

11.1.2 Consulting services or supervision of Catering provided at any areas of the Stadium or Real Property reasonably requested by the Event Host during Home Games, Field Events, Non-Field Events, Catered Events, Culinary Events and Special Stadium Events. Premium Concessionaire shall be permitted to charge a reasonable fee for any services provided pursuant to this subsection 11.1.2; provided, however, that the amount of any such fee paid to Premium Concessionaire for services pertaining to an Event sponsored by or for the benefit of a charitable or non-profit organization shall be contributed by the Premium Concessionaire to such charity or non-profit organization.

11.2 Special SMC Catering. At the request of SMC, Premium Concessionaire shall:

11.2.1 provide Catering services to the Owner's Executive Suite during Home Games and Ticketed Events at Actual Cost plus eighteen and six tenths (18.6%); and

11.2.2 provide Catering services at private functions at the Stadium or on the Real Property hosted by SMC or Affiliates of SMC ("Private SMC Functions") at Actual Cost plus eighteen and six tenths percent (18.6%); provided, however, that the Private SMC Functions shall not exceed two (2) functions in any Contract Year and only one (1) such function may involve more than one hundred (100) participants and in no event shall such function involve more than two hundred fifty (250) participants.

SMC shall provide not less than ten (10) Business Days' prior notice of any Private SMC Function which notice shall include the time and date, expected number of participants and description of Food, Beverages and services to be provided at such function. Any sales under this Section 11.2 shall not be included in Gross Receipts or District Gross Receipts. SMC shall pay Premium Concessionaire for Catering services under this Section 11.2 within forty-five (45) days after receipt of Premium Concessionaire's invoice therefor. If SMC is past due in paying any invoice submitted under this Section 11.2, Premium Concessionaire shall not be obligated to provide Catering services under this Section 11.2 until such past due invoices are paid.

11.3 Special District Catering. At the request of the District, Premium Concessionaire shall:

11.3.1 provide Catering services to the District's Executive Suite during Home Games and Ticketed Events at Actual Cost plus eighteen and six tenths (18.6%); and

11.3.2 provide Catering services at private functions at the Stadium or on the Real Property held by the District or Affiliates of the District ("Private District Functions") at Actual Cost plus eighteen and six tenths (18.6%); provided,

however, that the District Private Functions shall not exceed two (2) functions in any Contract Year and only one (1) such function may involve more than one hundred (100) participants and in no event shall such function involve more than two hundred fifty (250) participants.

The District shall provide not less than ten (10) business days prior notice of any Private District Function which notice shall include the time and date, expected number of participants and description of Food, Beverages and services to be provided at such function. Any sales under this Section 11.3 shall not be included in Gross Receipts or District Gross Receipts. The District shall pay Premium Concessionaire for Catering services under this Section 11.3 within forty-five (45) days after receipt of Premium Concessionaire's invoice therefor. If the District is past due in paying any invoice submitted under this Section 11.3, Premium Concessionaire shall not be obligated to provide Catering services under this Section 11.3 until such past due invoices are paid.

- 11.4 Participation by Minorities and Women. The District, SMC, PDB and Premium Concessionaire agree that minorities and women shall be afforded an opportunity to participate in Stadium Catering as employees of Premium Concessionaire. Concessionaire agrees to encourage the participation and promotion of minorities and women in performing the Obligations. In furtherance of the provisions of this Section 11.4, Premium Concessionaire agrees to develop and implement a community outreach program that encourages the involvement and participation of minorities and women in accordance with Premium Concessionaire's plan attached hereto as Exhibit C.
- 11.5 Level of Operations. Premium Concessionaire agrees to manage and operate the Required Catering at a level comparable to that provided in Similar Local Facilities during comparable events. Premium Concessionaire shall not perform any of the Obligations away from the Stadium, without the prior written approval of the District and SMC. Premium Concessionaire agrees to maintain throughout the License Term the quality of packaging, containers, sales material, menus, glassware, flatware, cutlery, china or other dishes, utensils, linens, napkins, Disposables and other items at a level greater than or equal to the level for such items as set forth on Schedule V hereto. Unless otherwise requested or approved by the Event Host, Premium Concessionaire shall use cloth napkins and tablecloths and non-disposable utensils, flatware, dishes, glasses and cups at Stadium Catered Events. Premium Concessionaire shall operate and conduct the Required Catering in a manner that assures that all Patrons shall be promptly, satisfactorily and courteously served. Premium Concessionaire shall provide all necessary working capital and inventory to operate the Required Catering at the Stadium at the levels required under this Agreement.
- 11.6 Subconcessionaires. Premium Concessionaire shall not enter into an agreement with a Subconcessionaire or otherwise delegate or subcontract any Obligations to any Subconcessionaire, subcontractor or agent (each a "Subconcessionaire Agreement")

without the prior written approval of the District and SMC which may be withheld in the sole and absolute discretion of the District and SMC.

- 11.7 Transactions in Name of Premium Concessionaire. In performing all Obligations, Premium Concessionaire shall transact business on its own account and in its own name. Except as otherwise provided herein, Premium Concessionaire shall pay all costs and expenses incurred by it in the performance of the Obligations. Unless otherwise agreed by the relevant Party in writing, Premium Concessionaire shall not make purchases or incur expenses in the name of the District, SMC or PDB.
- 11.8 Third-Parties Use of Catering Areas, Staffing Areas and Equipment. If, in accordance with the terms of this Agreement, third parties are selected by either SMC or the District to provide Catering services, in whole or in part, at any Catered Event (except for Club Level Catered Events) or Culinary Event, the third parties shall not have access to or be permitted to use the Catering Areas, Staffing Areas or Equipment located therein without the prior written consent of Premium Concessionaire.
- 11.9 Donation of Alcoholic Beverages. Premium Concessionaire shall not donate or permit the donation by any third party of Alcoholic Beverages at any Catered Event.

## 12. Invoices

- 12.1 Invoices. In addition to the Agreement for Services required pursuant to the provisions of Article 9, within three (3) Business Days before Premium Concessionaire delivers any invoice to any Person in connection with Catering services at any Catered Event, Premium Concessionaire shall provide the District and SMC with a copy of any such invoice in electronic or hard copy format, as may be requested by the District or SMC. The form of invoice used by Premium Concessionaire (including Premium Concessionaire's itemization of Food, Beverages and services provided) pertaining to any Executive Suite Catered Event at a Home Game shall be subject to the prior review and approval of SMC in the exercise of its sole and absolute discretion. Premium Concessionaire shall be permitted to determine the form of invoice used by Premium Concessionaire pertaining to any Catered Event (other than an Executive Suite Catered Event at a Home Game), including the itemization of charges for Food, Beverages, services, linens, menu, labor, equipment and administrative service charges; provided, however, in no event shall any invoice reflect an itemization of any charge by or for the benefit of the District, SMC or PDB.

## 13. Catering Collections

- 13.1 Premium Concessionaire shall provide SMC with prompt written notification of any Executive Suite Licensee's or Banquet Licensee's failure to pay any invoice for Catering services within thirty (30) days after the date such invoice is due (a

"Delinquent Account"). Premium Concessionaire agrees to use commercially reasonable efforts to collect all Delinquent Accounts.

