

FOOD SERVICE PARTNERSHIP AGREEMENT

This Food Service Partnership Agreement is made and entered into by and between Effingham County Board of Commissioners, 601 North Laurel Street, Springfield, Georgia 31329 (“Client”), and Summit Food Service, LLC, 1751 County Road B West, Suite 300, Roseville, Minnesota 55113 (“Company”) (collectively “the Parties”).

1. TERM AND INTENT

- 1.1 Client grants Company the exclusive right to provide Food Service, to operate the Food Service Facilities, and to provide to Client, employees, guests and other persons at the Premises such Food Service and Products.
- 1.2 This Agreement shall commence on March 9, 2018 (the “Commencement Date”) or sooner if mutually agreed upon in writing by both of the Parties. The Agreement will remain in effect through March 8, 2021. The Agreement shall automatically renew for an addition two (2) year period, unless either party provides written notice of termination to the other party at least ninety (90) days prior to the expiration date or unless this Agreement is otherwise terminated as set forth herein.

2. DEFINITIONS

- 2.1. Accounting Period. Company’s accounting calendar is based on an accounting cycle consisting of three (3) rotational periods of four (4) weeks, four (4) weeks, five (5) weeks.
- 2.2. Agreement. In order of precedence: (i) this Food Service Partnership Agreement, Exhibits and Schedules, as amended and, where specifically included by reference, (ii) the Company’s Proposal and (iii) the Solicitation.
- 2.3. Food Preparation Equipment. Equipment or appliances reasonably necessary for Food Service including, without limitation, stove, oven, sink, refrigerator, microwave, mixer, steamer, slicer, freezer and fire extinguishing equipment that is in good condition and of a commercial grade.
- 2.4. Food Service. Operations and Products to be provided by Company in accordance with this Agreement related to the preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises.
- 2.5. Food Service Facilities. Space for Company to prepare and perform Food Service at the Premises including, without limitation, kitchen, dining, service, office and storage areas.
- 2.6. Governmental Rule. Any statute, law, rule, regulation, ordinance or code of any governmental entity (whether federal, state, local or otherwise).
- 2.7. Office Equipment. All office items reasonably necessary for Company staff to perform office-related functions at the Premises including, without limitation, furniture (e.g. desk, chair, file cabinet), equipment (e.g. phone), parking spaces and locker/break room facilities.
- 2.8. PCI Standards. All rules, regulations, standards or guidelines adopted or required by the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Payment Instrument Information.
- 2.9. Premises. The Client’s food service facilities located at:

Effingham County Prison (Kitchen Location)

331 Highway 119 South
Springfield, Georgia 31329

Effingham County Jail
130 East 1st Street
Springfield, Georgia 31329

Effingham County Senior Citizens Center
128 Stillwell Road
Springfield, Georgia 31329

- 2.10. Products. Food, beverages, goods, merchandise, and supplies.
- 2.11. Proprietary, Confidential and Trade Secret Information. Items used in Company Food Services (owned by or licensed to Company) including, without limitation, menus, signage, surveys, Software (i.e. menu systems, food production systems, accounting systems), recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, provided, however that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the Client.
- 2.12. Servicewares. Items used in the service of food and beverages including, without limitation, chinaware, glassware, silverware, disposables, trays, and carts.
- 2.13. Smallwares. Items used in the preparation of food including, without limitation, pots, pans and kitchen utensils.
- 2.14. Supervisory Employee. Those persons who have directly or indirectly performed management or professional services on behalf of Company for the Client at any time during this Agreement including, without limitation, any corporate employee, manager, assistant manager, chef, lead cook or dietitian.
- 2.15. Utilities and Amenities. All utilities reasonably requested by Company to provide Food Services at the Premises including, without limitation, heat, hot and cold water, gas, refrigeration, lights, electric current, ventilation, air conditioning, recycling, cooking waste removal, hazardous waste removal, garbage removal services, exterminator services, telephone services, internet access, and sewage disposal services.

3. FOOD SERVICES

- 3.1 Food Service. Company will oversee Food Services at the Premises which shall include, without limitation, preparation and service of food and beverages to Client's employees, staff and guests.
- 3.2 Program Specifications.
 - A. Menu. Company shall provide a 3,300 calorie menu and menu cycle. Company shall provide a hot breakfast, cold lunch and hot dinner, unless otherwise agreed to by the Parties. Meals provided to the Senior Center shall be in accordance with the Center of Aging Standards.
 - B. Inmate Labor. Client shall provide fifteen (15) inmates per shift as labor at the food service facility. To the extent Client is unable to provide inmate labor as specified in this section, the parties shall renegotiate pricing to encompass any additional labor costs borne by Company.

