

BEVERAGE AGREEMENT

Parties:

BOTTLER:

Coca-Cola Bottling Company United -East, LLC
d/b/a Savannah Coca-Cola Bottling Company

ACCOUNT:

Effingham County Board of Commissioners on
behalf of Effingham County Recreation Department

The parties hereto are entering into this agreement (the "Agreement") because Account wishes to grant to Bottler, and Bottler wishes to obtain, the exclusive rights set forth herein. Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein and that all requirements of the applicable public procurement laws are satisfied. In consideration of the premises and the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All defined terms used in this Agreement and not otherwise defined will have the meanings set forth below:

- (a) **"Agreement Year"** means each twelve-month period during the Term beginning on the Effective Date (as defined in Section 2).
- (b) **"Beverages"** means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages can be made, and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®) are deemed to be included in this definition. For the avoidance of doubt, "flavor enhancers", "liquid water enhancers", and non-alcoholic beverages sold as "shots" or "supplements" are considered Beverages.
- (c) **"Competitive Products"** means all Beverages which are not Products.
- (d) **"Concessionaire"** means any current or future third-party food or beverage service provider at the Facility that directly or indirectly relate to the sale or service of Beverages.
- (e) **"Facility"** or **"Facilities"** means the entire premises of all locations owned, operated or under the control of Account, including all currently existing and future buildings, and includes, without limitation, the grounds, parking lots, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities. The term "Facilities" includes all franchised locations (whether currently existing or opened during the Term), and all food trucks operated by Account.
- (f) **"Freestyle"** means a fountain dispenser that combines ingredients (microdosed beverage components, beverage mixes and flavors stored in cartridges and nutritive and non-nutritive sweeteners stored in bag-in-boxes and/or cartridges) to create a wide variety of branded fountain beverages.
- (g) **"Products"** means Beverages (i) manufactured, distributed, or marketed by Bottler; or (ii) sold under trademarks or brand names owned or controlled by or licensed for use by Bottler.
- (h) **"Unattended Retail Services"** the provision and sale of Beverages, fresh brewed beverage(s), prepackaged food, snacks, and/or sundries through self-service kiosks, which permit sales directly to the consumer at the Facility without person-to-person interaction.

2. Term. This Agreement shall be in effect for an initial term beginning June 1, 2025, and ending on May 31, 2026 ("**Initial Term**"). Thereafter this Agreement shall automatically renew for up to nine (9) successive one (1) year periods, beginning each June 1st and ending each May 31st, (each, a "**Renewal Term**") unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. Notwithstanding the foregoing, effective at the end of each calendar year during the Term, either party shall have the right to terminate this Agreement,

without cause, by giving the other party sixty (60) days advance written notice. As used herein, the capitalized word “Term” shall mean the time period beginning June 30, 2025 and ending May 31, 2035, including each Renewal Term, but in no event shall the Term extend beyond any limitation in any applicable public bid law.

3. Advertising Rights.

- (a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products (i) at the Facility and (ii) in connection with the Facility. No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility.
- (b) Bottler will have the exclusive right to advertise the Products as the “official” or “exclusive” soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.
- (c) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account and Facility (“**Account Marks**”) in connection with the promotion of Products, upon approval by Account. Such promotion may occur in advertising (TV, radio, print, social media and/or other electronic means), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler’s other accounts.
- (d) Bottler shall have the right to place advertising materials in mutually agreed locations at the Facilities. Account agrees that Bottler’s advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the trademarks/logos corresponding to such Products.
- (e) Account further agrees that only Products will be dispensed in Bottler’s equipment and that no other trademarked Beverage-dispensing equipment, coolers or containers will be permitted at the Facilities. Provided, however, nothing herein is intended to prohibit any visitor, guest, or attendee at the Facilities from bringing their personal coolers and containers bearing the trademarks of Competitive Products into the Facilities.
- (f) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

