemed made four (4) business days after deposit in the United States mail, addressed to the party to whom the notice, demand or other communication is to be given. Notices shall be provided to the following addresses (any of which may be changed upon like notice to the other parties to this Agreement that would require notice hereunder):

If to Manager, to:

with a copy (which shall not constitute notice) to:

Attention: _____

If to Concessionaire, to:

Attention: _____

With a copy to:

(b) Where consent or approval of or authorization (each, a “**Consent**”) from Manager is required hereunder, such Consent shall mean a Consent in writing executed by an officer of Manager. Where Consent of Concessionaire is required hereunder, such Consent shall mean a Consent in writing executed by an officer of Concessionaire. To the extent that any Consent of a proposed action is required to be reasonable or commercially reasonable, the party whose Consent is sought shall give consideration to the views and financial needs of the other party and shall act in a timely and non-capricious manner.

11.8 Invalidity.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without affecting the validity of the remaining provisions of this Agreement. It is the intention of the parties that if any provision would be deemed invalid or unenforceable as written, that it be construed to apply to the greatest extent that would permit it to be valid and enforceable.

11.9 No Third Party Beneficiary.

This Agreement shall not confer any third party beneficiary rights on any other party except for the Authority, its Affiliates, Manager's Affiliates and, where expressly so provided, the Additional Indemnitees and tenants of the Stadium.

11.10 Limitation of Liability.

Except for the obligations of [Guarantor] under this Agreement, neither party's, nor their Affiliates', officers, directors, partners, members, managers, shareholders, consultants, agents or employees shall be liable in any manner or to any extent under or in connection with this Agreement, and each party and its successors and assigns shall look solely to the assets of the other for the satisfaction of any claims or judgments it may have.

11.11 Specific Performance.

Concessionaire hereby acknowledges and confirms that the remedies of Manager at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of that fact, hereby further acknowledges and confirms that, in the event of a breach or threatened breach by Concessionaire of the provisions of this Agreement, in addition to any remedies at law, Manager shall, without posting any bond or submission of proof of actual damages, be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

11.12 Subordination.

This Agreement shall be subject and subordinate at all times to the terms and conditions of the Stadium Lease and the Stadium Management Agreement, and to the lien of any mortgage or deed of trust or other lien, heretofore or hereafter placed by the Team, Manager or their respective Affiliates upon any interest in the Stadium that any of them shall hold or own, and of all renewals, modifications, consolidations, replacements and extensions thereof (all of which are hereinafter referred to collectively as a "**Mortgage**"), all automatically and without the necessity of any further act on the part of Concessionaire or Manager to effectuate such subordination. Concessionaire shall, at the request of the Authority, Manager or the holder of (or trustee under) any Mortgage, bond indenture or other security agreement upon foreclosure thereof or termination of the Stadium Lease, attorn to such holder or trustee, as the case may be. Concessionaire shall also execute, seal, acknowledge and deliver, within fifteen (15) days after Concessionaire's receipt of demand, such further instrument or instruments evidencing such subordination of Concessionaire's right, title and interest under this Agreement.

11.13 Suite License.

Throughout the Term, Concessionaire shall license a Suite on the terms set forth in the Suite license agreement being executed by Manager and Concessionaire contemporaneously with the execution of this Agreement. Notwithstanding the ten year "Term" set forth in such Suite license agreement, such "Term" of such agreement shall be extended if and to the extent this Agreement may be extended.

11.14 Further Acts.

The parties hereto agree to execute and deliver such instruments, and take such other actions, as may reasonably be required to carry out the terms of this Agreement and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

MANAGER:

_____, a

By: _____
Name: _____
Title: _____

CONCESSIONAIRE

_____, a

By: _____
Name: _____
Title: _____

[Accepted and agreed by:

_____, a

as Guarantor

By: _____
Name: _____
Title: _____]

EXHIBIT A

Drawings and Plans

The Food and Beverage Facilities, the Merchandise Facilities, the Leasehold Improvements and the Equipment shall be as shown in the following drawings or plans:

EXHIBIT B

Direct Operating Costs

[Concessionaire to provide an example cost-of-goods-sold and staffing report]

EXHIBIT C

Outside Areas

See Attachment

EXHIBIT D

Equipment and Smallwares

The Equipment is described as follows: _____

Portables and Smallwares will be purchased as required to perform the Food and Beverage Services and Merchandise Services as determined by Manager or as determined by Concessionaire and approved in writing by Manager.

