

**SAN JOSE SHARKS  
SPONSORSHIP AGREEMENT**

This Agreement (the "Agreement") is made by and among **CITY OF MERCED, EL CAPITAN, A JDV BY HYATT HOTEL** (collectively, the "Sponsor") and **SAN JOSE SHARKS, LLC**, a Delaware limited liability company (the "Company" or "Sharks") (collectively, the "Parties").

**RECITALS**

WHEREAS, the Sharks own and operate the San Jose Sharks (the "Team"), a professional ice hockey team competing in the National Hockey League (the "NHL");

WHEREAS, the Sharks have the power and authority to grant certain advertising, marketing, and promotional opportunities related to the Team and the Venue (the "Sponsorship Benefits"); and

WHEREAS, the Sponsor desires to purchase or otherwise participate in Sponsorship Benefits, as set forth herein;

NOW, THEREFORE, in consideration of these Recitals, hereby incorporated into this Agreement, the following promises and mutual covenants, and all other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**1. DEFINITIONS.** As used in this Agreement, the following terms will have the following meanings:

A. "Game" means any game designated as a San Jose Sharks home game and scheduled by the NHL to be played at the Venue.

B. "Event" means any commercial presentation at the Venue, including concerts, athletic events, and theatrical productions, for which tickets are made available for purchase by the public, and which require such a ticket for entry, excluding any (i) sporting events regulated by a governing body such as USA Gymnastics, other Olympic sport governing bodies, or the NCAA; and (ii) professional sports games and/or competitions.

C. "League" means the NHL and/or any other sports organization that is the governing body of any team that plays in the Venue or with which the Sharks or San Jose Arena Management is or otherwise becomes affiliated.

D. "League Rules" means the constitution, by-laws, and all other rules, regulations, agreements, resolutions, and policies of the League; any Collective Bargaining Agreement between the League and/or its members and other parties; all agreements, consent decrees and settlements entered into, between or among the League, League members and/or other persons in furtherance of League business; and any national network agreements, corporate marketing, licensing, sponsorship or similar agreements between the League and third parties; each as presently in existence and/or as hereafter enacted, made or enforced.

E. "League Year" means the period from July 1 of a calendar year through June 30 of the following calendar year, or such other time period determined by the NHL and NHL Players Association as indicated in the effective Collective Bargaining Agreement during the Term of this Agreement.

F. "NHL Season" or "Season" means the time period corresponding to the Preseason, Regular Season and the Post-Season as determined by the NHL.

G. "Post-Season" means the time period comprising the games conducted by the NHL following the Regular Season which lead to the determination of the winner of the Stanley Cup Championship.

H. "Preseason" means the time period of a League Year prior to the Regular Season, including the period comprising any exhibition games taking place during training camp.

I. "Regular Season" means the time period during an NHL League Year comprising the league schedule as determined by the NHL.

J. "Territory" means (i) the city of San Jose, (ii) the area extending seventy-five (75) miles from the corporate limits of San Jose, and (iii) the area extending further to the entirety of each county, division or district (as applicable), to the extent any portion of such county, division or district is within the area extending seventy-five (75) miles from the corporate limits of San Jose. Notwithstanding the foregoing, the Territory excludes any portion thereof that is within another NHL member club's territory.

K. "Venue" means the event facility currently known as SAP Center at San Jose, located at 525 West Santa Clara Street, San Jose, California.

**2. TERM.** The term of this Agreement will commence on the Effective Date and continue for the period of time set forth in **Exhibit A** (the "Term"), unless terminated earlier in accordance with this Agreement. Unless specifically provided in **Exhibit A**, neither party has the right or obligation to renew this Agreement upon expiration or earlier termination of the Term.

**3. SPONSORSHIP BENEFITS.** Sponsor will receive the specific Sponsorship Benefits described in **Exhibit A** and all other exhibits attached to this Agreement, if any (the "Exhibit(s)").

A. Signage

i. Display. Signage provided under this Agreement will be displayed at the Games and/or Events, and for the period of time, set forth in the Exhibit(s). Additional visibility will be provided as available during other Events at ingress, egress and/or intermissions. Specific length of time such signage will be displayed may vary based upon the timing and structure of the respective Event and signage may not be displayed and/or visible at select Events, subject to the provisions of this Agreement. During the Term of this Agreement, Sponsor will not cease promoting any of the products and/or services that serve as the subject of any signage granted herein.

ii. Costs and Expenses. Unless otherwise provided in the Exhibit(s), Sponsor will bear the cost of initial design, fabrication, installation, removal and maintenance of signage to be displayed under this Agreement. Sponsor will additionally bear the cost of any and all revisions, modifications, or alterations of the signage, as mutually agreed by the Parties or as reasonably deemed necessary by the Sharks. The design of any signage to be displayed under this Agreement must be mutually agreed upon by the Parties. Any additional signage costs to be paid by Sponsor hereunder will be in addition to any Sponsorship Fee described in **Exhibit A** and will be invoiced to Sponsor as they accrue.