#### **14. Hours of Operation**

- 14.1 Stadium Catered Events. Premium Concessionaire shall provide Stadium Catering at Stadium Catered Events at times agreed upon by Premium Concessionaire and the Banquet Licensee, subject to the approval of the Event Host in its sole and absolute discretion.
- 14.2 Executive Suite Catered Events. Premium Concessionaire shall provide Stadium Catering at Executive Suite Catered Events commencing at Stadium Gate Opening and continuing for up to one (1) hour after the conclusion of the Home Game, Field Event or Non-Field Event which has taken place during such Executive Suite Catered Event, or as otherwise may be requested or approved by the Event Host in its sole and absolute discretion.
- 14.3 Non-Interference. Stadium Catering shall be conducted and operated in a manner so as not to interfere with the orderly operation of Events.

#### **15. Performance Standards**

- 15.1 Service Problems. Premium Concessionaire shall anticipate and resolve service problems pertaining to the operation of Required Catering as soon as possible and Premium Concessionaire shall use all commercially reasonable efforts to resolve such problems before the end of the Catered Event at which they arise. The General Manager and other members of Premium Concessionaire's Management Team shall review problems as they occur and discuss and implement solutions to prevent their recurrence.
- 15.2 Resolution of Complaints. Premium Concessionaire shall resolve, as soon as possible and without expense to or intervention by the District, SMC or their Licensees, all Patron complaints received by Premium Concessionaire with respect to the Required Catering. Premium Concessionaire shall use all commercially reasonable efforts to resolve such Patron complaints before the end of the Catered Event at which such complaints arise. The District and SMC shall refer any complaints received by them from Patrons pertaining to Required Catering to Premium Concessionaire. Premium Concessionaire shall notify the District and SMC of any written complaint received by Premium Concessionaire or any complaint that is not fully resolved before the end of the Catered Event to which the complaint relates (each such complaint is herein referred to as a "Patron Complaint"). Premium Concessionaire shall keep the District and SMC fully apprised of the status of any meetings or proceedings to resolve a Patron Complaint and shall promptly notify the District and SMC upon final resolution of each Patron Complaint. Premium Concessionaire shall deliver copies of any written Patron Complaint received by Premium Concessionaire to District and SMC within the

earlier of ten (10) Business Days after Premium Concessionaire's receipt of such Patron Complaint or one (1) Business Day prior to the next Home Game following Premium Concessionaire's receipt of such Patron Complaint. Premium Concessionaire shall immediately bring serious Patron Complaints to the attention of the Event Host. All complaints by Patrons pertaining to Required Catering shall be resolved at Premium Concessionaire's sole expense.

15.3 Notification to District and SMC of Material Verbal Complaints. Verbal complaints, comments and suggestions from Patrons which Premium Concessionaire determines to be material shall, at appropriate intervals, be reduced to writing by Premium Concessionaire and submitted to both the District and SMC.

15.4 Annual Survey. On an annual basis within ninety (90) days after the last day of each Contract Year, Premium Concessionaire shall conduct a survey among all Executive Suite Licensees and Banquet Licensees to evaluate satisfaction with respect to all aspects of Stadium Catering. The form and content of the surveys shall be subject to the prior approval of the District and SMC, and the census of such surveys shall include all Executive Suite Licensees and Banquet Licensees to which Premium Concessionaire has provided Catering services during the immediately preceding Contract Year. The results of such surveys shall be promptly submitted to both the District and SMC.

15.5 Monitoring Program. Premium Concessionaire shall develop and implement an internal program to continually monitor and evaluate and to address proposed changes that would enhance the overall operation of Stadium Catering. In addition, the General Manager shall meet with the District Liaison and the SMC Liaison on a regular basis (not less often than after each Home Game during each NFL Season), (i) to review and evaluate the performance of Premium Concessionaire in aspects including maintenance and cleaning operations, operation of Stadium Catering, staff training and development, and community outreach efforts; and (ii) to recommend ways to improve the overall service provided by Premium Concessionaire.

15.6 District and SMC's Right to Test Products. The District and SMC reserve the right to examine, sample and otherwise test Premium Concessionaire's Food and Beverage products at any time for the purposes of assessing quality.

## **16. Procurement Policy, Branded Products and Donated Merchandise**

16.1 Sources. Premium Concessionaire shall purchase Food, Beverages and operating supplies from whatever source or sources that will establish and effect procedures which assure the quality and quantity required. Notwithstanding the foregoing, Premium Concessionaire agrees to purchase, sell and feature Colorado-produced Food and Beverage items, as long as the quality, cost and other terms of sale of such items are reasonably comparable to the quality, cost and other terms of sale of similar Food and Beverage items available in the market. Premium Concessionaire shall adhere to Minimum Purchase Specification Requirements as set forth in Schedule

IV. All such purchases shall be in Premium Concessionaire's name and payment shall be made directly to the supplier.

- 16.2 Branded Products. SMC or PDB may enter into Sponsorship Agreements which may include product availability rights at the Stadium in accordance with this Section 16.2. Premium Concessionaire shall sell Branded Products when required by the terms of a Sponsorship Agreement entered into by SMC or PDB so long as (i) the cost, quality, sales prices and other similar terms (including volume discounts) of sale of such Branded Product are at least comparable with other competing products selected by the Premium Concessionaire for sale at the Stadium, and (ii) such Branded Product is reasonably available in quantities needed for the operation of the Stadium Catering. Any payments made by the supplier of such Food or Beverage designated by SMC or PDB for the right to have such Food or Beverages sold at the Stadium shall be retained by SMC or PDB (whichever is applicable) and shall not be included in Gross Receipts. Premium Concessionaire shall have no rights to any such payments made by suppliers, or any part thereof. Premium Concessionaire shall not at any time offer an exclusive right to any supplier of Food or Beverages without obtaining the prior written approval of the District and SMC. Premium Concessionaire may sell Branded Products in compliance with this Section 16.2; provided, however, Premium Concessionaire shall not permit the display of any Branded Products or any labels, packaging, boxes, containers, wrapping or materials identifying, advertising or promoting Branded Products in violation of any Sponsorship Agreement.

## 17. Menus

- 17.1 Planning and Preparation. The quality, portion size and price of each Food and Beverage item offered for sale at Executive Suite Catered Events is subject to the approval of the District and SMC in accordance with the provisions of this Article 17.
- 17.2 Annual Meeting. On an annual basis no later than May 1 prior to the scheduled start of each NFL Season, the General Manager shall meet with representatives from the District and SMC to review the selection and pricing of Food and Beverage items which Premium Concessionaire proposes to offer for sale at Executive Suite Catered Events during the forthcoming year. Premium Concessionaire shall compile a descriptive listing of Food and Beverage items (together with proposed pricing) to be offered for sale at Executive Suite Catered Events during the forthcoming year, along with ingredients, portion sizes and prices at which the proposed items will be sold to Executive Suites Licensees, which listing is subject to the approval of the District and SMC. Upon reasonable advance request by the District or SMC, Premium Concessionaire shall provide samples of proposed menu offerings at this meeting. The District, SMC and Premium Concessionaire shall determine the three (3) price ranges at which the Minimum Food Offerings will be offered for sale at Executive Suite Catered Events during the forthcoming year. In determining the pricing of Food and Beverage items and in resolving any dispute which may arise

with respect to such pricing, the Parties agree to consider the prices charged for products which are comparable in type, quality and portion size at Comparable Stadiums and a reasonable margin for profit. Premium Concessionaire shall sell only those Food and Beverage items in portions and at prices which have been approved by the District and SMC (the "Approved Food and Beverages").

17.2.1 Notwithstanding any provision contained in this Agreement to the contrary, upon notice to the Premium Concessionaire, the Event Host retains the right to preclude the sale of any Approved Food and Beverage item in whole or in part, at a particular Executive Suite Catered Event if the Event Host determines that the sale of such Approved Food and Beverage item is necessary for the safety or protection of Patrons, Event Participants or the Stadium.