Point of sale services and menuboards will be purchased as required to perform the Food and Beverage Services and Merchandise Services as determined by Manager or as determined by Concessionaire and approved in writing by Manager.

EXHIBIT E

Uniforms, Office Equipment, Etc.

Uniforms, Office Equipment and warehouse and transportation equipment will be purchased as required to perform the Food and Beverage Services and Merchandise Services as determined by Manager or as determined by Concessionaire and approved in writing by Manager. Prior to the Commencement Date, Concessionaire shall provide the following uniforms, Office Equipment, warehouse and transportation equipment:

EXHIBIT F

Service Levels

Location

Services Provided

Owners Club and Suites

East Field VIP Club

West Field Club

East Field Club

Stadium Club

Mezzanine Club

Founders Suites

Executive Suites

Team Suite (Owner Suite)

Team Marketing Suite

Legacy Clubs and Suites (including Boardroom Suites)

General Admission (aka Reserved)

Media food areas at Press Box and Field Level

Plazas

Parking lots

Catering

EXHIBIT G

Manager Commissions¹

<u>Category:</u>	<u>Percentage:</u>
Concessions Sales	
<i>National Football League Events</i>	55.0%
<i>Other Large Stadium Events²</i>	48.0%
<i>Small Stadium Events³</i>	40.0%
Premium / Specialty Concession Items ⁴	TBD
Club Areas ⁵	35.0%
Luxury Suites ⁶	20.0%
Catering ⁶	25.0%
Third Party Subcontractors ⁷	50.0%
Concessions - Branded Products/Licensed Products ⁸	TBD
Merchandise Service – Game Day	30.0%
Merchandise Service – Non Game Day	25.0%

¹ This Agreement is contingent upon the Team playing its Home Games at the Stadium. In the event an Additional Team becomes an anchor tenant at the Stadium, the Manager Commission percentages for NFL Events outlined above shall each be increased by five percent (5%); for example, upon the addition of an Additional Team, the Manager Commissions for Concessions Sales shall increase from 55.0% to 60.0%. Furthermore, Concessionaire shall pay to Manager, as part of the Manager Commissions, the following additional amounts in connection with NFL playoff games held at the Stadium: (i) for each NFL “Wild Card” playoff game, \$75,000; (ii) for each NFL “Division” playoff game, \$100,000; and (iii) for each NFL “Conference Championship” playoff game, \$125,000.

² Events with attendance greater than or equal to 25,000.

³ Events with attendance less than 25,000 and for which admission tickets have been issued and/or sold.

⁴ “Premium / Specialty Concessions Items” shall be items identified by the good-faith agreement of Manager and Concessionaire, taking into account the available profit margin on such items typically offered for sale on menus which feature specialty and luxury items.

⁵ Club Areas shall include, but not be limited to, the Stadium Club, Mezzanine Club, East VIP Club, West VIP Club and Owners Club.

⁶ The amount on which Manager Commissions is calculated shall include gratuities not paid out to employees.

⁷ The Manager Commissions percentage for subcontractors is based on the amount received – in cash or in kind – by Concessionaire from its third party subcontractors; amounts credited to or received by Concessionaire “in kind” shall be treated as market value cash received.

⁸ Concessionaire proposes the same Manager Commissions percentage for Branded Products as that for General Concessions Sales/Food and Beverage Services, provided that the Manager Commissions are decreased dollar for dollar for the royalty fee associated with the Branded Product concepts. Any Branded Products and/or Licensed Products shall be subject to Manager’s approval.

EXHIBIT H

Concessionaire Management Team

EXHIBIT I

Employee Training Program(s)

Concessionaire is committed to provide a highly motivated, very professional and truly inspired on-site service team for the Stadium. First, we seek to hire people who are eager to serve others. It is then our obligation to provide them the tools to successfully cater to Stadium guests. At the core of this effort is Concessionaire's training program, Centerplate University: a series of modules that provides our team the foundation to succeed. Our mandatory training sessions for all employees and not-for-profit volunteers include, but are not limited to the following topics:

Orientation

Extraordinary Guest Service

Job Task

Employee and Food Safety

Responsible Service of Alcohol

Each training session is aided by an audio/visual presentation and is sensitive to individual learning styles to maximize success. Concessionaire conducts written tests on the material presented in the session to ensure full understanding, and to identify areas that may need reinforcement, and we provide a certificate for each module completed.