- C. Bag Lunches. Company shall provide bag lunches as agreed to by the Parties.
 - D. Medical Meals. Company shall provide required medical meals at the direction of Client's medical staff.
 - E. Special Functions/Catering. Company shall provide Food Service for special occasions, including Client's conferences, dinners, meetings, parties and other functions, as well as catering services to employees, guests and outside groups in connection with this Agreement. Fees for these services shall be governed by the menu, manner and time of service, and shall be established by mutual agreement of Company and Client or the party sponsoring the Special Function.
 - F. Locations. Company shall operate and manage Food Services at the Premises and locations as the Client and Company mutually agree.
 - G. Hours. Company shall provide necessary Food Services at such hours as the Client and Company mutually agree.
- 3.3 Purchasing. Company shall purchase those Products and supplies necessary to comply with Company's obligations as set forth in this Agreement from Company's approved vendors that meet Company's guidelines and requirements.
- 3.4 Inventory. Company will purchase and own all inventories of food, beverages, and supplies. Upon termination of this Agreement for any reason, at Company's option, (i) Company may remove and retain any remaining Product inventory or (ii) Client will purchase from Company, at Company's invoice cost, any remaining Product inventory.
- 3.5 Cleaning. Company and Client shall be jointly responsible for housekeeping and sanitation in the food preparation, storage and service areas of Premises. Company shall perform routine cleaning and housekeeping in the food preparation and service areas. Client shall perform major cleaning including, without limitation, stripping and waxing floors, cleaning walls, windows, fixtures, ceilings, electric light fixtures, grease traps, hoods and vents, duct work, plenum chambers, pest control and roof fans throughout the Food Service Facilities as defined herein. Client shall be responsible for setting up and cleaning the Premises for functions not managed by Company, in addition to any related charges. Client shall be responsible for removal of refuse from the collection areas and all refuse removal charges.

4. EMPLOYEES

- 4.1. Employees. Company shall hire employees necessary for its performance of this Agreement. Persons employed by Company will be the employees of Company and not of Client. Company's employees and agents shall comply with applicable rules and regulations concerning conduct on the Client's premises which the Client imposes upon its employees and agents provided such rules and/or regulations are not in violation of any federal, state, and/or local laws. Client agrees to provide Company notice of any proposed changes in rules, at least thirty (30) days prior to implementation. Company will consider Client's written requests to remove Food Service employees, provided such requests are non-discriminatory and comply with all laws and regulations governing employment.
- 4.2. Existing Employees; Employment Terms; Employee Pension and Benefit Plans. Company in its sole discretion may elect to hire any managers or employees of Client or Client's incumbent foodservice provider (collectively, "Existing Employees") who are qualified, available and willing to provide Food

Service at the Premises. Company shall have the authority to establish the terms of employment for all current Company managers and employees (including Existing Employees that Company may elect to hire in connection with this Agreement). Client represents that such Existing Employees are not represented by a union and are not entitled to be paid a living or prevailing wage under any Governmental Rule or agreement.

- 4.3. Wages and Hours. Company shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for Company's employees. Client shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for Client's employees.
- 4.4. Payroll Taxes. Company shall be responsible for all withholding and payroll taxes relative to Company's employees. Client shall be responsible for all withholding and payroll taxes relative to Client's employees.
- 4.5. Background Checks. Client shall conduct, and pay all costs associated with, necessary background checks as required by law.
- 4.6. Equal Opportunity and Affirmative Action Employer. Company abides by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their age, race, color, religion, sex, sexual orientation or national origin. Company employs and promotes individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.
- 4.7. Non-Hire. Client acknowledges that Company has invested considerable amounts of time and money in training its Supervisory Employees. Therefore, the Client agrees that during the Supervisory Employee's employment with Company and for a period of twelve (12) months thereafter no Supervisory Employees of Company will be hired by Client nor any facility affiliated with Client, nor will Client permit employment of Company Supervisory Employees on Client's Premises or the Premises of any facility affiliated with Client. Client agrees that if it violates this provision, Client shall pay to Company and Company shall accept as liquidated damages and not as a penalty, an amount equal to one time the annual salary) of the Supervisory Employee(s) hired by or allowed to work with Client in violation of the terms of this Agreement. Company shall be entitled to pursue all other remedies available under federal, state, or local law. This provision shall survive the termination of this Agreement.