17.2.2 Premium Concessionaire shall have the right to make interim menu, portion and price changes (including menu deletions), during an NFL Season (an "Interim Menu Change") in accordance with the following terms: (i) Premium Concessionaire shall not request more than three (3) Interim Menu Changes within any NFL Season; (ii) any request for an Interim Menu Change shall be delivered in writing to the District and SMC and shall describe in reasonable detail the Interim Menu Change requested; (iii) the District and SMC shall respond to each request for an Interim Menu Change within ten (10) business days after receipt of such request and each such response shall specifically address each change proposed on the applicable request for Interim Menu Change and in the event a requested change includes an unacceptable requested change in price, the response shall include a change in price, if any, which the respondent would accept; and (iv) the District and SMC agree not to unreasonably withhold their consent to a requested Interim Menu Change.

17.2.3 Premium Concessionaire, District and SMC agree to use good faith efforts to resolve disputes pertaining to the types, quality, portion size and pricing of Food and Beverages to be offered for sale by Premium Concessionaire at Executive Suite Catered Events and shall consider the following in attempting to resolve disputes: (i) the type, quality and portion size of Food and Beverage items offered at Similar Local Facilities, and (ii) the price at which Food and Beverage items are offered at Similar Local Facilities.

17.3 Minimum Food Offerings. At each Executive Suite Catered Event, Premium Concessionaire shall offer Food and Beverages for sale from an a la carte menu and from a minimum of three (3) complete menu selections (which shall be selected from the Approved Food and Beverages) (the "Minimum Food Offerings"), with one complete menu selection being priced in each of the three (3) different pricing ranges determined pursuant to the provisions of Section 17.2. In addition to the Minimum Food Offerings, Concessionaire shall provide a special Food offering for each Home Game ("Game Day Special"). Within three (3) Business Days prior to each Home Game, Field Event and Non-Field Event, Premium Concessionaire shall provide the

Event Host with written notification of the proposed Minimum Food Offerings at the Executive Suite Catered Events held in connection with such Home Game, Field Event or Non-Field Event, which shall be subject to the approval of the Event Host unless previously approved pursuant to the provisions of Section 17.2. Within three (3) Business Days prior to each Home Game, Premium Concessionaire shall provide SMC with written notification of the proposed Game Day Special. In addition to the Minimum Food Offerings, Premium Concessionaire may offer additional complete menu selections or additional Food and Beverage items (which shall be selected from the Approved Food and Beverages) for sale at Executive Suite Catered Events (the "Optional Food Offerings").

- 17.4 Executive Suite Menus. Premium Concessionaire shall prepare printed menus utilizing the Stadium's logos for Executive Suite Catered Events ("Executive Suite Menus"), which shall be used exclusively for Premium Concessionaire's operations at Executive Suite Catered Events. All Executive Suite Menus shall include the Minimum Food Offerings, the Optional Food Offerings and special promotions (including the Game Day Special) and prices at which Executive Suite Menu items are offered for sale. All Executive Suite Menus shall be subject to the approval of the District and SMC prior to distribution, and may be used by the District, SMC and Premium Concessionaire's marketing departments for sales purposes, subject to the restrictions herein contained. Premium Concessionaire shall maintain a minimum of one (1) Executive Suite Menu in each Executive Suite.
- 17.5 Stadium Catered Event Menus. Premium Concessionaire shall prepare a printed general menu utilizing the Stadium's logos for Stadium Catered Events ("Stadium Catered Event Menu"), which shall be used exclusively for Premium Concessionaire's operations at Stadium Catered Events. Any menus used by Premium Concessionaire in connection with the operation of Stadium Catered Events shall be subject to the prior approval of the District and SMC and may be used by the District, SMC and Premium Concessionaire's marketing departments for sales purposes, subject to the restrictions herein contained.

## 18. Food Handling

- 18.1 Compliance with Laws. Premium Concessionaire shall comply with all Laws and applicable HACCP rules, regulations, operating requirements, principles and controls in the preparation and distribution of Food and Beverage items pursuant to the terms of this Agreement.
- 18.2 Inventory Inspection. Premium Concessionaire shall inspect all Food and Beverage inventories upon delivery for quality and quantity compliance with the original order and shall store all Food and Beverage inventories in proper areas and containers.

## 19. Food Quality



- 19.1 All Food and Beverages sold or kept for sale by Premium Concessionaire at the Stadium or on the Real Property shall be of a "first class" quality and purity and shall be well prepared and served in accordance with industry standards implemented at Similar Local Facilities. No imitation, adulterated or misbranded Food or Beverage item shall be stored, displayed or sold by Premium Concessionaire, and all Food and Beverages acquired by Premium Concessionaire shall be stored and handled at all times in a manner consistent with the standards implemented at Similar Local Facilities. Premium Concessionaire shall not reuse perishable Food or Beverage products at any time. Premium Concessionaire shall adhere to Minimum Purchase Specification Requirements as set forth in **Schedule IV**.

**20. Items Offered for Sale**

- 20.1 Premium Concessionaire shall plan and prepare imaginative Food and Beverage menus in consultation and coordination with the District and SMC. Food and Beverage items offered for sale at the Stadium by Premium Concessionaire should reflect variety and innovations in market trends. Premium Concessionaire shall, subject to the prior approval of the District and SMC, initiate new programs for catering and menu variations to respond to market trends. Premium Concessionaire shall offer Food and Beverage items generally offered in Similar Local Facilities.

- 20.1.1 Premium Concessionaire shall purchase, sell and feature Colorado-produced Food and Beverage products and items, as long as the quality, cost and other terms of sale of such items are reasonably comparable to the quality, cost and other terms of sale with similar products and items available in the market.

**21. Sales Restrictions and Requirements**

- 21.1 Culinary Events. Premium Concessionaire understands and agrees that Culinary Events may take place at the Stadium, or on the Real Property, or any part thereof. The Event Host of a Culinary Event may preclude or limit the scope of Stadium Catering at any Culinary Event; provided, however, that Premium Concessionaire shall be responsible for supervising all Catering operations conducted upon the Club Lounge level of the Stadium pursuant to the provisions of subsection 11.1.2.

- 21.2 Chewing Gum and Tobacco Products Prohibition. Premium Concessionaire shall not sell nor permit any Premium Concessionaire Party to sell or distribute chewing gum, any candy with a gum product (e.g., blow pops) and any tobacco products (e.g., cigarettes, cigars, pipe tobacco, chewing tobacco) at the Stadium or on the Real Property.