ORIENTATION. As one would expect, orientation welcomes the new employee to Concessionaire's and to the Stadium. In addition to providing an overview of policies and procedures, we introduce them to their responsibility and role in providing you extraordinary experiences.

EXTRAORDINARY GUEST SERVICE. The goal of Concessionaire's guest service training is to provide our employees the tools and motivation to provide "Craveable Experiences" for our guests. Throughout the training process employees are taught to understand their role in our overall guest service and loyalty strategy and how their department and each individual contributes to guest enjoyment.

JOB SKILLS TRAINING. All employees receive skills training in the tasks specific to their position. For instance, our quick service department training materials include sessions for cashiers, stand managers, culinary personnel, and our service attendants.

RESPONSIBLE SERVICE OF ALCOHOL: "TIPS TRAINING." Where alcohol is served, Centerplate requires all managers and service staff to attend ongoing training in alcohol awareness programs (TiPS, TEAM or state certification programs). All new hires must complete alcohol awareness training within 30 days of hire and attend updates every six months. If an

employee fails to complete the program within the mandated time frames, he or she will not be eligible to work until completion of the coursework can be verified. All participants must pass a test at the end with a grade of ninety percent or better to become certified. Employees who fail are not allowed to work in alcoholic beverage serving positions.

SAFE FOOD HANDLING: "SERVSAFE TRAINING." All employees who handle food including front-of-house and our culinary team are required to attend a ServSafe quality assurance program. An industry expert performs an interactive training program, designed to educate employees regarding critical food safety. During this training program participants receive valuable information regarding safe food practices and are given the tools and information to apply critical food safety practices to everyday situations.

TRAINING FREQUENCY. Each new employee must complete at minimum 5 of the applicable training courses before serving guests. This process is typically 5 to 6 hours with a quiz session for each. This formal training is supported by continuous pre-service training refreshers, a poster program, and ongoing communications. Each subsequent season, the veteran employee must re-take all courses (less orientation).

EXHIBIT J

Ethical Standards for Concessionaire

Termination of Agreement for Certain Acts.

- A. Manager may terminate this Agreement in the event any one or more of the following occurs:
1. If the Concessionaire¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Legal Requirements;
 - b. Is convicted² of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a commercial contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Concessionaire; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Concessionaire can be imputed to Concessionaire when the conduct occurred in connection with the individual's performance of duties for or on behalf of Concessionaire, with Concessionaire's knowledge, approval or acquiescence, Concessionaire's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

¹ For purposes of this Exhibit J, "Concessionaire" means Volume Services, Inc., a Delaware corporation, doing business as Centerplate, and any person who controls or who has the power to control Volume Services, Inc., or a primary corporate stockholder (i.e., a person who owns more than ten percent (10%) of the outstanding stock (or membership interests, as the case may be) of Volume Services, Inc.), and who is active in the day to day operations of Volume Services, Inc..

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

EXHIBIT K

Affidavit of Compliance with Ethical Standards

I, _____, hereby state that I am [title] of _____ and that I have read and understand the language, entitled "Ethical Standards for Concessionaire" set forth in Exhibit J to this Agreement. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Concessionaire" contained in the Ethical Standards for Concessionaire at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) included in the definition of "Concessionaire" in Exhibit J to this Agreement has been convicted of any one or more of the crimes identified in the Ethical Standards for Concessionaire within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

[CONCESSIONAIRE]

a [_____] [company][corporation]]

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

EXHIBIT B

PRE-OPENING CONCESSIONAIRE MANAGEMENT TEAM

Bill Greathouse – SVP Operations
Randal Brubaker – General Manager
Eric Wooden – VP Facility Design
Greg Fender – SVP Operations
Mike Dubey – VP Operations
John Sergi – Chief Design Officer
Sean Kavanaugh – Executive Chef
Ed Arwine – VP Controller

EXHIBIT C

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE SANTA CLARA STADIUM AUTHORITY

Termination of Agreement for Certain Acts.