4. Product Rights.

- (a) Except as permitted in Section 4.(d) below, The only Beverages (including, but not limited to, in post-mix, bottle/can, and vending) that will be sold, distributed, dispensed, sampled, or served at the Facility at any time or at any event during the Term will be Bottler’s Products.. Account and/or its Concessionaires shall purchase all Beverages (and cups, lids and carbon dioxide, if applicable) directly from Bottler. Notwithstanding anything in this Agreement to the contrary, no Competitive Products may be sold, dispensed, sampled, served, or otherwise made available anywhere at the Facility. Account agrees not to sell or distribute, directly or indirectly, any Products purchased hereunder outside of the Facility. Products offered in cups shall be offered in Approved Cups.
- (b) Account agrees to offer 20oz packaged Products at all events held at the Facility.
- (c) Account hereby grants to Bottler the exclusive Beverage vending rights at the Facility and exclusive rights to provide Unattended Retail Services at the Facility.
- (d) Nothing in this Section 4 is intended to restrict any visitor, guest, or attendee of the Facility from bringing Competitive Product for their personal consumption. However, such Competitive Products may not be sold or distributed to the general public.
- (e) Permitted Exceptions.
 - i. Bottler’s Products will be the only Beverages sold, served, distributed, sampled, or otherwise made available at the Facilities, provided however Account may, on a non-exclusive basis, serve, sell or dispense the following

Competitive Products (“**Permitted Exceptions**”) at the Facilities, provided that no Competitive Products are sold, vended, distributed, dispensed or otherwise served from Bottler’s Equipment:

- Kona Ice vendor or other ICEE vendor

- 5. Consideration.** In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to provide Account with the specific items set forth in **Exhibit A** (collectively “**Consideration**”). If Bottler has agreed to make any payments for rebates, commissions, or other consideration by check or ACH, Bottler is not obligated to make such payments until the balance due to Customer is at least \$50. After the balance due reaches \$50, the payment will be made on the next regularly scheduled payment date. Bottler may adjust the frequency of such payments if \$50 or more is not earned in any payment period.
- 6. Pricing.** Account shall be entitled to purchase bottled/can Products (and cups, lids and carbon dioxide, if applicable) at Bottler’s then current trade prices. Such prices shall remain in effect until December 31, 2025. Thereafter, prices are subject to change each Agreement Year. Price increases generally occur automatically on January 1st of each Agreement Year. However, in the event of an increase in a component of Bottler’s cost of goods, manufacture or delivery, or increases in taxes, deposits or other government related fees, Bottler may further increase prices to cover such increased costs at other times during the Agreement Year; in which case Bottler will provide thirty (30) days’ written notice to Account prior to such price changes taking effect with documentation for any mid-year increases.
- 7. Equipment.** During the Term, Bottler will loan to Account, subject to the terms of Bottler’s Equipment Placement Addendum (“**EPA**”) attached hereto as **Exhibit B**, at no cost, the Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Products at the Facility (“**Equipment**”). Account agrees that Bottler shall have the right to place a quantity of Beverage vending machines, coolers or other Equipment, determined by Bottler in its discretion, in mutually agreed upon locations at the Facility. Upon thirty (30) days’ notice from Bottler, Bottler shall have the right to remove any Equipment, in its discretion, and Account shall provide immediate physical access to Bottler for the removal of such Equipment. The Equipment will not include Freestyle equipment. Account hereby agrees to the terms of the EPA set forth in **Exhibit B**.
- 8. Concessionaire.** In the event Account employs a Concessionaire, Account will cause Concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler’s existing agreement with Concessionaire, if any. If no agreement exists between Concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. Account acknowledges that there will be no duplication of allowances, funding or any other benefits (including, pricing, marketing fees, commissions, rebates) from Bottler to Account or Concessionaire under this Agreement or Bottler’s existing agreement with Concessionaire, if any. If Bottler is required to pay the Concessionaire funding or to provide Products pursuant to prices under a separate agreement with the Concessionaire, then Account agrees that Bottler may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Bottler to Account. In the event of a default in any of Concessionaire’s obligations owing to Bottler, Account will use commercially reasonable efforts to cause Concessionaire to cure such default.
- 9. Termination.** If any of the following events occur during the Term of this Agreement, a party may (in addition to any other remedies available) terminate this Agreement immediately upon notice to the other party: (a) the other party breaches any of its obligations set forth in this Agreement and fails to cure such breach within 30 days’ written notice thereof; (b) any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages; (c) the other party files a petition under any bankruptcy law or becomes insolvent or makes any general assignment for benefit of creditors; or (d) a party’s full right and authority to enter into this Agreement and to grant and convey to the other party the rights set forth herein has expired or been revoked. In the event of any termination of this Agreement, Account shall (i) provide immediate physical access to Bottler for the removal of any Equipment, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of any Consideration. Further, if either party elects to terminate this Agreement as provided in Section 2 above, School shall (i) provide immediate physical access to Bottler for the removal of any Equipment, and (ii) pay to Bottler the unearned portion of any Consideration.