**22. Intentionally Omitted**

**23. Advertising**

23.1 Advertising Rights and Restrictions. The District or SMC (as provided in the Lease) shall retain the exclusive right to sell advertising space in the Stadium (including the Stadium Premises) and on the Real Property and on all packaging and containers for products used or sold in the Stadium or on the Real Property; provided that the District or SMC (as the case may be) shall reimburse Premium Concessionaire for the additional out-of-pocket expense incurred by Premium Concessionaire as a result of purchasing and using such packaging and containers instead of Premium Concessionaire's standard packaging and containers, as the same are depicted and described on **Schedule V** hereto within thirty (30) days after receipt of invoice and reasonable evidence of the incurrence of such out-of-pocket expenses. Except as otherwise provided in this Agreement, Premium Concessionaire shall have no advertising rights in the Stadium or on the Real Property. No advertising of any kind is permitted on any Catering Areas or Equipment unless approved in writing by the District during District Catered Events and SMC during District Catered Events or SMC Catered Events, which approval may be withheld in their sole and absolute discretion. Premium Concessionaire shall not advertise in any manner or form, on or about the Stadium, or Real Property, or elsewhere, or in any Publications or otherwise, except by means of such signs or forms of advertising as may be approved in writing by the District and SMC, which approval may be withheld in their sole and absolute discretion. Premium Concessionaire shall not in any way publicize or advertise the fact that it is providing services to the District, SMC or PDB without the prior written consent of the District, SMC and PDB in each instance (which consent may be withheld in their sole and absolute discretion); provided, however, Premium Concessionaire may list the District, SMC, PDB or the Denver Broncos as clients in Premium Concessionaire's promotional materials and trade-level advertising and, (i) subject to the prior written approval of the District and SMC may use the logo, trademark, trade name, emblem, insignia, symbol or likeness of the Stadium, and (ii) subject to the prior written approval of PDB (which approval may be withheld in the sole and absolute discretion of PDB) may use the logo of the Denver Broncos in trade-level advertising or other promotional materials describing Premium Concessionaire's own services. Except as permitted under this Section 23.1, Premium Concessionaire shall have no right to use the logo, trademark, trade name, emblem, insignia, symbol or likeness of the Stadium directly or indirectly, in connection with any production, promotion, service or publication without the prior written approval of the District and SMC which may be withheld in their sole and absolute discretion. Except as permitted under this Section 23.1, Premium Concessionaire shall not use the logo, trademark, trade name, emblem, insignia, symbol or likeness of the Denver Broncos on any material without the prior written approval of PDB which may be withheld in the sole and absolute discretion of PDB.

23.2 Required Use of Logos. The District, SMC or PDB may require Premium Concessionaire to use specially designed sales material, menus, glassware, flatware, cutlery, linens, china, containers, napkins, Disposables and other items, which, at the District's, SMC's or PDB's direction and approval may include the logo, trademark, trade name, emblem, insignia, symbol, likeness or other trade dress of the Denver Broncos, the Stadium or of sponsors and advertisers of the Denver Broncos or the

Stadium; provided, however, that (i) Premium Concessionaire shall be permitted to use up any existing stocks of disposable items prior to implementing any new design requirements unless the District, SMC or PDB agree to purchase such existing stock at Premium Concessionaire's actual cost, (ii) the requesting Party, at its sole cost and expense, shall provide Premium Concessionaire with camera ready art work required in the production of such specially designed materials, and (iii) Premium Concessionaire shall be reimbursed by the requesting Party for the additional out-of-pocket expense incurred by Premium Concessionaire as a result of purchasing and using such specially designed materials and items instead of Premium Concessionaire's standard materials and items, as described on **Schedule V** hereto within thirty (30) days after receipt of invoice and reasonable evidence of the incurrence of such out-of-pocket expenses.

23.3 **Premium Concessionaire Promotions.** Premium Concessionaire shall implement marketing and promotional plans in a manner typical of successful commercial operations, which may, but are not required to include, by way of example: (i) periodic postings of printed materials at locations approved by the District and SMC; (ii) brochures describing Catering and services available at the Stadium; (iii) announcements of new products and services; (iv) complimentary tasting stations with sample products on the Suite Levels during Home Games; and (v) introductory pricing of new items; provided, however, that Premium Concessionaire shall not be required to engage in any advertising or promotional activities not conducted in the Stadium or on the Real Property. All advertising, marketing and promotional efforts pertaining to the operation of Stadium Catering at the Stadium or on the Real Property shall be coordinated with and subject to the prior approval of the District and SMC prior to implementation.

23.4 **Premium Concessionaire's Trademarks.** Neither the District, SMC nor PDB shall use or display the logos, trademarks or tradenames of Premium Concessionaire at the Stadium or in any advertising or promotional materials pertaining to the Stadium without the prior written approval of Premium Concessionaire; provided, however, that the District, SMC and PDB shall have the right to inform potential customers of the name of Premium Concessionaire.

#### **24. Premium Concessionaire Transfers at Expiration or Termination**

24.1 At the expiration or termination of this Agreement, Premium Concessionaire shall: (a) to the extent assignable, assign all of its rights and interests under all Catering contracts and deposits, for Events scheduled to occur after the Termination Date, to the succeeding concessionaire, or to SMC (or other Persons designated by SMC) in the absence of a succeeding concessionaire provided such successor assumes and agrees to perform Premium Concessionaire's obligations arising after the Termination Date; (b) relinquish, assign and transfer all of its right, title and interest under the Liquor License, to the extent permitted under applicable Law, to the succeeding concessionaire, or SMC (or other Persons designated by SMC) in the absence of a succeeding concessionaire. Unless this Agreement is terminated as a

result of the occurrence of a Premium Concessionaire's Event of Default, SMC shall reimburse Premium Concessionaire for all reasonable out-of-pocket costs (including reasonable attorneys' fees) incurred by Premium Concessionaire in order to complete the transfers contemplated under this Section 24.1.

25. **Intentionally Omitted**

26. **Commissions.**

26.1 **Commissions Payable to SMC**

26.1.1 **Executive Suites Commissions.** For all Stadium Catering at SMC Executive Suite Catered Events occurring during the License Term of this Agreement, Premium Concessionaire shall pay SMC the following Commissions determined as a percentage of Gross Receipts from such Executive Suite Catered Events:

<u>Sales Category</u>	<u>Percentage of Gross Receipts</u>
Stadium Catering at SMC Executive Suite Catered Events	25.0%

26.1.2 **Catered Events Commissions.**

26.1.2.1 For all Stadium Catering at SMC Stadium Catered Events occurring during the License Term of this Agreement, Concessionaire shall pay SMC the following Commissions determined as a percentage of Gross Receipts from such Stadium Catered Events from the following categories of sales:

<u>Sales Category</u>	<u>Percentage of Gross Receipts</u>
Stadium Catering (excluding the sale of Alcoholic Beverages) at SMC Stadium Catered Events, except for SMC Stadium Catered Events on the Suite Levels, during the first three (3) Contract Years	7.0%
Stadium Catering (excluding the sale of Alcoholic Beverages) at SMC Stadium Catered Events, except for SMC Stadium Catered Events on the Suite Levels, during	

all Contract Years following the third (3rd) Contract Year	10.0%
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Stadium Catering (including the sale of Alcoholic Beverages) at SMC Stadium Catered Events on the Suite Levels during all Contract Years	20.0%
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26.1.2.2 In the event that a Joint Liquor License is issued and SMC permits Premium Concessionaire to sell Alcoholic Beverages at SMC Stadium Catered Events (other than SMC Stadium Catered Events on the Suite Levels) in accordance with the provisions of subsection 7.2.1.4, then, in addition to the Commissions paid to SMC pursuant to the provisions of subsection 26.1.2.1, Premium Concessionaire shall pay SMC the following Commissions determined as a percentage of Gross Receipts from such Stadium Catered Events from the following categories of sales:

<u>Sales Category</u>	<u>Percentage of Gross Receipts</u>
Sale of Alcoholic Beverages at SMC Stadium Catered Events (other than SMC Stadium Catered Events on the Suite Levels)	20.0%

26.1.3 Guaranteed Annual Payments to SMC. Premium Concessionaire guarantees that the minimum amount of Commissions payable to SMC during each Contract Year pursuant to subsections 26.1.1 and 26.1.2 ("SMC Guaranteed Annual Payment") shall be Two Hundred Thousand Dollars (\$200,000).