- A. The Authority may, following consultation with StadCo, terminate this Agreement in the event any one or more of the following occurs:
1. If the Pre-Opening Concessionaire¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Concessionaire; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Pre-

¹ For purposes of this Exhibit C, "Pre-Opening Concessionaire" means Volume Services, Inc., a Delaware corporation, doing business as Centerplate, and any person who controls or who has the power to control Volume Services, Inc., or a primary corporate stockholder (i.e., a person who owns more than ten percent (10%) of the outstanding stock (or membership interests, as the case may be) of Volume Services, Inc.), and who is active in the day to day operations of Volume Services, Inc.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

Opening Concessionaire can be imputed to the Pre-Opening Concessionaire when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Pre-Opening Concessionaire, with the Pre-Opening Concessionaire's knowledge, approval or acquiescence, the Pre-Opening Concessionaire's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. In the event this Agreement is terminated pursuant to these provisions, the Pre-Opening Concessionaire may appeal the Authority's action to the Board of the Authority by filing a written request with the City Clerk of the City of Santa Clara, California, within ten (10) days of the notice given by the Authority to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Pre-Opening Concessionaire will have the burden of proof on the appeal. The Pre-Opening Concessionaire shall have the opportunity to present evidence, both oral and documentary, and argument.

EXHIBIT D

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, _____, being first duly sworn, depose and state I am [title] of **VOLUME SERVICES, INC.**, a Delaware corporation, doing business as Centerplate, and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit C. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Pre-Opening Concessionaire" contained in the Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) included in the definition of "Pre-Opening Concessionaire" in Exhibit C to this Agreement has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

VOLUME SERVICES, INC., a Delaware corporation, doing business as Centerplate

By: _____
Name: _____
Title: _____
Address: _____
Telephone Number: _____

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

EXHIBIT E

PRE-OPENING CONCESSIONAIRE'S INSURANCE COVERAGE REQUIREMENTS

(a) *Interpretation.* Without limiting the Pre-Opening Concessionaire's indemnification under this Agreement of the Authority and StadCo, and their respective officers, directors, managers, members, partners, owners and employees, and prior to commencing any of the services required of the Pre-Opening Concessionaire under this Agreement, the Pre-Opening Concessionaire shall purchase and maintain in full force and effect during the period of performance of this Agreement and for twenty-four (24) months following acceptance by the Authority, unless a shorter time shall be mutually agreed, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the Authority so that any other coverage held by the Authority shall not contribute to any loss under the Pre-Opening Concessionaire's insurance. Throughout this Exhibit E, and as otherwise used in this Agreement, capitalized, insurance-related terms are intended to have those respective meanings as are used consistently throughout the commercial insurance industry in the United States. The minimum coverages, provisions and endorsements of the insurance to be provided by the Pre-Opening Concessionaire are as follows:

(i) *Commercial General Liability Insurance.*

(A) A Commercial General Liability Insurance policy, which policy provides coverage at least as broad as that set forth in Insurance Services Office ("ISO") form CG 00 01. Policy limits are subject to review by the Authority and StadCo, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal Injury

(B) The exact structure and layering of the coverage shall be left to the discretion of the Pre-Opening Concessionaire; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

(C) The following provisions shall apply to the Commercial General Liability Insurance policy as well as to any umbrella policy maintained by the Pre-Opening Concessionaire to comply with the insurance requirements of this Agreement:

(1) Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

(2) There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

(3) Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

(ii) *Business Automobile Liability Insurance.*

(A) A Business Automobile Liability Insurance policy, which policy provides coverage at least as broad as that set forth in ISO form CA 00 01 and with a minimum limit of not less than one million dollars (\$1,000,000) per each accident. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

(B) In the event that the services being performed by the Pre-Opening Concessionaire under this Agreement involve transporting any Hazardous Substances, the Pre-Opening Concessionaire and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Automobile Liability Insurance of an Environmental Impairment Endorsement MCS90 or ISO endorsement form CA 99 48, which shall amend the pollution exclusion in the standard Business Automobile Liability Insurance policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

(iii) *Workers' Compensation Insurance.*

(A) A Workers' Compensation Insurance policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit for each bodily injury by disease, one million dollars (\$1,000,000) for each accident/bodily injury and one million dollars (\$1,000,000) for each employee for bodily injury by disease.

(B) Notwithstanding any other provision of this Agreement, the indemnification and hold harmless obligations of the Pre-Opening Concessionaire included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for the Pre-Opening Concessionaire or any subcontractor under any workers' compensation act(s), disability benefits act(s) or other employee benefits act(s).

(C) This Workers' Compensation Insurance policy provided by the Pre-Opening Concessionaire shall include a waiver of subrogation provision in favor of the Authority and StadCo, and their respective officers, directors, managers, members, partners, owners and employees.