5. PREMISES, FACILITIES, UTILITIES AND EQUIPMENT

- 5.1 Premises. The Premises shall be in good condition and maintained by the Client to ensure compliance with applicable Governmental Rules and to enable Company to perform its obligations hereunder. Client shall be responsible for any modifications or alterations to the workplace or the Premises necessary to comply with any applicable Governmental Rules. Company shall have no obligation to maintain or repair the Premises.
- 5.2 Equipment. Without limiting the foregoing, Client shall permit Company to use all of the Client's Food Preparation Equipment in the performance of Food Service. The Food Preparation Equipment provided by Client shall be commercial grade, in good condition and shall be maintained, repaired and replaced by Client to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. Company and Client shall inventory

Client's current Equipment within thirty (30) days after the Commencement Date. Company shall take reasonable care of all Food Preparation Equipment under its custody and control, provided that the foregoing shall not limit Client's obligation to maintain, repair and replace (as necessary) the Food Preparation Equipment. If Client fails to make necessary repairs or replacement to equipment within a reasonable amount of time, Company shall have the right to effect equipment repairs or replacements at Client's expense. Company shall retain title to equipment hereunder and shall be entitled to assert a security interest in any equipment that it purchases or repairs under this section provided that once the cost of the purchased equipment or equipment repair has been recovered, Company shall release the security interest and title for any such purchased equipment to Client.

- 5.3 Facilities, Utilities. At its own expense, Client shall maintain, repair, replace, and keep in safe operating condition said Facilities and Utilities, to permit the performance of the Food Service and to ensure compliance with Governmental Rules.
- 5.4 Smallwares and Servicewares. At its own expense, Company shall furnish disposables, smallwares, cleaning supplies, and carts. At its own expense, Client shall furnish trays.
- 5.5 Vehicle. At its own expense, Client shall furnish a vehicle to allow Company to deliver meals as required by this Agreement. Client shall be solely responsible for any and all costs associated with delivery vehicles including, but not limited to, fuel, maintenance and insurance.
- 5.6 Computer Equipment.
 - A. Internet Access. If Company is to implement a point-of-sale system, Client shall either allow Company to use Client's point-of-sale- system ("POS System") and required internet access or, in the alternative, shall provide and maintain the system requirements necessary for Company to install and maintain its own POS System. To the extent Company installs and maintains its own POS System, Client shall provide electrical outlets and wireless IP network connectivity terminating in necessary cabling connection between the cash registers, the time-clocks, the foodservice office and Company's router. Client shall allow Company and the internet provider physical access to the area where a high-speed internet connection will be installed, and shall permit Contractor's installation of a router and dedicated high-speed internet circuit with full administrative control to establish a connection between the foodservice office, workstations (if any) and Company's network.
 - B. Software. Company will license products, software and maintenance for use in providing services in accordance with this Agreement. Company has procured a license to access and use Company's centralized Nutritional Database ("NDB") for nutritional analysis, menu planning and other operational purposes for Client's Premises. Client agrees that all software associated with the operation of the Food Service, including without limitation, the NDB, food production systems, and accounting systems, is owned by or licensed to Company. Client's access or use of such software shall not create any right, title, or copyright in such software. Upon termination of this Agreement, Client shall have no right to access or retain any Company software or Confidential Information produced by that software.
 - C. Credit Card Processing. If requested by Client, Company will accept and process credit card payments for sales of food, beverage, goods, merchandise and services in the Food Service operation. If Company processes credit card transactions using equipment solely provided by Company, then Company will be responsible for compliance of its equipment in accordance with PCI Standards. If Company uses computers, software, network equipment ("Systems") or

other property of Client to process credit card transactions, then Client will be required to provide Systems that fully support PCI standards and requirements or reimburse the Company for the acquisition of Systems that sufficiently meet the requirements of current PCI Data Security Standards. In that case, if Company is considered the "merchant of record", Client will provide Company with a certificate of compliance if requested by Company.