- 10. Right to Off-Set and Withhold.** In the event Account or Concessionaire fails to pay Bottler any invoice due for Products received, transshipment charges or upon any other basis, Bottler shall have the right to deduct the amount of such unpaid invoice, transshipment charge or other charge from any Consideration otherwise due from Bottler to Account. Bottler shall have the right to withhold and not pay further any amounts which may become payable to Account pursuant to this Agreement if: (i) Account has failed to perform its obligations hereunder, (ii) Bottler's rights hereunder have been lost, limited or restricted, or (iii) there exists a bona fide dispute between the parties. Nothing in this section shall operate to restrict any of Bottler's other remedies in the event of a material breach by Account.
- 11. Adjustment.** If (i) any of the rights granted to Bottler herein are materially restricted or limited during the Term, including as a result of a Force Majeure Event (as defined in Section 13, or (ii) if any material component of the Facility is closed, or substantially closed, to customers for a period of thirty (30) consecutive days, or (iii) if the volume of Products sold to the Account decreases for any reason in any Agreement Year by ten percent (10%) or more over the prior Agreement Year, then in addition to any other remedies available to Bottler, Bottler may elect to adjust any Consideration to fairly reflect the decreased value of rights granted to Bottler hereunder (and Account will pay to Bottler a refund of any prepaid amounts in excess of such reduced Consideration and a pro rata refund of the costs of refurbishing and installing the Equipment).
- 12. Notices.** Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the addresses on the signature page (as such addresses may be updated from time to time by written notice).
- 13. Force Majeure.** The failure of a party to comply with the terms and conditions hereof because of an act of God, strike, labor troubles, war, fire, earthquake, hurricane, tornado, epidemic, act of terror or public enemies, action of federal, state or local governmental authorities, or for any reason beyond the reasonable control of such party ("**Force Majeure Event**"), will not be deemed a breach of this Agreement. Such party will resume full performance of and compliance with the terms and conditions hereof promptly upon removal of any such Force Majeure Event.
- 14. Claims.** In no event will Bottler accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other Consideration provided under this Agreement ("Claims") more than forty-five (45) days from the date of invoice, commission report, check or other applicable documentation. In order to submit a Claim, Account shall provide Bottler a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. Bottler will review each Claim in good faith and provide responses to each Claim submitted in accordance with this Section. Bottler will work directly with the Account to resolve any Claims or audit issues but will not interact with third-party auditors or contractors. Any audits requested by Account shall take place during normal business hours and shall be conducted at Bottler's place of business.
- 15. Complete Agreement.** This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral. In the event of a conflict between the provisions of this Agreement and a provision in any other document including any "click through" or other online terms and conditions referenced in any such documents or in a website (collectively, "**Supplemental Terms**"), the provisions of this Agreement shall control. No Supplemental Terms shall modify, amend or supplement the terms of this Agreement, even if such Supplemental Terms are accepted or acknowledged by a party after the execution of this Agreement.
- 16. Confidentiality.** During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential, subject to applicable laws.
- 17. Miscellaneous.** Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without reference to its conflict of law rules. Each of the parties hereto agrees that it will, in its performance of its obligations

hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. If any portion of this Agreement is severed, that is, held indefinite, invalid, or otherwise unenforceable, the rest of this Agreement continues in full force. But if the severance of a provision affects a party's rights, the severance does not deprive that party of its available remedies, including the right to terminate this Agreement. Account shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company or Bottler, nor shall this Agreement give Account the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Bottler or The Coca-Cola Company. **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES.** This waiver applies to any action or legal proceeding, whether arising in contract, tort or otherwise. Account may not assign this Agreement without the prior written consent of the Bottler. All amendments to or waivers of this Agreement must be in writing signed by all the parties. Bottler's delay or failure to exercise any of its rights hereunder will not operate as a waiver thereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BOTTLER

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ACCOUNT

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NOTICE ADDRESS:

If to Bottler:

Coca-Cola Bottling Company United – East, LLC
d/b/a Savannah Coca-Cola Bottling Company
102 Coleman Boulevard
Savannah, GA 31408

With a copy to:

Coca-Cola Bottling Company United, Inc.
4600 East Lake Boulevard
Birmingham, AL 35217
Attn: General Counsel

NOTICE ADDRESS:

If to Account:

Effingham County Board of Commissioners
804 S. Laurel Street
Springfield, GA 31329

Exhibits Attached:

Exhibit A – Consideration

Exhibit B – Equipment Placement Addendum

EXHIBIT A

CONSIDERATION

1. **Annual Marketing Fees.** Bottler agrees to pay Account Five Thousand Dollars (\$5,000) each Agreement Year of the Term (the “**Annual Marketing Fees**”). The first installment shall be payable within sixty (60) days after the date this Agreement is fully executed, and subsequent installments shall be due on or about the anniversary date of the Effective Date in each Agreement Year remaining in the Term. The Annual Marketing Fees shall be deemed earned pro rata on a daily basis over the Agreement Year for which they are paid.
2. **Rebates.** Bottler agrees to pay Account rebates in the amount of Two Dollars (\$2.00) for each converted case of Product purchased and paid for by Account for sale at the Facility (the “**Rebates**”). The Rebates shall be paid quarterly, in arrears, within Sixty (60) days after the end of each applicable period in which the Rebates were earned and will be based on Bottler’s case sales records. Rebates shall not be earned on 12oz cans, 16.9oz sparkling, 16.9oz Dasani or sales of Products through Bottler’s full-service vending machines. As used herein, a “converted case” is measured by 24-count. Regardless of the case configurations in which Products are sold, they are translated to the converted case equivalent for purposes of calculating Rebates.
3. **In-kind Marketing Support.** Each Agreement Year, Bottler agrees to make available to Account in-kind marketing support for mutually agreed marketing activities, such as menu boards, banners or other items, with an aggregate estimated retail value of up to Seven Hundred Fifty Dollars (\$750), as determined in good faith by Bottler (“**In-kind Marketing Support**”). Account understands and acknowledges that it will not receive cash in lieu of In-kind Marketing Support.
4. **Complimentary Product.** Each Agreement Year, Bottler shall make available to Account up to One Hundred (100) standard physical cases of complimentary Products consisting of 12oz cans and 16.9oz Dasani, with an aggregate estimated retail value of One Thousand Dollars (\$1,000), as determined in good faith by Bottler. Such complimentary Products will be provided to Account upon reasonable advance request. Account must request all available complimentary Products during the course of each Agreement Year. If Account does not request all available complimentary Products by the end of each Agreement Year, then any complimentary Products remaining at the end of each Agreement Year shall be forfeited by Account and retained by Bottler with no further obligation. Complimentary Products are not to be resold. Account understands and acknowledges that it will not receive cash in lieu of Complimentary Product.
5. **Event Trailers.**
 - (a) In connection with this Agreement, Account may have the opportunity to use a trailer supplied by Bottler for concession sales of Products at Account events. (“**Event Trailer**”). Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to Account’s use of an Event Trailer, except such claims as might arise solely out of Bottler’s gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Product, or consequential, special or incidental damages in any way relating to Account’s use of an Event Trailer.

EXHIBIT B

EQUIPMENT PLACEMENT ADDENDUM

During the Term of the Agreement, Bottler may provide to Account Equipment (as defined below), subject to the terms of this Equipment Placement Addendum (“**EPA**”). The terms of this EPA shall apply to each piece of Equipment commencing on its date of installation at any Account Location (“**Commencement Date**”). THE TERMS OF THIS EPA WILL CONTINUE IN EFFECT WITH RESPECT TO EACH PIECE OF EQUIPMENT UNTIL THE EQUIPMENT HAS BEEN RETURNED TO BOTTLER AND WILL SURVIVE THE EXPIRATION OR TERMINATION OF ANY AGREEMENT INTO WHICH THIS EXHIBIT IS INCORPORATED. Any term capitalized, and not otherwise defined herein, shall have the meaning given in the Agreement.