iii. Temporary Obstruction. The Sharks will have the right to relocate, remove, cover, or obstruct any fixed signage, including dasherboard signage, or not run digital signage, in the Venue: (i) for games and/or events closed to the general public; (ii) for games and/or events presented by a national or international collegiate or professional organization including, but not limited to, the National Collegiate Athletic Association ("NCAA"); U.S. National Governing Bodies, the NHL All-Star Game, the Post-Season, or Arena Football League All-Star Game; (iii) as required by Event promoters or presenters; (iv) as required by League Rules, the NHL, including NHL broadcast preemption, and/or any other league with which the Sharks, San Jose Arena Management, or Sharks Minor Holdings is affiliated; or (v) subject to Sponsor's approval, as requested by the Sharks.

iv. Additional Teams. In the event that the Sharks, San Jose Arena Management, or any of their parents, subsidiaries, or other related entities should reach an agreement with another franchise team of the NHL, the National Basketball Association (the "NBA"), or similar professional sports leagues to make the Venue the home venue of an additional professional sports team on a permanent basis, then the Sharks will have the right to: (i) increase Sponsorship Fee(s) associated with the signage benefits granted hereunder, if any, as consideration for the increased display and visibility of such signage within the Venue; or (ii) terminate this Agreement, effective upon three (3) months prior written notice, at which time Sponsor's signage may be removed. Any increase to Sponsorship Fee(s) pursuant to this provision will be determined in the Sharks' sole and reasonable discretion and will be based on the difference between (i) the initial Sponsorship Fee(s) provided in **Exhibit A** and (ii) the prevailing rates paid for comparable signage benefits in comparable venues presenting similar games on a permanent basis.

B. Advertising

i. Cost and Expenses. Unless otherwise provided in the Exhibit(s), all advertising copy and/or content for print, broadcast, internet or other similar distribution (the "Advertising Materials") will be prepared by Sponsor at Sponsor's sole cost and expense, and will be delivered to the Sharks in a form that is ready for distribution and/or publication. The design of any such Advertising Materials will be mutually agreed upon by the Parties. The Sharks will bear the cost of actual distribution and/or publication of the Advertising Materials unless otherwise provided in the Exhibit(s). Sponsor may revise, at its own cost and expense, the copy and content of any Advertising Materials on an on-going basis at any time during the Term of this Agreement; provided Sponsor will give the Sharks three (3) business days to implement any such revisions and subject to any publication or printing deadlines. Sponsor will bear all costs of any such revisions.

ii. Broadcasts. The Sharks have agreed to use reasonable efforts to provide, or cause to be provided to, Sponsor with such commercial time during television, radio and/or internet broadcasts, if any, as set forth in the Exhibit(s). The Sharks reserve the right, in its sole discretion, to determine when Sponsor's commercial messages will be aired during any such broadcast. The Sharks will provide Sponsor with a broadcast schedule, but the Sharks

and the League each reserve the right, in their sole discretion, to unilaterally alter the broadcast schedule. The Sharks will give Sponsor reasonable notice of any such schedule change. The Sharks will not be in breach of this Agreement for the failure of any third party broadcaster to present or produce any Sponsorship Benefits granted herein.

### C. Games and Events

i. Tickets. Sponsor will receive the number of tickets, if any, for admission to the Game(s) and/or Event(s) played in the Venue specified in the Exhibit(s) (the "Tickets"). Unless otherwise provided in the Exhibit(s), the location of the seat(s) for which the Tickets are issued will be determined in the sole discretion of the Sharks. Sponsor agrees that Sponsor and any person(s) to whom Sponsor confers Tickets granted hereunder will be bound by all terms and conditions upon which tickets for admission to the Venue are issued and will observe all rules and regulations relating to admission, behavior and use of the Venue. Sponsor will have no right to renew or repurchase the Tickets granted herein subsequent to the expiration or earlier termination of this Agreement. If this Agreement is terminated prior to the end of the Term, any Tickets granted herein will no longer be valid and will be returned immediately by Sponsor to the Sharks.

ii. Parking Passes. Sponsor will be entitled to the number of parking passes, if any, specified in Exhibit(s) (the "Parking Passes"). Parking Passes will be for vehicle parking located in the parking area designated in the Sharks' sole discretion, and Sponsor will be entitled to use the Parking Passes any time Sponsor is entitled admission to the Venue under this Agreement. Sponsor agrees that Sponsor and any person(s) to whom Sponsor confers the Parking Passes granted hereunder will be bound by all terms and conditions upon which parking passes are issued by the Sharks and will observe all rules and regulations relating to their use. Sponsor will have no right to renew or repurchase the Parking Passes granted herein subsequent to the expiration or earlier termination of this Agreement. If this Agreement is terminated prior to the end of the Term, any Parking Passes granted herein will no longer be valid and will be returned immediately by Sponsor to the Sharks.

iii. Sponsor Events. Sponsor will have the right to schedule the use of various facilities within the Venue for the number of private Sponsor functions or events, if any, specified in the Exhibit(s) (the "Sponsor Events"). The Parties acknowledge that the scheduling of Sponsor Events by the Parties is subject at all times to facility availability, as determined by the Sharks and San Jose Arena Management. The Parties further acknowledge that Sponsor Events will constitute a non-exclusive license to use certain facilities within the Venue, San Jose Arena Management and the Sharks will maintain possession and control of the Venue at all times. Unless otherwise provided in the Exhibit(s), Sponsor will be responsible for the payment of all costs related to the presentation and production of Sponsor Events, including, but not limited to, staffing, lighting, rental equipment and utilities, at the standard market rate offered by San Jose Arena Management as of the date of each Sponsor Event.

iv. Sharks Foundation and Community Events. The Sharks Foundation and Community Sponsorship Benefits and/or activation events may be cancelled, rescheduled, and/or postponed at any time in the sole discretion of the Sharks or its corporate affiliate(s). In the event any Sponsorship Benefits provided for in the Exhibit(s) are affected by such cancelation, rescheduling, or postponement, such cancelation, reschedule, or postponement will constitute a Force Majeure in accordance with **Section 8.F**, below.