6. LICENSES, PERMITS AND TAXES

- 6.1 Licenses and Permits. Company shall procure, maintain and post the food licenses and permits as required by law. Client represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Services. The Client agrees to notify Company immediately upon receiving notice of loss of any such permit or license.
- 6.2 Taxes. Company shall be responsible for collecting and remitting sales tax on applicable sales collected by Company. Unless Client provides documentation of Client's federal and state tax-exempt status to the Company's sole satisfaction, Client shall reimburse Company for state and local sales tax on the full amount of charges and fees billed to the Client. Client shall secure and pay all federal, state and local property, excise and income and other taxes and fees required for the Premises and resulting from the Food Services provided for hereunder. Client shall immediately pay for any tax assessments including interest, penalties, costs and expenses, which are assessed against the Food Service operation and were not in effect as of the Commencement Date or were owed but unpaid as of the Commencement Date. Client shall notify Company promptly should its sales tax status be changed.

7. FINANCIAL ARRANGEMENTS

- 7.1 Payment Arrangement.
- A. Inmate Meal Rate.
- a. For a Scaled Rate. Client shall pay Company the rate per Meals served as provided on the attached Exhibit A. The rate shall not include charges for religious meals, supplements, cleaning supplies, equipment purchases or repairs.
- b. Religious Meals. Client shall pay Company the rate of \$4.50 per meal for pre-packaged religious meals.
- B. Service and Pricing Assumptions. To the extent any of the basic assumptions change or if Client requests a significant change in Services as provided under the Agreement, the Company's base rate shall be proportionately increased, unless the Parties otherwise mutually agree.
- C. Advance Payment. Prior to the commencement of operation hereunder, Company shall submit to the Client a proposed budget for the year. After the budget is approved and agreed to by the Client, it shall advance to Company one-twelfth (1/12) of the budget within seven (7) days of the date of Company's invoice. The amount of this advance will

be retained by Company as a deposit and will be used to off-set the amounts due by Client upon termination of the Agreement. The advance will be adjusted at the beginning of each fiscal year based upon the agreed budget.

- 7.2 Payments Due and Late Payment Penalty. Company shall issue an invoice at the end of each week (which shall run Friday through Saturday) showing the amounts due. Client shall pay the full invoice amount within thirty (30) days from the issuance of the invoice. In the event payment is not made within thirty (30) days of the due date, the invoice will be subject to a finance charge of eighteen percent (18%) per annum or, if less, the maximum amount permitted under applicable law. The right of Company to charge the finance charge shall not be construed as a waiver of Company's normal entitlement to receive timely payment as set forth herein.
- 7.3 Equipment Investment. Company shall make an investment by purchasing a Planetary Mixer and an Electric Food Cutter. The cost of this investment shall be amortized with payments made over a sixty (60) month period beginning with the effective date of this Agreement. The monthly amount due to Company for its investment is \$380.43 which is included in the calculation of costs outlined in Section 7.1. However, should this Agreement be terminated for any reason prior to the conclusion of this sixty (60) month period, any outstanding amount owing, which shall be calculated based on the monthly amount due multiplied by the number of months remaining under the sixty (60) month term, shall immediately be due and owing to Company.
- 7.4 Right to Offset. In the event that Client is more than thirty (30) days past due on any obligations to Company, Company shall have the right to offset, from any other sums owed by Company to Client, all or any portion of such outstanding receivables. Additionally, Company shall have the right, at Company's option, at any time that Client is over thirty (30) days past due on any obligations require that Client pay, on a prebilling basis, at least one week in advance of each Accounting Period, the estimated amount due Company for that Accounting Period. The estimated amount shall be adjusted and reconciled to the actual amount in the next prebilling invoice, or if Client is no longer past due on its obligations to Company, with the next invoice due hereunder. Further, Company shall have the right to immediately adjust hours, prices, labor and menu offerings to further off-set any losses.
- 7.5 Change in Conditions. The financial terms set forth in this Agreement, and all other obligations assumed by Company hereunder, are based on conditions in existence on the date Company commences operations including, without limitation, population; labor costs; applicable Governmental Rules; food and supply costs; provision of equipment and utilities; state of the Premises; and federal, state and local sales, use and excise taxes (the "Conditions"). Further, Client acknowledges that in connection with the negotiation and execution of this Agreement, Company has relied upon Client's representations regarding existing and future conditions (the "Representations"). In the event of change in the Conditions, inaccuracy of the Representations, or if Client requests any significant change in the Food Services as provided under this Agreement, the financial terms and other obligations assumed by Company shall be renegotiated to reflect a proportionate increase in Company's charges to the Client. Company will provide a thirty (30) day notice of such increased charges.
- 7.6 Future Pricing. Pricing adjustments shall be made on an annual basis and shall be agreed upon by the parties at a rate no less than the greater of: three percent (3%) or the most recently released U.S. Department of Labor Consumer Price Index, All Urban Consumers, National Average Unadjusted, Food Away From Home. Up to ninety (90) days prior to the anniversary of the

Commencement Date, Company shall provide Client notification of the adjustment. On the anniversary date, Company proposed adjustments shall go into effect, unless the Parties have entered into a written agreement with an alternative cost adjustment.