26.1.4 SMC Event Summary Report and Commission Payments. Premium Concessionaire shall deliver to SMC within twenty-five (25) days after the end of a calendar month (i) an Event Summary Report reflecting the amount of Gross Receipts attributable to SMC Catered Events during such calendar month for each sales category identified in subsections 26.1.1 and 26.1.2, and (ii) payment of Commissions due to SMC with respect to all such Catered Events. At the request of SMC, Premium Concessionaire shall pay Commissions and any other amounts due to SMC under this Agreement in the form of a wire transfer to account(s) designated from time to time by SMC.

26.1.5 SMC Annual Report. On or before ninety (90) days following the end of each Contract Year during the License Term, Premium Concessionaire shall deliver to SMC (i) a complete accounting report (collectively the "SMC Annual Report"), setting forth the calculation of Gross Receipts for all SMC

Catered Events (separated between the categories of Gross Receipts described in subsections 26.1.1 and 26.1.2) and the total amount of Commissions due to SMC for the applicable period pursuant to subsections 26.1.1, 26.1.2 and 26.1.3, which accounting report shall be certified by Premium Concessionaire's Chief Financial Officer as accurate and prepared in accordance with industry standards and the Obligations; (ii) if Commissions previously paid to SMC for such Contract Year are less than the total amount of Commissions due to SMC for such Contract Year (including, if applicable, the difference between Commissions paid during such Contract Year and the SMC Guaranteed Annual Payment for such Contract Year) payment of such shortfall shall either accompany such SMC Annual Report or, if previously requested by SMC, shall be wire transferred to account(s) designated by SMC.

**26.2 Commissions to Payable to District**

**26.2.1 Executive Suites Commissions.** For all Stadium Catering at District Executive Suite Catered Events occurring during the License Term of this Agreement, Premium Concessionaire shall pay the District the following Commissions determined as a percentage of District Gross Receipts from such Executive Suite Catered Events:

<u>Sales Category</u>	<u>Percentage of District Gross Receipts</u>
Stadium Catering at District Executive Suite Catered Events	25.0%

**26.2.2 Catered Events Commissions.**

**26.2.2.1** For all Stadium Catering at District Stadium Catered Events occurring during the License Term of this Agreement, Concessionaire shall pay the District the following Commissions determined as a percentage of District Gross Receipts from such Stadium Catered Events from the following categories of sales:

<u>Sales Category</u>	<u>Percentage of District Gross Receipts</u>
Stadium Catering (excluding the sale of Alcoholic Beverages) at District Stadium Catered Events except for District Stadium Catered Events on the Suite Levels	20.0%
Stadium Catering (including the sale of Alcoholic Beverages) at District	

Stadium Catered Events on the Suite  
Levels

20.0%

26.2.2.2 In the event that a Joint Liquor License is issued and SMC permits Premium Concessionaire to sell Alcoholic Beverages at District Stadium Catered Events in accordance with the provisions of subsection 7.2.1.4, then, in addition to the Commissions paid to the District pursuant to the provisions of subsection 26.2.2.1, Premium Concessionaire shall pay the District the following Commissions determined as a percentage of District Gross Receipts from such Stadium Catered Events from the following categories of sales:

Sales Category

Percentage of District Gross Receipts

Sale of Alcoholic Beverages  
at District Stadium Catered Events  
(other than District Stadium Catered  
Events on the Suite Levels)

20.0%

26.2.3 District Event Summary Report. Premium Concessionaire shall deliver to the District within twenty-five (25) days after the end of a calendar month (i) an Event Summary Report reflecting the amount of District Gross Receipts attributable to all District Catered Events held within such calendar month for each sales category identified in subsections 26.2.1 and 26.2.2 and (ii) payment of Commissions due to the District for all such Catered Events. At the request of the District, Premium Concessionaire shall pay Commissions and any other amounts due to the District under this Agreement in the form of a wire transfer to account(s) designated from time to time by the District.

26.2.4 District Annual Report. On or before ninety (90) days following the end of each Contract Year during the License Term, Premium Concessionaire shall deliver to the District a complete accounting report (collectively the "District Annual Report"), setting forth the calculation of District Gross Receipts, (separated between the categories of District Gross Receipts described in subsections 26.2.1 and 26.2.2), of all District Catered Events and the total amount of Commissions due to the District for the applicable period, which accounting report shall be certified by Premium Concessionaire's Chief Financial Officer as accurate and prepared in accordance with industry standards and the Obligations, and if Commissions previously paid to the District for such Contract Year are less than the total amount of Commissions due to the District for such Contract Year payment of such shortfall shall either accompany such District Annual Report or, if previously requested by the District, shall be wire transferred to account(s) designated by the District.

26.3 Commission Obligations Absolute. The obligation of Premium Concessionaire to pay any Commissions and the SMC Guaranteed Annual Payments are independent of the obligations and liabilities of the District and SMC under this Agreement. Premium Concessionaire shall promptly pay all Commissions and the SMC Guaranteed Annual Payments when due to either the District or SMC (as applicable) without any deductions or setoffs against such Commissions and the SMC Guaranteed Annual Payments on account of any breach or default by or claim against the District or SMC. Nothing in this Section 26.3 shall prevent Premium Concessionaire from bringing an independent action against the District or SMC.

**27. Improvements, Pre-Opening Date Events, Change Orders**

27.1 Improvements. The District and SMC shall cause the Catering Areas and Staffing Areas to be improved and equipped in accordance with the provisions of **Schedule II** hereto and SMC shall cause, at its sole cost, the Marketing Area to be improved in accordance with the provisions of Section 4.8. (The improvements to and equipping of the Catering Areas and Staffing Areas as provided in **Schedule II** and the improvements to the Marketing Area as provided in Section 4.8, as the same may be changed or amended upon the mutual agreement of the Premium Concessionaire, the District and SMC, are referred to herein as the "Improvements"). The Improvements shall remain the property of the District and SMC at all times both during the Term and after the expiration or termination of this Agreement. Premium Concessionaire covenants to fully cooperate with the Construction Representative, the District, SMC, PDB and the Design/Builder to facilitate the timely completion of the Improvements.

27.2 Pre-Opening Date Events. It is understood and agreed that there will likely occur Events at the Stadium prior to the Opening Date to commemorate or celebrate the opening of the Stadium, to dedicate the Stadium or for similar purposes. If the District or SMC desire the operations of certain Stadium Catering at any such Events, the District or SMC shall so advise Premium Concessionaire, and if and to the extent that the operation of such Stadium Catering may be operated at such time (including any required licenses) and the Premium Concessionaire and the requesting Party agree on the location, nature and extent of the Stadium Catering to be operated at such Events and the prices to be charged, Premium Concessionaire shall operate and manage Stadium Catering at such Events. No pre-Opening Date Event shall be hosted on the Club Lounge level of the Stadium or in any of the Executive Suites without the prior written approval of SMC which may be withheld in the sole and absolute discretion of SMC. Any Gross Receipts or District Gross Receipts, as applicable, derived from the operation of Stadium Catering at any such pre-Opening Date Events shall be included in Gross Receipts or District Gross Receipts, as applicable, for all purposes under this Agreement unless otherwise excluded pursuant to the provisions of Sections 4.7, 11.2 or 11.3. SMC shall be deemed to be the host of all pre-Opening Date Events for all purposes under this Agreement unless the District and SMC specify otherwise to Premium Concessionaire pursuant to the provisions of Section 9.1.