D. Materials Approval. The design, layout, and content of any and all advertising copy, broadcast commercials, marketing, promotional and/or other creative materials for use under this Agreement, including any use of the Marks, is subject to Sharks' prior approval which will not be unreasonably withheld. Sponsor will submit all materials for approval in a timely manner, as requested by the Sharks. Upon approval, Sponsor will prepare and deliver all materials to the Sharks in a form that is ready for production, publication, and/or distribution.

E. Exclusivity. Except as otherwise provided in the Exhibit(s), Sponsor will have no right of exclusivity or priority relating to the subject matter, product(s), service(s) and/or any other aspect of Sponsor Category (as defined in Exhibit A), Sponsor's business, or Sponsorship Benefits granted hereunder; and nothing in this Agreement will prevent the Sharks from entering into a similar agreement with any other party, including, but not limited to, competitors of Sponsor, or to provide or sell any type of advertising, marketing, promotional and/or other sponsorship benefit to any other party. In no event shall any right of exclusivity provided to Sponsor under this Agreement prevent the Sharks from permitting the named sponsor of any Event or team from displaying temporary signage at the Venue, or making any public announcements during the presence of such Event or team at the Venue. For purposes of clarity and notwithstanding anything to the contrary in this Agreement, during the Term, if the Sharks desire to enter into a sponsorship agreement with a third party in the Sponsor Category, the Sharks shall have the right to terminate this Agreement without penalty upon 30 days written notice to Sponsor.

F. Partner Status. Unless otherwise provided herein, if Sponsor is designated an "Official Partner" in **Exhibit A**, both Parties may publicly recognize Sponsor as an "Official Partner" of the Sharks. The designation of

"Official Partner" shall be non-exclusive. If Sponsor is designated a "Proud Partner" in **Exhibit A**, both Parties may publicly recognize Sponsor as a "Proud Partner" of the Sharks. The designation of "Proud Partner" shall be non-exclusive.

G. League Preemption. Notwithstanding anything herein to the contrary, this Agreement is subordinate in all respects to the League Rules. In addition to all other League Rules, the Parties acknowledge that the Sharks must cooperate in certain League-mandated national sponsorship agreements, and the League may reserve the right to remove or replace local team sponsor signage from in-bowl areas with signage of a League sponsor. League preemption during Regular Season Games will constitute a Force Majeure under this Agreement. "Line of sight" signage and certain other benefits are not available for Post-Season Games.

H. Premium Promotional Items. In accordance with League Rules, certain branded promotional items may be subject to premium license fee(s) payable to the NHL ("Royalty"). Unless otherwise provided in the Exhibit(s), Sponsor will be solely responsible for any Royalty payments.

I. Post-Season Benefits. If, during the Term, the Sharks play in any Post-Season Game, to the extent that Sharks has the necessary rights to grant the Benefits on Exhibit A for such Post-Season Game, Sponsor shall pay an additional amount per Post-Season Game equal to a pro-rated portion of the Sponsorship Fee applicable during the then-current NHL Season as determined by Sharks' internal line item accounting values as set forth in Sharks' standard rate card for Sponsorship Benefits during each Post-Season Game, provided that if tickets are part of the Sponsorship Benefits, such Post-Season Game tickets shall be at the rates generally applicable to the price of such tickets. Any fees due for Post-Season benefits will be payable at the conclusion of each Post-Season, as provided in **Section 4.B**, below.

J. Multiple Seasons. Unless otherwise provided in the Exhibit(s), if the Term comprises more than one (1) NHL Season, Sponsor's rights and benefits will be the same for each NHL Season under this Agreement.

K. Unavailable Benefits. The Parties acknowledge and agree that from time to time during the term, certain of the Sponsorship Benefits to be provided hereunder may become unavailable to Sharks, may become impossible or impracticable to provide (including, by way of example only and without limitation, due to Sharks' termination of a particular business activity (including the exhibition of a Sharks Game or any media program, event to which a Sponsorship Benefit relates, or a change in League Rules)), or may impose an economic burden on Sharks materially greater than the burden it could have reasonably expected to incur on the date hereof (each, an "Unavailable Benefit"). With respect to any Unavailable Benefit for which a remedy is not otherwise expressly provided in this Agreement or in another agreement between Sharks and Sponsor, the parties will negotiate in good faith for the provision of one (1) or more substitute benefits having substantially the same promotional or sponsorship value as the Unavailable Benefit, as determined by Sharks in its sole discretion, except that if a Sponsorship Benefit has become unavailable due to a Force Majeure Event, Sharks may elect to not make such substitution and the provision of Section 8.F shall apply. Any action by Sharks with respect to the preceding sentence shall satisfy all of Sharks' obligations hereunder with respect to the Unavailable Benefits.