- 7.7 Attorney's Fees and Costs. Client shall pay all costs of collecting any amount due Company, including attorney's fees and all costs and other expenses incurred by Company in collecting an indebtedness of Client. This provision shall survive the termination of the Agreement.

8. TERMINATION OF THE AGREEMENT.

- 8.1 Termination for Non-Performance. If either party refuses, fails or is unable to perform or observe any of the terms or conditions of this Agreement for any reason other than for Excused Performance as set forth in this Agreement, the party claiming such deficiency shall provide the breaching party written notice of any such breach. If the breaching party remedies such breach within (i) three (3) days in the case of failure to make payment when due, (ii) ninety (90) days in the case of any other breach, or (iii) a reasonable time where cure is not possible within ninety (90) days (collectively the "Notice Period"), the notice shall be null and void. If the breaching party fails to remedy the breach within the Notice Period, the party giving notice may cancel the Agreement after the end of the Notice Period.
- 8.2 Termination for Financial Insecurity. If either Party makes an unauthorized assignment for the benefit of creditors, files a petition under the bankruptcy or insolvency laws of any jurisdiction, has or suffers a receiver or trustee to be appointed for its business or property, or is adjudicated a bankrupt or an insolvent, the other party may terminate the Agreement with three (3) days' notice. Provided, however, that Client agrees to provide Company thirty (30) days' notice before filing a petition for bankruptcy.
- 8.3 Voluntary Termination. At any time after ninety (90) days of service, either Party may terminate this Agreement with or without cause by written notice to the other party given not less than ninety (90) days prior to the effective date of termination.
- 8.4 Steps Upon Termination. Upon the termination or expiration of this Agreement, Company shall vacate the Premises occupied by Company and shall remove its own equipment and return equipment furnished by Client pursuant to this Agreement. Upon termination of this Agreement, Company shall surrender the then-current Food Preparation Equipment to Client in the condition as it was delivered on the Commencement Date (or, if later, in the condition in which such Food Preparation Equipment was placed into service), excepting ordinary wear and tear, damage resulting from Client's failure to maintain the Food Preparation Equipment and other damage (including damage caused by force majeure) for which Company is not responsible hereunder.
- 8.5 Continuing Obligations. The termination of this Agreement shall not affect the rights, privileges, or liabilities of the Parties as they exist as of the effective date of termination. All outstanding amounts owed to Company shall become due and payable immediately upon termination. If, at Client's request, Company enters into agreements with one or more third parties in connection with its management of Client's Food Service operations (collectively, "Third Party Agreements"), Client agrees, at Client's sole cost and expense, to: (i) assume and undertake (or cause to be assumed and undertaken by the Food Service provider succeeding Company) all responsibilities of Company under all Third Party Agreements from and after the date this Agreement expires or is earlier terminated; (ii) release Company from all liability associated with such Third Party

Agreements from and after the date this Agreement expires or is earlier terminated; and (iii) bear all liability and responsibility with respect to any costs, fees and other charges associated with termination of such Third Party Agreements. This Paragraph shall survive the termination or expiration of this Agreement.