1. **Installation and Use Restrictions.** Bottler may, from time to time, deliver and install **Equipment** (which term encompasses all equipment provided by Bottler at any time, including, without limitation, vending machines, coolers, fountain equipment, racks and/or any replacement parts, replacements, additions or accessories) reasonably required and as mutually agreed upon to dispense the Bottler’s Products. Account shall use the Equipment only at the particular location to which such Equipment is actually delivered unless otherwise agreed by Bottler. At all times during the term of this Agreement, Account shall maintain records of the location of all Equipment and promptly provide copies of such records to Bottler upon request. The Agreement and this EPA, in addition to any additional documents and/or records by and/or between the parties describing the Equipment and the location(s) where such Equipment is placed, shall be maintained by Bottler and shall constitute the official book of record pertaining to the Equipment. Account hereby agrees that: (i) no logo, trademark, advertisement, or other indication of Bottler’s ownership of the Equipment shall be obstructed, defaced, or removed, and no other logo, trademark, or advertisement shall be attached to the Equipment; (ii) the Equipment shall not be obstructed, moved, or removed without the prior written consent of Bottler; (iii) the Equipment shall not be sold, reassigned, loaned, leased, or rented to any other party except as authorized by Bottler; in which case, Account shall remain fully responsible for the Equipment as per the terms of this Agreement; (iv) no racks, merchandise, or any other objects shall be placed on top of or attached to the Equipment unless expressly authorized by Bottler; and (v) Account will not attach the Equipment, or allow the Equipment to be attached, in such a manner as to become part of the realty as a fixture or otherwise, and that the Equipment will be maintained so that it may be easily removed without damage to buildings or realty.
2. **Operation.** In consideration of the provision of the Equipment by the Bottler to Account pursuant to the Agreement, Account agrees to purchase from Bottler and store in, or sell through, the Equipment only products supplied by Bottler or an authorized Bottler-approved distributor. In Bottler’s sole discretion, a review of Account’s product purchase volume and Equipment usage may justify ongoing Equipment placement or Equipment removal. Removal of any piece of Equipment will not affect the term of any agreement between the parties, and this EPA shall survive with respect to any Equipment remaining in Account’s possession.
 - a. If Bottler is providing full-service vending, Account agrees to permit Bottler to place the vending Equipment on Account’s premises. Bottler shall stock such vending Equipment and shall collect all vending proceeds from the sale of beverages. If Bottler has agreed to pay Account a commission on sales through the Equipment, all taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating any commissions due to Account.
 - b. Bottler hereby loans the Equipment to Account; however, during the term of this Agreement, Bottler reserves the right, upon prior notice to Account, to lease or rent the Equipment to the Account and, upon commencement of the lease or rental program, Account agrees to pay a monthly rental/lease amount. Bottler may change the rental/lease rate charged under this Agreement by sending notice of such change to Account at its present address. Account may terminate this Agreement as set forth herein if it objects to such change.
 - c. If the Equipment includes a fountain beverage dispenser, Account agrees to permit Bottler to install the fountain Equipment on Account’s premises. Account agrees such fountain Equipment will be used only for the purpose of dispensing fountain beverage products of The Coca-Cola Company (“**Company**”), such as Coca-Cola® classic (or Coke®), diet Coke® and Sprite®, and other fountain products distributed by Bottler with the understanding that no product of PepsiCo, Inc. or of an affiliate thereof may be dispensed. Account further agrees not to dispense any product whose pungency could affect the normal taste or quality of the Company’s fountain beverage products.
3. **Ownership.** Bottler is and, at all times, shall remain, the exclusive owner of the Equipment. Account shall protect Bottler’s title and keep the Equipment free from all claims, liens, and encumbrances arising from the actions or inactions of Account. Account’s obligation under this paragraph remains until such time as Bottler or Bottler’s designee picks up the Equipment. Account authorizes Bottler to execute and file any additional instruments in all jurisdictions where it deems it necessary to perfect and maintain Bottler’s interest in the Equipment. Bottler shall have the right, during Account’s regular business hours, to inspect the Equipment at Account’s premises or wherever the Equipment may be located and to review all records that reasonably relate to the Equipment upon reasonable notice to Account. Account shall promptly notify Bottler of all details arising out of any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.
4. **Service and Repair.** Account shall take reasonable care of the Equipment. Bottler agrees to provide reasonable service and repair for the Equipment during the term hereof. Account shall allow Bottler to enter its premises for the purpose of inspection or performance of such service and repair, or necessary replacement or return or removal of the Equipment. In the event additional service and repair is requested by Account or reasonably necessary as a result of Account’s negligence or willful misconduct, Bottler may bill Account its standard rate per

service call. All service and repair calls must be exclusively handled or authorized by Bottler. Account's sole recourse against Bottler with respect to service and repair provided by Bottler or its agents to the Equipment is that Bottler will correct any defective workmanship at no additional charge to Account, provided that Bottler is given prompt notification of any defective workmanship. Account shall promptly notify Bottler of any Equipment malfunction and take reasonable steps to mitigate any risk of injury to person or property arising from such malfunction. For example, if a piece of Equipment is not cooling properly, Account will unplug that piece of Equipment until it is repaired or replaced by Bottler.