#### 4. COMPENSATION AND PAYMENT

A. Compensation. In consideration of the various rights and benefits granted herein, Sponsor agrees to pay to the Sharks the amount described in **Exhibit A** (the "Sponsorship Fee"), the value and sufficiency of which is hereby acknowledged by the Parties.

B. Method of Payment. Sponsor will pay the Fee in accordance with the Payment Schedule described in **Exhibit A**. The Sharks will send Sponsor an invoice for the total amount due for any and all Post-Season Sponsorship Benefits (the "Post-Season Fee") within thirty (30) days following the conclusion of the NHL Stanley Cup Playoffs in the same League Year. The Sharks will provide Sponsor with an invoice for any additional charges due hereunder as such charges accrue. All invoices will be payable at the office of the San Jose Sharks in San Jose, California (525 West Santa Clara Street, San Jose CA 95113), or such other location as the Sharks may designate, on or before the thirtieth (30th) day after the date of invoice. Sharks' failure to deliver such invoice shall not relieve Sponsor of any obligation to pay such amounts to Sharks. Post-Season Fees are in addition to any other amounts, including the Sponsorship Fee, due to Sharks hereunder.

C. Late Payments. Sponsor agrees to timely pay all Sponsorship Fee invoices. If any invoice is not paid in full on time, any unpaid amounts shall bear interest at the annual rate of ten percent (10%) or the highest rate permissible under California law, calculated daily and compounded monthly after thirty (30) days. Sponsor shall also reimburse Sharks for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which the Sharks do not waive by the exercise of any rights hereunder), Sharks shall be entitled to suspend the provision of any Sponsorship

Benefits if Sponsor fails to pay any part of the Sponsorship Fee when due hereunder. Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other rights hereunder, Sharks reserve the right at any time to setoff any late or unpaid Sponsorship Fee payments under this Agreement against any amount payable by Sharks to Sponsor under any service agreement or other arrangement.

D. Expenses and Reimbursement. All payments to be made to the Sharks by Sponsor under this Agreement will be net of all costs, expenses and taxes, except if the Sharks are required to pay any costs, expenses or taxes directly related to Sponsor's obligations under this Agreement, Sponsor will promptly reimburse the Sharks upon notice thereof. Under no circumstance will this provision be construed to require Sponsor to pay taxes imposed on the Sharks income. The Sharks will provide Sponsor with an invoice for any additional charges due hereunder as such charges accrue.

## 5. INTELLECTUAL PROPERTY

A. Marks. The Parties will retain all ownership, right, and title in their copyrights, patents, trademarks, service marks, trade names, insignia, symbols, logos, designs, artwork and all other intellectual property rights (the "Marks"). The Parties acknowledge that any use of the other party's Marks under this Agreement will inure to the benefit of and be on behalf of the other party and will terminate upon the expiration or prior termination of this Agreement. Except as expressly provided herein, neither party will have any rights or interest in the other party's Marks without prior written consent.

B. Sharks' License. Sponsor represents and warrants that it has the power and authority to grant, and does hereby grant, to the Sharks a non-exclusive, royalty-free, worldwide license during the Term of this Agreement to reproduce and display Sponsor's Marks, solely for purposes related to the performance of this Agreement. Sponsor further grants to the Sharks the right to sublicense its rights to use Sponsor's Marks granted herein: (i) to the vendors and concessionaires of the Venue, who may, in turn, subcontract the manufacture of products (excluding food service products), related supplies, novelties, souvenirs, and any other goods or items used, consumed, or given away by them and/or Sharks in connection with their respective use and operation within the Venue; and (ii) other service providers who render services in connection with the operation of the Venue. Any such sublicenses may include the right to use Sponsor's Marks alone or in conjunction with marks of other sponsors or organizers of specific events at the Venue.

C. Marks Approval. Each party will provide the owning party samples of all usage of the owning party's Marks prepared and/or used in the performance of this Agreement for the owning party's prior approval, which approval shall not be unreasonably withheld or delayed. The owning party shall approve or disapprove the use as depicted in any such sample within five (5) business days of receipt thereof. Any samples not objected to within such time shall be deemed approved. Once approved, usage as depicted in any sample provided hereunder can be used without subsequent approval by the owning party.

D. Broadcast Rights. Notwithstanding anything herein to the contrary, the Sharks own and control all rights in and to all visual and audio content of the Team home and away games and any other content owned and/or licensed by the Sharks, San Jose Arena Management or Sharks Minor Holdings, including without limitation, all television, radio, internet, live-stream or any other broadcast rights, and the Sharks will have the exclusive right to authorize and control any and all use of such content. Such authorization or consent of the Sharks, which may be withheld for any reason or no reason, must be in writing. Sponsor will have no rights to any revenues from any game broadcast.