27.3 Premium Concessionaire Change Order. Any deviations or changes from the Design/Build Agreement or Stadium Plans which are requested by Premium Concessionaire and result in the issuance of a change order by the Construction Representative, Design/Builder or other applicable Person (each, a "Premium Concessionaire Change Order") must first be approved by the District and SMC and signed by a Vice President (or greater officer) of Premium Concessionaire, and Premium Concessionaire shall pay the amount of any increase to the Guaranteed Maximum Price under the Design/Build Agreement resulting from such Premium Concessionaire Change Order at the time of the approval of such Premium Concessionaire Change Order by the District and SMC to the Wells Fargo Bank West, N.A. for deposit of seventy-five percent (75%) of such payment into the District Project Fund (56% to be deposited into the Series A Bonds account and 44% to be deposited into the Series B Bonds account), and twenty-five percent (25%) of such payment into the Franchise Project Fund. The cost of any Premium Concessionaire Change Order will not be included in Premium Concessionaire's Investment and will not be subject to reimbursement, in whole or in part, by the District or SMC.

27.3.1 The District and SMC may withhold approval of any requested Premium Concessionaire Change Order in their sole and absolute discretion if the subject deviation or change may cause the delay of the Scheduled Opening Date.

## 28. Equipment.

28.1 Premium Concessionaire agrees to purchase and install all the items described on Schedule III hereto (collectively the "Equipment") in the manner and at the levels and standard required or otherwise contemplated under this Agreement, including the replacement of one of the originally specified convection ovens and five gallon steam kettles with a Rationale Oven. SMC agrees to pay for the cost and expense of replacing one of the convection ovens and five gallon steam kettles originally specified with a Rationale Oven. Any credit or rebate for the convection ovens and steam kettles shall accrue to SMC's benefit. Premium Concessionaire shall coordinate with the Design/Builder to cause the Equipment to be installed and ready for operation without delaying the Opening Date. Except as otherwise expressly provided in this Agreement, (a) the Equipment shall be and remain the property of the District and SMC at all times during the Term and after the expiration of termination of this Agreement, subject to Premium Concessionaire's license to use the Equipment as set forth in Sections 4.1 and 4.6 hereof, and further subject to Premium Concessionaire's rights upon termination of this Agreement as set forth in Section 62.1 hereof; and (b) Premium Concessionaire shall not cause or permit the Equipment, or any portion thereof, to be removed from the Stadium without the prior written consent of the District and SMC, which consent may be withheld in their sole and absolute discretion. All Equipment shall be new and of a quality consistent with equipment used in the operation of Similar Local Facilities. Premium Concessionaire shall cause all manufacturer warranties and guaranties pertaining to the Equipment

to be transferred or assigned to the District and SMC. Premium Concessionaire shall diligently pursue all warranties and guaranties pertaining to the Equipment prior to making expenditures or seeking reimbursement from the Catering Areas and Equipment Repair and Replacement Reserve Fund; provided that the District and SMC use reasonable efforts to cooperate with Premium Concessionaire in the pursuit of such warranties and guaranties. Not less than five (5) Business Days prior to the Opening Date, Premium Concessionaire shall cause all the Equipment to be tested and fully operational. The reasonable out-of-pocket costs and expenses incurred by the Premium Concessionaire to purchase and install the Equipment (including freight and sales taxes) shall be included within the Equipment Investment. Premium Concessionaire represents and warrants to the District and SMC that on the Opening Date, the Equipment, when used in conjunction with the Improvements, shall be sufficient as of the Opening Date to provide for the operation of the Stadium Catering in the manner and within the standards required under this Agreement. In the event any additional equipment is necessary on the Opening Date for the operation of the Stadium Catering in the manner and at the standards required under this Agreement, Premium Concessionaire shall purchase and install such equipment at the Stadium at its sole cost and expense. Such equipment shall be deemed Equipment under this Agreement and the reasonable out-of-pocket costs and expenses incurred by Premium Concessionaire to purchase and install such equipment (including freight and sales taxes), up to a maximum amount of \$25,000, shall be added to the amount of the Equipment Investment.

28.1.1 Within thirty (30) days after the Opening Date, Premium Concessionaire shall deliver to the District and SMC a preliminary inventory of all items comprising the Equipment including a description of the make, model and serial number of each item. Within thirty (30) days after the end of the first NFL Season during the License Term, Premium Concessionaire shall deliver to the District and SMC (i) a final inventory of all items comprising the Equipment including a description of the make, model and serial number of each item, (ii) a statement itemizing all costs and expenses incurred by Premium Concessionaire in acquiring and installing each item of Equipment certified by the Premium Concessionaire's Chief Financial Officer together with copies of supporting invoices or statements, and (iii) certificate from the Premium Concessionaire's Chief Financial Officer stating the total amount of the Equipment Investment attributable to the acquisition and installation of the Equipment.

28.1.2 Premium Concessionaire shall perform at its sole expense, a physical inventory of the Equipment on at least a semiannual basis, one such inventory occurring not less than forty-five (45) days before the commencement of each NFL Season during the License Term, and another such inventory occurring not more than thirty (30) days after the end of each NFL Season during the License Term. Premium Concessionaire shall provide the District and SMC with the written results of the physical inventory within five (5) Business Days of each inventory and shall use all commercially reasonable efforts to

repair or replace all missing or damaged Equipment within sixty (60) days after each physical inventory in accordance with the provisions of Article 55, but in no event later than the commencement of the next NFL Season. To the extent funds are available in the Catering Areas and Equipment Repair and Replacement Reserve Fund, Premium Concessionaire shall be entitled to requisition such fund, subject to the provisions of Sections 55.1 and 55.3, for all reasonable out-of-pocket costs incurred by Premium Concessionaire to repair or replace such Equipment. To the extent that the Catering Areas and Equipment Repair and Replacement Reserve Fund is depleted, the provisions of Sections 55.2 and 55.3 shall apply.

- 28.2 Premium Concessionaire has reviewed the list of the Owner's Suite Equipment attached hereto as **Schedule III-A** and the Premium Concessionaire represents to SMC and PDB that the Owner's Suite Equipment shall be sufficient as of the Opening Date to provide for the operation of Stadium Catering within the Owner's Suite in the manner and within the standards required under this Agreement. SMC shall be solely responsible for the acquisition and installation of the Owner's Suite Equipment and the Owner's Suite Equipment shall be the sole and exclusive property of SMC and does not constitute a part of the Equipment.

## 29. Pre-Opening Expenses

- 29.1 Pre-Opening Expenses. It is recognized that certain activities must be undertaken prior to the Opening Date so the Stadium Catering can function properly on the Opening Date and thereafter. Accordingly, from time to time at the appropriate time both prior to the Opening Date, Premium Concessionaire shall: (i) recruit, train and employ the staff required for the operation of the Stadium Catering, (ii) undertake pre-opening promotion and advertising, including opening celebrations and tastings for Executive Suite Licensees, (iii) test the operations of the Equipment; and (iv) in general, render such other miscellaneous services incidental to the preparation and organization of the operation of the Stadium Catering in the manner and at the levels required under this Agreement, provided that Premium Concessionaire shall not be obligated to spend in excess of Premium Concessionaire's Pre-Opening Budget. The expenses relating to such activities ("Pre-Opening Expenses") shall include, but not be limited to, items such as salaries and wages (including those of personnel of Premium Concessionaire), professional fees, telephone expenses, staff hiring and training costs, costs of opening celebrations, advertising and other promotional expenses.
- 29.2 Premium Concessionaire Investment for Premium Concessionaire's Pre-Opening Expenses. The Premium Concessionaire agrees that the portion of Premium Concessionaire's Investment attributable to Pre-Opening Expenses shall not be less than \$100,000 nor more than \$150,000, unless otherwise approved in writing in advance by the District and SMC in their sole and absolute discretion. Premium Concessionaire's Investment shall include all reasonable Pre-Opening Expenses incurred by Premium Concessionaire not to exceed, however, the total amount of

Pre-Opening Expenses reflected in the approved Premium Concessionaire's Pre-Opening Budget. Premium Concessionaire's proposed budget ("Premium Concessionaire's Pre-Opening Budget") for Pre-Opening Expenses is attached hereto as **Exhibit D**. The Premium Concessionaire, District and SMC shall agree upon a final Premium Concessionaire's Pre-Opening Budget on or before April 30, 2001. In the event the Premium Concessionaire, District and SMC are unable to agree upon the Premium Concessionaire's Pre-Opening Budget on or before April 30, 2001, the matter shall be submitted to resolution pursuant to the terms of Section 69.10. On or before thirty (30) days following the Opening Date, Premium Concessionaire shall provide evidence reasonably acceptable to the District and SMC, of Premium Concessionaire's Investment in Pre-Opening Expenses.