(iv) *Professional Liability or Errors and Omissions Insurance.*

Professional Liability or Errors and Omissions Insurance, as appropriate, shall be written on a policy form with coverage specifically designed to protect against negligent acts, errors or omissions of the Pre-Opening Concessionaire. Covered services as designated in the policy must specifically include all work performed by the Pre-Opening Concessionaire under this Agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence or two million dollars (\$2,000,000) in the aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office of the City of Santa Clara, California.

(b) *Compliance with Requirements.* All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy:

(i) *Additional Insureds.* The Authority and StadCo, and their respective officers, directors, managers, members, partners, owners and employees shall be added as additional insureds in respect to liability arising out of the Pre-Opening Concessionaire's provision of services under this Agreement, using ISO Endorsement CG 20 10 10 01, or its equivalent.

(ii) *Primary and Non-Contributing.* Each insurance policy provided by the Pre-Opening Concessionaire shall contain language or be endorsed to contain wording making it primary insurance with respect to, and not requiring contribution from, any other insurance which the Pre-Opening Concessionaire's indemnitees may possess, including any self-insurance or self-insured retention they may have. Any other insurance that Pre-Opening Concessionaire's indemnitees may possess shall be considered excess insurance only and shall not be called upon to contribute with the Pre-Opening Concessionaire's insurance.

(iii) *Cancellation.*

(A) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of any premium shall be effective until written notice has been endeavored to be provided to the Authority and StadCo at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be endeavored to be provided to the Authority and StadCo at least thirty (30) days prior to the effective date of non-renewal.

(B) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been endeavored to be provided to the Authority and StadCo at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be endeavored to be provided at least thirty (30) days prior to the effective date of non-renewal.

(iv) Other Endorsements. Other endorsements may be required for policies, other than the Commercial General Liability Insurance policy, if specified in the description of required insurance set forth in subsection (a) and this subsection (b) of this Exhibit E.

(c) ***Additional Insurance Related Provisions.*** The Pre-Opening Concessionaire, the Authority and StadCo agree as follows:

(i) Regarding Subcontractors. The Pre-Opening Concessionaire agrees to ensure that its subcontractors, and any other party involved with the services provided by the Pre-Opening Concessionaire under this Agreement who is brought into or involved in the performance of such services by the Pre-Opening Concessionaire, provides the same minimum insurance coverage required of the Pre-Opening Concessionaire, except as with respect to limits. The Pre-Opening Concessionaire agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. The Pre-Opening Concessionaire agrees that upon request by the Authority or StadCo, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in any service contemplated by this Agreement will be submitted to the Authority and StadCo for review.

(ii) No Payment or Reimbursement by the Authority or StadCo. The Pre-Opening Concessionaire agrees to be responsible for ensuring that no contract used by any party involved in any way with the services provided by the Pre-Opening Concessionaire hereunder reserves the right to charge the Authority or StadCo for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Authority or StadCo. It is not the intent of the Authority or StadCo to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the Authority or StadCo for payment of premiums or other amounts with respect thereto.

(d) ***Evidence of Coverage.*** Prior to commencement of any services to be provided by the Pre-Opening Concessionaire under this Agreement, the Pre-Opening Concessionaire, and each and every subcontractor (of every tier), if any, shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance

coverage shall be maintained with insurers, and under forms of policies, satisfactory to the Authority and StadCo and as described in this Agreement. The Pre-Opening Concessionaire shall file with the Authority and StadCo all certificates and endorsements for the required insurance policies for the Authority and StadCo's approval as to adequacy of the insurance protection.

(e) *Evidence of Compliance.* The Pre-Opening Concessionaire or its insurance broker shall provide the required proof of insurance compliance, consisting of ISO endorsement forms or their equivalent and the Association for Cooperative Operations Research and Development form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to the Authority and StadCo, or its representative as set forth below, at or prior to execution of this Agreement. Upon the Authority's or StadCo's request, the Pre-Opening Concessionaire shall submit to the Authority and StadCo copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to the Authority and StadCo pursuant to this Agreement shall be additionally mailed to:

City of Santa Clara [***insert City department name here**]

c/o EBIX Inc.

P.O. 12010-S2

Hemet, CA 92546-8010

or

151 North Lyon Avenue

Hemet, CA 92543

Telephone number: 951-766-2280

Fax number: 770-325-0409

(f) *Qualifying Insurers.* All of the insurance companies providing insurance for the Pre-Opening Concessionaire shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the Authority (or its insurance compliance representative(s)) and StadCo.