## 6. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. Indemnification. Sponsor will indemnify, defend, and hold harmless the Sharks, Sharks Sports & Entertainment LLC, San Jose Arena Management, LLC, San Jose Sharks, LLC, Sharks Minor Holdings LLC, Digital Infrastructure Transformation, LLC, The Sharks Foundation, Sharks Hospitality, the City of San Jose, and each of their respective members, officers, directors, employees, agents, representatives, affiliates, successors and assigns (the "Indemnified Parties") from and against any and all damages, liabilities, claims, costs and expenses of any kind, including reasonable attorneys' fees, court costs, and litigation expenses (the "Claim(s)"), related to or arising from: (i) the actual or alleged negligent, intentional, or wrongful acts or omissions of Sponsor or those acting with Sponsor's authority; (ii) the content of any materials, including Sponsor's Marks, equipment or articles of appointment provided by Sponsor and displayed and/or used hereunder; and (iii) Sponsor's breach or threatened breach of any provision of this Agreement. Sponsor will not be responsible for the gross negligence or willful misconduct of the Indemnified Parties.

B. Limitation of Liability. Under no circumstances shall the Sharks be liable to Sponsor for any consequential, special, indirect, incidental, punitive or exemplary loss, damage, cost or expense, including, without limitation, loss of good will, lost profits, data loss, or opportunity costs.

C. Insurance. Sponsor must obtain, and continuously maintain, at its own expense, the following insurance policies:

1. Workers' Compensation (or its equivalent in the country of Sponsor) in compliance with state statutory laws, including Employers' Liability with minimum limits of:

\$1,000,000 Each Accident;  
\$1,000,000 Disease - Each Employee;  
\$1,000,000 Disease - Policy Limit.

2. An Insurance Services Office occurrence based Commercial General Liability Insurance Policy, providing coverage for bodily injury and property damage and personal and advertising injury including contractual liability and products/completed operations liability and additional insured - vendors broad form coverage with minimum limits of:

\$1,000,000 Each Occurrence;  
\$2,000,000 General Aggregate;  
\$2,000,000 Products/Completed Operations Aggregate.

Products completed/operations insurance shall be maintained for a minimum period of three (3) years after final payment and Sponsor shall continue to provide evidence of such coverage to Sharks on an annual basis during the aforementioned period.

3. Automobile Liability Insurance, covering owned, non-owned, leased or hired automobiles, with a minimum combined single limit of \$1,000,000 Each Accident.
4. Media Liability or equivalent Professional Liability Insurance, with a minimum limit of \$10,000,000 Each Claim to cover third-party claims of intellectual property rights infringement including but not limited to infringement of trademark, copyright, trade name, trade dress, slogan, and rights of publicity claims.
5. Liquor Liability Insurance with minimum limits of \$10,000,000 Each Occurrence and \$10,000,000 in the Aggregate.
6. Umbrella Liability Insurance, in excess of 1, 2 & 3 above, with minimum limits of:  
\$10,000,000 Each Occurrence  
\$10,000,000 General Aggregate

All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A- VII or better. Sharks Sports & Entertainment LLC, San Jose Sharks, LLC, San Jose Arena Management, LLC, Sharks Ice, LLC, Sharks Minor Holdings LLC, Digital Infrastructure Transformation, LLC, The Sharks Foundation, Sharks Hospitality, the City of San Jose, Successor Agency to the San Jose Redevelopment Agency, The San Jose Arena Authority, and their respective officials, employees, agents and contractors must be named as Additional Insureds ("Sharks Additional Insureds") on the Commercial General Liability, Commercial Automobile Liability, and Umbrella Liability Policies. Additional insured coverage shall be extended to include products-completed operations coverage. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). The Commercial General Liability policy shall include no third-party-over action exclusions. Further, coverage for the Sharks Additional Insureds shall apply on a primary basis irrespective of any other insurance available to the Sharks Additional Insureds, whether collectible or not. No policy shall contain a self-insured retention. No policy shall contain a deductible in excess of \$25,000 and any/all deductibles shall be the sole responsibility of the Sponsor and shall not apply to the Sharks. All policies shall be endorsed to provide the coverage described for the Sharks Additional Insureds and to provide a waiver of subrogation in favor of the Sharks Additional Insureds. Sponsor shall provide the Sharks with at least 30 days' written notice if any of the required policies are cancelled or not renewed. Sponsor shall furnish the Sharks with certificates of insurance evidencing compliance with all insurance provisions noted above prior to the commencement of the Sponsorship and annually at least ten (10) days prior to the expiration of each required insurance policy. The insurance requirements set forth will in no way modify, reduce, or limit the indemnification herein made by Sponsor. Receipt by the Sharks of a certificate of

insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding.

D. Books and Records. Sponsor will maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Sharks for a minimum period of two (2) years from the date of final payment to Sponsor pursuant to this Agreement. Any records or documents required to be maintained pursuant to this Agreement will be made available for inspection or audit at any time during regular business hours, upon written request by the Sharks.

E. Cooperation. Sponsor agrees to cooperate with the Sharks in the performance of its obligations under this Agreement, including, but not limited to, agreeing to, distributing and/or enforcing any waivers, rules and regulations prepared or implemented by the Sharks relating to Sponsorship Benefits granted hereunder.