**30. Alterations**

- 30.1 **Required Approvals for Alterations.** Premium Concessionaire shall not make or permit any of the Premium Concessionaire Parties to make any improvements, additions, alterations, fixed decorations, replacements or modifications, structural or otherwise, to the Catering Areas, Staffing Areas or the Stadium (the "Alterations") without obtaining the prior written consent of the District and SMC. The District and SMC shall have the right to withhold their consent to any Alterations that would, in the District's and SMC's sole and absolute judgment, (i) adversely affect any of the Stadium Systems or of the functioning thereof; (ii) affect the structural integrity of the Stadium; (iii) interfere with the operation of the Stadium or any Events; or (iv) be inconsistent with the design or architecture of the Stadium or Improvements. If the District and SMC consent to any Alterations, the District and SMC may impose any conditions that they reasonably deem appropriate to such consent, including the approval of the plans and specifications for such Alterations, approval of contractors and subcontractors, supervision of the work by the District, SMC or their respective agents, and assurances that payment for the work will be made.
- 30.2 **Periodic Evaluation of Catering Areas and Staffing Areas.** From time to time as determined by the District and SMC, Premium Concessionaire shall meet with representatives of the District and SMC to evaluate the potential expansion, reduction, modification or remodeling of the Catering Areas and Staffing Areas. This Section 30.2 shall not be construed as imposing any obligations upon any of the Parties financial or otherwise to expand, reduce, modify or remodel such areas. The District and SMC acknowledge that any Catering Areas Alteration may be made only in accordance with Section 4.1
- 30.3 **Permits.** Premium Concessionaire shall obtain all permits, licenses and approvals required by any applicable Governmental Authority prior to commencing any Alterations. Premium Concessionaire shall ensure that all Alterations conform to all Laws, and insurance requirements. The District and SMC shall reasonably cooperate with the Premium Concessionaire in connection with any application by Premium Concessionaire for any license or permit or renewal thereof required to permit the construction of an approved Alteration. If Premium Concessionaire makes any

Alteration without the prior written consent of the District and SMC, the District and SMC shall have the right to correct or remove the same at Premium Concessionaire's expense. Once commenced, Premium Concessionaire shall cause the construction of all Alterations to be completed diligently and in a good and workmanlike manner.

**31. Initial Inventory and Condition Survey**

- 31.1 Prior to the commencement of the operation of Stadium Catering, Premium Concessionaire, the District and SMC shall conduct a joint inventory and condition survey of the Stadium Premises and Equipment. Premium Concessionaire, the District and SMC shall make a written record thereof, and each Party shall indicate by authorized signature its acceptance of the inventory and the condition indicated on the record.

**32. Intentionally Omitted**

**33. Personnel**

- 33.1 Personnel Selection and Training. Premium Concessionaire understands and agrees that the District and SMC place special emphasis on providing service to Patrons in a manner and at a level superior to that provided at Similar Local Facilities. Premium Concessionaire shall select, employ, train, furnish and deploy employees who are proficient, productive and courteous to Patrons in order to satisfy this standard. Premium Concessionaire shall not employ any Person performing services at the Stadium who (i) uses improper or foul language, (ii) acts in an unprofessional manner, (iii) is rude, discourteous, argumentative or abusive with the District's, SMC's or PDB's employees or agents, Patrons or Event Participants, (iv) fails to provide the level of customer service required under this Agreement, or (v) fails to satisfy any public board of health standards. All Stadium Employees and other Premium Concessionaire Parties interacting with Patrons shall be clean, courteous, friendly, efficient and properly trained. Stadium Employees and Premium Concessionaire Parties interacting with Patrons shall be attired in neat and clean uniforms at all times when Stadium Catering is provided. Premium Concessionaire shall employ an adequate number of personnel to manage and operate Stadium Catering in the manner and at the levels required under this Agreement.

- 33.1.1 Premium Concessionaire shall formulate and implement the following policies for all Stadium Employees (i) a drug-free policy; (ii) an anti-sexual harassment policy; (iii) an equal opportunity in employment policy, and (iv) such other policies generally implemented by Premium Concessionaire at other venues. Premium Concessionaire shall provide to the District and SMC evidence of its compliance with the provisions of this subsection, from time to time, when requested by the District or SMC.

- 33.1.2 Subject to the provisions of Section 69.23, each of the District, SMC and PDB agrees not to hire or otherwise engage the services of Premium

Concessionaire's management-level employees to work in or in connection with the operation of the Stadium during the Term and for a period of six (6) months following any termination of employment with Premium Concessionaire, provided that Premium Concessionaire has previously identified such employees in a writing delivered to the District, SMC and PDB. The restriction contained in the previous sentence (i) shall not apply to any former employees who left the employ of the Premium Concessionaire more than six (6) months prior to their employment by the District, SMC or PDB, and (ii) shall terminate and be deemed null, void and of no further effect in the event this Agreement is terminated as a result of a Premium Concessionaire's Event of Default or termination by Premium Concessionaire pursuant to Section 60.2. The sole and exclusive remedy for a breach of this subsection 33.1.2 shall be the payment to Premium Concessionaire by the breaching Party of an amount equal to one and one-half times the semi-annual salary that the former employee was earning immediately prior to his or her termination of employment with Premium Concessionaire. Premium Concessionaire, the District, SMC and PDB agree that such amount will constitute liquidated damages for a breach of this subsection 33.1.2 and shall be the sole and exclusive remedy of Premium Concessionaire with respect to any breach of this subsection. The Parties acknowledge that Premium Concessionaire will incur damages in the event of a breach of this subsection, that any damages would be extremely difficult and impractical to ascertain and that the amount of the liquidated damages provided under this subsection represents the Parties' reasonable estimate of such damages. The Parties further acknowledge that the amount of the liquidated damages specified herein does not include any penalty.

- 33.2 Personnel Discipline. As needed, Premium Concessionaire shall discipline and discharge (or require the discipline or discharge of) any Stadium Employee or other personnel working in the operation of Stadium Catering on behalf of Premium Concessionaire. Upon receipt of notice from either the District or SMC of any reasonable and significant objection to any Stadium Employee, the employment of such Stadium Employee will be discontinued at the Stadium, and a suitable person will be promptly substituted; provided, however, the District and SMC acknowledges that their right to require replacement of a Stadium Employee is subject to restrictions imposed by Law, collective bargaining agreement or other contract affecting such Stadium Employee. Any Stadium Employee whose employment is discontinued shall not again be employed at the Stadium or the Real Property without the prior written consent of the District and SMC. Premium Concessionaire shall provide adequately trained relief personnel in the event of absences by primary staff. The District and SMC may for good cause (i) deny entry to the Stadium by or (ii) remove from the Stadium any person employed by any Premium Concessionaire Party. The District or SMC (whichever is applicable) shall attempt to notify the General Manager immediately if any such person is denied entry to or removed from the Stadium.