5. Disclaimer of Warranties; Liability and Costs. Account acknowledges that Bottler is not the manufacturer of the Equipment. BOTTLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AS TO THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, CONSTRUCTION, CONDITION, SPECIFICATIONS, OR PERFORMANCE OF THE EQUIPMENT. Account accepts no warranties and expressly waives any implied warranties as to the fitness for a particular purpose, merchantability, design, construction, condition, specification, or performance of the Equipment. Except to the extent attributable to the gross negligence or willful misconduct of Bottler, Account hereby assumes liability for any and all damage to (normal wear and tear excepted), or loss of, the Equipment from the time the Equipment is delivered to Account until returned to or removed and accepted by Bottler. Account assumes responsibility to report any damage to, or loss of, Equipment to Bottler immediately. To the extent any payment is due from Bottler to Account under the Agreement or otherwise, Bottler may deduct from such payment the cost of repair or replacement of Equipment due to damages for which Account is responsible hereunder. All taxes, licenses, charges, or other fees which may be imposed on Account's sales of products through the Equipment or in connection with this Agreement by any taxing authority, shall be borne by Account.
6. Exculpation; Indemnity. **CUSTOMER ACKNOWLEDGES THAT INSTALLATION, USE, OR OPERATION OF EQUIPMENT CARRIES INHERENT RISKS INCLUDING BUT NOT LIMITED TO FLOODING AND DAMAGE TO FIXTURES AND OTHER PROPERTY.** Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to the installation, use, repair, or operation of the Equipment, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of product, or consequential, special or incidental damages in any way relating to the installation, use, repair, or operation of the Equipment. Account represents and warrants that plumbing and electrical service on the property is proper and adequate for the installation and use of the Equipment, and Account will not use extension cords or other electrical connections not expressly approved by Bottler. Notwithstanding anything herein to the contrary, the provisions of this section will survive termination of the Agreement.
7. Termination or Expiration. Upon termination or expiration of the Agreement, Account shall promptly return all Equipment to Bottler.
8. Remedies. In the event of Account's breach of this EPA, Bottler shall have the immediate right to exercise any one or more of the following remedies: (w) to terminate the Agreement; (x) to declare the entire amount of any rent immediately due and payable, without notice to or demand of Account; (y) to take possession of any or all of the Equipment without demand or notice wherever the same may be located, without any court order or other process of law; or (z) to pursue any other remedy at law or in equity. If the Equipment is not made accessible by Account, then Account shall pay all costs and expenses relating to the removal of the Equipment, including reasonable attorneys' fees incurred by Bottler in enforcing its rights hereunder by litigation or otherwise. If this EPA is terminated with respect to any piece of Equipment for any reason prior to one year from the commencement date hereof, then Account shall pay Bottler all costs and expenses for installation, removal and refurbishment of the Equipment. All rights and remedies provided herein may be exercised exclusively, concurrently, or cumulatively with any other right or remedy hereunder, or as otherwise provided by law.
9. Casters (if applicable). If Account requests, at any time during the term of the Agreement, that Bottler provide the Equipment equipped with casters, the following provisions shall apply. Account represents and warrants that the Equipment is required by a governmental authority pursuant to applicable health, safety, sanitary or other applicable codes or ordinances, or the Account desires the Equipment to be equipped with casters to permit the efficient and thorough cleaning of the Equipment and surrounding areas. Account recognizes and acknowledges that the casters provided on the Equipment are not designed or intended to allow for the movement of the Equipment beyond the minimal distances required for cleaning of the immediate area and are not designed for movement from room to room or other similar distances. Account agrees that it shall not, and shall not permit its employees, agents, or subcontractors to use the casters to move the Equipment beyond the short distances necessary to adequately clean and maintain the Equipment and immediately surrounding areas. Account agrees not to otherwise move or displace the Equipment from the area in which it was placed by Bottler. Any violation of this section by Account shall constitute a breach of this EPA.
10. Miscellaneous. To the extent that any of the terms of this EPA conflict with the terms set forth in any other agreement between the parties (and the effect of such conflict diminishes the rights of Bottler under this EPA), the terms of this EPA will control; provided further that removal of any Equipment will not affect the terms of any other agreement between the parties.