**7. DEFAULT AND TERMINATION.** If either party fails to perform or otherwise breaches a material obligation, covenant, agreement, representation or warranty made under this Agreement (the "Default"), and the breaching party fails to remedy the Default within thirty (30) days of receiving written notice thereof, the non-breaching party may, in addition to any other remedies which may be available to it, terminate this Agreement, effective immediately upon written notice of termination. Termination of this Agreement will not affect Sponsor's obligations under this Agreement for amounts due and owing to the Sharks or otherwise limit the rights and remedies available to the Sharks. If this Agreement is terminated by Sponsor under the terms of this **Section 7**, the Sharks will provide Sponsor with a pro rata refund of the Sponsorship Fee already paid to the Sharks, excluding any amount allocable to Sponsorship Benefits already delivered hereunder and/or any other Sharks' obligations already performed in accordance with this Agreement.

Upon termination pursuant to this Section 7, Sponsor will forfeit all rights to any Sponsorship Benefits. Furthermore, Sponsor's obligation to pay the full outstanding balance of the Sponsorship Fee (the "Outstanding Balance") and any other amounts due to the Sharks under this Agreement, if any, will be accelerated and become immediately due and payable. Upon such termination, the Sharks will have no further liability or obligation to Sponsor, and may recover any damages to which it is entitled at law or in equity.

## **8. MISCELLANEOUS**

A. Relationship of the Parties. The Parties are independent contractors and nothing contained herein will be interpreted, construed, or applied in practice, in any way, as creating or establishing a partnership, agency, joint venture, or employment relationship among the Parties. Sponsor is solely responsible for all state, federal and local taxes, as well as reporting requirements, for Sponsor and any of its subcontractors, employees or agents. Sponsor will be solely responsible for complying with all OSHA, workers' compensation, insurance or other similar laws, regulations and/or requirements.

B. Right to Manage. The Sharks reserve the sole and exclusive right and authority to handle, decide, supervise, manage, and control the financial, business, administrative and other matters with respect to its business including, without limitation, the operation of the Sharks, the Venue, and any other business entities and professional sports team(s) in which it or its corporate affiliates has an interest or which is under its control, including the scheduling of all Games and Events, the hiring and firing of personnel, and any other administrative matters.

C. No Warranty. Other than full performance of the Season(s) comprising the Term of this Agreement, as determined in the sole discretion of the League, the Sharks do not make any representation, warranty, covenant or guarantee that any particular Games or events, or any specific number of Games or events, will take place at the Venue during the Term of this Agreement.

D. Confidentiality. This Agreement, including all of its terms and conditions, along with all negotiations and discussions between the Parties regarding this Agreement are confidential and may not be disclosed by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may disclose such matters to its corporate directors, attorneys and/or auditors, the NHL, and as required by law, provided such fiduciaries commit in writing to abide by the confidentiality provisions set forth in this Agreement. If either party is required to disclose any term or provision of this Agreement, such party shall promptly notify the other party to permit it to take what appropriate action it deems necessary to protect its interests hereunder.

E. Venue Reference. Sponsor agrees to identify the Venue as the "SAP Center at San Jose," or other arena name as determined in the Sharks' sole discretion, in all public references made by Sponsor during the Term of this Agreement.

F. Force Majeure. Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted, or interfered with by reason of any event beyond the reasonable control of the Parties, including, but not limited to, League preemption, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, strike, labor dispute, war, terrorist threat or activity, any government law, order, or regulation, or order of any court or jurisdiction (a "Force Majeure"), the restricted party will not be in breach hereof and neither party will be entitled to receive a credit or refund; rather, the Parties will cooperate in good faith to allow the performance of this Agreement by rescheduling, substituting, or altering performance, as mutually determined by the Parties. The financial condition, default, breach, or intentional or negligent act or omission of this Agreement by the Party seeking excuse from performance will not constitute a Force Majeure. COVID-19 related restrictions or other COVID-19 related impacts on the Sharks' operations shall be a Force Majeure event to the extent the Sharks' delivery of a Sponsorship Benefit is prevented, in which case, the Sharks will deliver substitute Sponsorship Benefits equal to the aggregate value of the missed Sponsorship Benefit(s) as a result of the Force Majeure.

i. NHL Work Stoppage

a. Make Goods. Notwithstanding anything herein to the contrary, in the event the NHL experiences a strike, lockout or related work stoppage (the "NHL Work Stoppage") resulting in the reduction of the number of Games played at the Venue during the Term, Sponsor and Sharks will negotiate in good faith for the provision of one or more "make good" benefits equal to the value of Unavailable Benefits due to the NHL Work Stoppage. As a result of an NHL Work Stoppage, Sponsor will not have the right to terminate this Agreement; rather, Sponsor's remedy will be limited to the make good benefits in accordance with the terms of this Agreement.

b. Extension. Notwithstanding anything herein to the contrary, if an NHL Work Stoppage occurs in any NHL Season during the Term of this Agreement and, as a consequence, the entire schedule of Games for that NHL Season is cancelled, this Agreement will automatically be extended for one (1) additional NHL Season for every NHL Season missed during such NHL Work Stoppage upon the same terms and conditions.

G. Compliance. This Agreement is subject to, and the Parties will strictly comply with: (i) all licenses held by broadcasters of the games; (ii) all applicable federal, state and local laws, regulations and decisions, including actions of governmental administrative agencies and commissions and the lease under which the Sharks operate the Venue; and (iii) all League Rules and Venue policies (including with respect to health and safety) as presently in existence and/or hereafter enacted, made, modified or enforced.