- 33.3 General Manager's Required Attendance. Premium Concessionaire's General Manager shall be present at the Stadium during all Home Games. If the General Manager cannot attend a Home Game, Premium Concessionaire shall notify the SMC in advance, and the General Manager's replacement at that Home Game shall be subject to the reasonable approval of the SMC.
- 33.4 Management Team. Premium Concessionaire's management team (collectively the "Management Team") shall include the General Manager, sales manager, executive chef, human resources/office manager and accountant, and such administrative managers and assistant managers as are necessary in order to ensure the efficient management of the Stadium Catering in the manner and at the level required under this Agreement.
- 33.4.1 Premium Concessionaire shall provide the District and SMC with the home telephone numbers and cell phone numbers of all members of the Management Team and arrange for at least one member of the Management Team to be available by telephone or cell phone at all times.
- 33.5 Employees of Premium Concessionaire. All Persons engaged in the management or operation of Stadium Catering shall be the sole and exclusive agents, subcontractors or employees of the Premium Concessionaire and shall be paid by Premium Concessionaire. Such Persons shall not, for any purpose, be considered employees, subcontractors or agents of the District, SMC or PDB. In connection with the hiring of employees, Premium Concessionaire shall pay wages and withhold and remit all payroll taxes and insurance related thereto, as required by any Laws.
- 33.6 Parking. Parking for Stadium Employees and Premium Concessionaire Parties is not available at the Stadium or on the Real Property during Executive Suite Catered Events, Home Games or Field Events and may not be available at the Stadium or on the Real Property during Non-Field Events and Stadium Catered Events. The Event Host agrees, to the extent parking is available, to provide parking for Stadium Employees during Non-Field Events and Stadium Catered Events on the Real Property in areas to be designated by the Event Host. In the event parking is not available on the Real Property for Stadium Employees, the Event Host agrees to provide parking for Stadium Employees performing services during an Event at a remote location with appropriate shuttle service to the Stadium. Premium Concessionaire shall provide the Event Host with reasonable advance notice of parking requirements for Stadium Employees. Stadium Employees shall be required to pay a fee for the parking and shuttle services at a rate sufficient to cover the out-of-pocket cost and expense incurred by the Event Host to provide such parking and shuttle service. Parking provided by the Event Host for Stadium Employees pursuant to the foregoing provisions will be at the same remote location(s) at which the Event Host's Event-day employees shall be required to park and the fee for parking and shuttle service charged to Stadium Employees shall be equal in amount to the fee for parking and shuttle service charged to the Event Host's Event-day employees. The

District and SMC shall designate six (6) parking spaces on the Real Property to be available for use by Premium Concessionaire Parties at all times.

**34. Unit Staffing and Personnel Training**

- 34.1 Staffing and Supervision Plan. Premium Concessionaire shall at all times provide a well-trained and adequate staff, including the necessary management and supervisory support, to assure a high level of service for Stadium Catering. Premium Concessionaire shall provide attendants to initially setup and stock Food and Beverages, to continue to monitor Food and Beverage supplies and presentation, and to provide cleaning of Food and Beverage service areas in each Executive Suite at Executive Suite Catered Events (each an "Executive Suite Attendant") during that period of time commencing from Stadium Gate Opening continuing until one hour after the conclusion of the Home Game, Field Event or Non-Field Event which has taken place during such Catered Event. In addition, Premium Concessionaire shall provide a bartender at each Executive Suite at Executive Suite Catered Events if requested by the Executive Suite Licensee at a reasonable additional charge to the requesting Executive Suite Licensee.
- 34.2 Pre-Opening Date Information. Prior to the Opening Date, Premium Concessionaire shall: (i) describe in writing its good faith efforts in complying with the District's and SMC's Equal Opportunity Employment Program; (ii) provide the number of entry level employee hours to be devoted to formal training of the staff during the first two (2) weeks of employment and monthly and annually thereafter; (iii) submit a copy of Premium Concessionaire's employee handbook; (iv) provide a written description of recruiting techniques and sources of non-management labor; and (v) provide a written description of personnel policies and practices.
- 34.3 Training Classes. Premium Concessionaire shall conduct regularly scheduled training classes as needed for Stadium Employees and Premium Concessionaire Parties throughout the Term of this Agreement. At a minimum, Premium Concessionaire shall provide or conduct customer service training, Alcohol Awareness Training, health and safety training, Executive Suite service training and banquet service training.

**35. Employment Records**

- 35.1 Premium Concessionaire shall keep and maintain at the Stadium, or at its office within the Denver metropolitan area, accurate records ("Employee Records") of the names, addresses, eligibility for employment and all other legal documentation required by Law for each Stadium Employee.

**36. Tipping Policy**

- 36.1 Stadium Employees shall not accept tips or gratuities in performance of services pertaining to Stadium Catering or in any cash bar environment. The following



practices are expressly prohibited: (i) tip jars which are in view of any Patron; (ii) "salting" of the bar top with money to solicit tips; and (iii) permitting tips to remain on bar tops or trays.

### **37. Uniforms**

37.1 All Stadium Employees interacting with Patrons at an Event shall be neatly uniformed. Selection of the type, color and style of uniforms, including specialty uniforms designated to fit the exact nature of the Stadium or a particular Catered Event, shall be at the discretion and approval of the District and SMC. Premium Concessionaire shall provide a sampling of uniform styles and availability upon the request of the District and SMC. The District and SMC will provide the graphic standards to be followed in the design of the uniforms. Any deviations from Premium Concessionaire's standard uniforms shall be subject to the prior approval of the District and SMC.

37.1.1 Premium Concessionaire, the District and SMC shall mutually cooperate in the selection and approval of uniforms to facilitate Premium Concessionaire's need to order and receive delivery of uniforms prior to the Opening Date. The uniforms selected and approved by the District and SMC may be modified or altered by the District or SMC after Premium Concessionaire has ordered such uniforms, provided, however, that the District or SMC, as applicable, shall reimburse Premium Concessionaire for the additional out-of-pocket expense incurred by Premium Concessionaire as a result of the modifications or alterations to the uniforms ordered by Premium Concessionaire.

37.1.2 As any existing stock of uniforms is worn-out or depleted, Premium Concessionaire, the District and SMC shall mutually cooperate in the selection and approval of new uniforms pursuant to the provisions of Section 37.1.

37.2 Each of the Stadium Employees interacting with Patrons at an Event shall (a) wear a name tag and carry a Stadium identification card or badge (provided by Premium Concessionaire at its sole cost and expense) approved by the District and SMC at all times when working at the Stadium or on the Real Property, and (b) wear Event credentials as required by the Event Host; provided, however that such credentials shall be supplied by the Event Host at no charge to Premium Concessionaire or such employees.

### **38. Maintenance and Repairs**

38.1 Maintenance. Subject to the provisions of Article 55, Premium Concessionaire agrees (i) to maintain the Stadium Premises and Equipment in good order, condition and repair; (ii) to replace when necessary all worn-out Equipment; and (iii) to ensure that at all times during the License Term that the Stadium Premises maintain an up-to-date, clean and attractive appearance. The District and SMC shall have the right,