H. Dispute Resolution. The Parties voluntarily agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (collectively, the "Dispute(s)"), shall be determined by arbitration in San Jose, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. Except as required by law, neither party nor the arbitrator may disclose the existence, content, results or award of any arbitration without the prior written consent of all Parties. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The prevailing party will be entitled to recover from the losing party reasonable attorneys' fees, arbitrators' fees and any other fees incurred in connection with the arbitration. The Parties expressly waive the right to resolve any Dispute through any other means, including by a jury trial. This dispute resolution provision will survive the Agreement. THE PARTIES UNDERSTAND AND AGREE THAT THEY ARE ELECTING TO RESOLVE ANY DISPUTE BY ARBITRATION AND ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

I. Attorney's Fees. If either party commences or engages in an action or other proceeding by or against the other party arising out of or related to this Agreement, the prevailing party will be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action or proceeding, any related appeals, and enforcing any associated judgments.

J. Governing Law. This Agreement will be governed and construed in accordance with the internal laws of the State of California without regard to conflict of law principles that may cause the application of the laws of another jurisdiction, except for the Dispute Resolution provisions, which are to be governed and construed in accordance with the Federal Arbitration Act. Subject to the Dispute Resolution provisions of this Agreement, any dispute arising under or related to this Agreement will be subject to the exclusive jurisdiction of state court in the County of Santa Clara, California, or the United States District Court for the Northern District of California in San Jose, California.

K. Notices. Any notice, request, approval or consent under this Agreement must be given in writing and delivered in person, mailed (certified or first class), or electronically transmitted to the address provided in this

Agreement, or to such other address as the recipient may furnish in writing to the sender, and will be effective upon the earlier of actual delivery or three (3) days following mailing.

L. Waiver and Amendment. No modification, amendment, or waiver of any provision of this Agreement will be binding or valid unless in writing and executed by both Parties. Failure to enforce any provision of this Agreement will not be construed as a waiver or thereafter prevent either party from enforcing the same, or any other provision, of this Agreement.

M. Severability. If any portion of this Agreement is judged to be illegal, invalid, or unenforceable, such portion will be given effect to the maximum extent possible by narrowing, or enforcing in part, such portion by the minimum extent necessary to make it enforceable. Any such invalidity or unenforceability will not in any way affect the validity or enforceability of the remainder of this Agreement, which will continue in full force and effect.

N. Captions. The captions used in this Agreement are for convenience only and will not define, limit, or otherwise be used in the construction of this Agreement.

O. Assignment. Sponsor may not assign all or part of its rights or obligations hereunder without the Sharks' express written consent, except for assignments resulting from an internal corporate reorganization. Subject to the foregoing, this Agreement is binding upon the Parties, and inures to the benefit of the Parties and is binding upon each party's respective heirs, successors, legal representatives, and permitted assignees.

P. Authority. Each party represents and warrants that the person executing this Agreement is the authorized representative of each party, is legally competent to execute this Agreement, and has the full right and authority from all necessary sources to enter into and fully perform this Agreement in accordance with its terms.

Q. Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will be binding when one or more counterparts have been signed by each of the Parties and delivered, either manually or electronically, to the other party, it being understood that all Parties need not sign the same counterpart.

R. Entire Understanding. This Agreement, including all Exhibits referred to herein, constitutes the entire understanding between the Parties and supersedes all prior or contemporaneous negotiations, discussions, understandings and agreements, whether written or oral.

S. Survival. The applicable provisions of Sections 6, 7 and 8 shall survive termination or expiration of this Agreement.

**[Signatures Follow]**

The Parties execute this Agreement as of the date first written below (the "Effective Date").

**SAN JOSE SHARKS, LLC**

By: \_\_\_\_\_  
Brian Towers  
VP, Sales and Service

\_\_\_\_\_  
Date

**CITY OF MERCED**

By: \_\_\_\_\_  
Stephanie R. Deitz  
City Manager

\_\_\_\_\_  
Date

**EL CAPITAN, A JDV BY HYATT HOTEL**

By: \_\_\_\_\_  
Robin Donovan  
Managing Director

\_\_\_\_\_  
Date

Address for Notices:

**SAN JOSE SHARKS, LLC**  
525 West Santa Clara Street  
San Jose, California 95113  
[btowers@sjsharks.com](mailto:btowers@sjsharks.com)

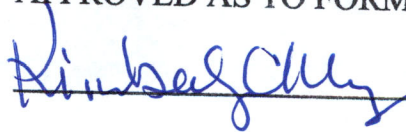
With a copy via email to:  
Cassie McBride, VP and General Counsel  
[cmcbride@sjsharks.com](mailto:cmcbride@sjsharks.com)

Address for Notices:

**CITY OF MERCED**  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340  
Attn: Stephanie R. Dietz, City Manager  
Email: \_\_\_\_\_

**EL CAPITAN, A JDV BY HYATT HOTEL**  
609 W. Main Street  
Merced, CA 95340  
Attn: Robin Donovan, Managing Director  
Email: [robin.donovan@jdvhotels.com](mailto:robin.donovan@jdvhotels.com)

APPROVED AS TO FORM:

 \_\_\_\_\_ 12/29/21  
Date

Deputy City Attorney

**EXHIBIT A**  
**SHARKS SPONSORSHIP PACKAGE**

1. **Term** 2020-21 NHL Seasons: September 30, 2021 – June 30, 2022
2. **Sponsor Category** Tourism Board
3. **Exclusivity** Non-exclusive
4. **Sharks Sponsorship Benefits**

**A. Signage and Promotions**

**i. Stadium Vision – Concourse Plus**

- a. **Concourse.** One minute (1:00) total of advertising exposure on the Concourse LED boards plus Concourse LCD Pendants during Preseason and Regular Season Games and all Events at the Venue, subject to promoter approval. Exposure will rotate at various times during the course of each Game or Event as determined in the Sharks' reasonable discretion.
- b. **TV L-Wraps.** One minute (1:00) total of advertising exposure on "L-Wraps" displayed on Concourse level televisions (excludes televisions not intended for public viewing) during Preseason and Regular Season Games and all Events at the Venue, subject to promoter approval. Exposure will rotate at various times during the course of each Event as determined in the Sharks' reasonable discretion.
- c. **Post-Season.** Sponsor will purchase this same Stadium Vision signage for each and every Post-Season Game played at the Venue, if any, at the rate of \$500 per Post-Season Game.

**ii. Game Entitlement.** During one (1) Team Regular Season Game (the "Entitled Game"), to be mutually determined by the Parties subject to availability, Sponsor will receive the following:

- a. **Marketing Mentions.** Sponsor will be recognized as the "Presenting Sponsor" or similar designation in all Sharks-controlled mentions of the Entitled Game, including: social media, game day email blast, and radio.
- b. **Logo Placement.** Sponsor shall receive display of a Sponsor Mark on all promotional graphics, creative, and collateral marketing for the Entitled Game. The exact nature and location of the Mark placements is at the Sharks discretion, subject to Sponsor approval.
- c. **PA Announcement.** Sponsor's name will be mentioned in live announcements by Public Address announcer during the Entitled Game. Timing and exact nature of each announcement will be determined in the Sharks' sole discretion. Announcements will include a Sponsor Mark displayed on in-Venue graphics and content.
- d. **LED Static Signage.** Two minutes (2:00) total of advertising exposure on the fascia ring, lower scoreboard ring, and intermediate scoreboard ring of the Venue during the Entitled Game. Exposure will rotate at various times during the course of the Game as determined in the Sharks' sole discretion.
- e. **Digital Dasherboard.** Three minutes (3:00) total of advertising exposure on one (1) pair of TV-visible LED digital dasherboards at the Venue during Entitled Game. Exposure will rotate at various times during the course of the Game, to be determined in the sole discretion of the Sharks. Subject to NHL national broadcast preemption.
- f. **LED Marquee.** For approximately two weeks leading up to the Entitled Game, Sponsor will receive display of a Sponsor Mark and recognition as the "Presenting Sponsor" or similar designation included in the signage rotation and displayed on the LED Marquee located in front of the South Entrance of the Venue. Exact timing of rotation and display is in the sole discretion of the Sharks.
- g. **Individual Game Tickets and T-Shirts.** Sponsor will receive one hundred (100) upper reserved tickets for admission and one hundred (100) t-shirts to the Entitled Game. The specific seat location of each ticket will be determined in the Sharks' sole discretion, subject to availability.

## **B. Community and Sharks Foundation**

- i. Teal Top Court.** Sponsor will be a recognized partner of the Sharks Foundation's Teal Top Court initiative. As a partner of Teal Top Court, Sponsor will receive the following marketing support for one (1) Teal Top Court location:
  - a. Social Media.** Sponsor will be recognized by SJS Community and San Jose Sharks on the day of the Teal Top Court dedication/opening event through Sharks Community and San Jose Sharks social media accounts. Number and details of posts will be determined in the Sharks' discretion but will include two (2) total Sharks Community "What's Happening" and "Recap" infographics and one (1) recap video post.
  - b. Recap Video.** Sponsor representative will have the opportunity to participate in on-camera interview used in the recap video. Recap video will air during at least one (1) Team home Game at the Venue on the videoboard and will be posted at sjsharks.com and shared on social as described above.
  - c. Print.** Sponsor will be recognized in Sharks Foundation digital newsletter recap of the Teal Top Court event, recap article posted on sjsharks.com, and recap article on Teal top webpage at sharksfoundation.org.
  - d. Teal Top Court Event.** Sponsor Mark will be included in signage at or on the court upon opening. At the dedication/opening event for the court, Sponsor representative will have the opportunity to address the crowd and participate in the ribbon cutting ceremony.
  - e. Teal Top Court Equipment.** Sharks will provide Teal Top athletic equipment sufficient to begin game play prior to the scheduled opening event.

### **5. Sponsorship Fee.** 2021-22 NHL Season \$185,000

Sharks will invoice Sponsor for the Sponsorship Fee upon execution of this Agreement. The Sponsorship Fee shall be payable as follows: City of Merced shall pay Sharks \$83,250 and El Capitan Hotel shall pay Sharks the remaining \$101,750 of the Sponsorship Fee. All Sponsorship Fees are due and payable within thirty (30) days of receipt of invoice and do not include the Post-Season, unless otherwise noted in this Agreement.