9. INDEMNIFICATION; INSURANCE

- 9.1 **Insurance.** Both Client and Company shall maintain their own insurance on their respective real property, equipment and contents. Upon request, evidence of such insurance shall be provided in the form of a certificate of insurance.
- A. **Client Insurance.** Client shall procure and maintain insurance for the Premises, the Food Preparation Equipment and any Smallwares, Servicewares and food and beverage inventory against all loss or damage as insured against under a commercial property causes of loss – special form policy (or any successor policy form).
- B. **Company Insurance.** Company shall procure and maintain the following insurance:
1. Worker's Compensation Insurance as prescribed by the laws of the state where the Premises are located; and
 2. Comprehensive General Liability Insurance, with limits of one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) annual aggregate to cover any and all claims that arise during the course of this Agreement.
- C. **Subrogation.** Client and Company waive any and all right of recovery from each other for property damage or loss of use thereof, however occurring, which loss is insured under a valid and collectible insurance policy to the extent of any recovery collectible under such insurance. This waiver shall include, but not be limited to, losses covered by policies of fire, extended coverage, boiler explosion and sprinkler leakage. This waiver shall not apply to claims for personal death or injury. Company shall not be liable to the Client, in any way for damage to the Facilities or Premises caused by reason of fire, or other hazard, however caused, or by the reason of an act of God. In any event, Company shall not be held liable for any cause to an extent which would exceed effective coverage and dollar limits prevailing under the policies of insurance described in this Agreement.
- 9.2 **Indemnification.** Each Party agrees to provide the following indemnification:
- A. Each party agrees that it will defend, indemnify and hold harmless the other party, its officers, directors, parent corporation, affiliates, employees and agents ("Indemnified Parties") against any and all liabilities, losses, damages, injuries, deaths, reasonable litigation expenses (including, without limitation, reasonable attorneys' fees), costs and costs of court (collectively, "Damages") which Indemnified Parties may hereafter sustain, incur or be required to pay arising out of the other party's negligent acts, omissions or failure to perform obligations pursuant to this Agreement. Provided, however, neither party shall be required to defend, indemnify and hold harmless the other party for any intentional or criminal actions of the other party or its employees, visitors or invitees. Client agrees to defend, indemnify and hold harmless Company Indemnified Parties from all Damages which may arise due to any act or omission of a Company Party made in compliance with a Client's rules or requirements. Any portion of this Agreement regarding indemnification applies only to the extent permitted by law, and any applicable case law, including under CSX Transportation, Inc. v. City of Garden

City, 277 Ga. 248, 588 S.E.2d 688 (2003). Nothing contained in this Agreement shall be construed or deemed to be a waiver of any immunity to which the client, its officials, or employees are legally entitled.

- B. Notice of Indemnification. A party shall only be required to indemnify pursuant to the Agreement, where that party receives a written request to indemnify within twenty (20) days after the initial receipt of notice of any such lawsuit or claim by the party requesting indemnification. Failure to notify a party of such claim or lawsuit within the stated period of time shall relieve that party of any and all responsibility and liability under this Agreement to defend, indemnify and hold harmless for that claim or lawsuit.

10. GENERAL AGREEMENT TERMS

- 10.1 Confidentiality. Neither Client, nor Client's employees or agents, shall disclose, photocopy, duplicate or use, either during or after the term of this Agreement, any Proprietary, Confidential and Trade Secret Information, without Company's prior written permission. All Proprietary, Confidential and Trade Secret Information shall remain Company exclusive property. Client's access or use of Company Proprietary, Confidential and Trade Secret Information or Software shall not create any right, title, interest or copyright in such Information or Software. If Client is requested to disclose any of the Confidential Information to any third party for any reason, Client shall provide Company with prompt notice of such request(s). Upon termination of this Agreement, Client shall return all Company Proprietary, Confidential and Trade Secret Information in Client's possession relating to Company's services pursuant to this Agreement. Client agrees that upon breaching this provision, Company shall be entitled to equitable relief, including injunction or specific performance, in addition to all other available remedies. This provision shall survive the termination of the Agreement.
- 10.2 Intellectual Property. Nothing in this Agreement is intended to grant any rights to Client under any patent, copyright, trademark, trade name, trade secret or other proprietary right of Company (whether now owned or hereafter developed or acquired), all of which are reserved to Company.
- 10.3 HIPAA Compliance. The parties agree to abide by applicable HIPAA requirements as set forth in Exhibit A.
- 10.4 Independent Contractor Relationship. It is mutually understood and agreed, and it is the intent of the Parties, that an independent contractor relationship is hereby established under the terms and conditions of this Agreement. Employees of Company are not, nor shall they be deemed to be, employees of Client. Employees of Client are not, nor shall they be deemed to be, employees of Company.
- 10.5 Notice. Any notice required under this Agreement shall be deemed to have been sufficiently provided when delivered by hand, or three days after being sent by certified or registered mail return receipt requested, or by overnight delivery service with receipt of delivery, provided such delivery is to the parties at the following addresses:
- | | |
|---|------------------------------------|
| Effingham County Board of Commissioners | Company |
| 601 North Laurel Street | Attn: President & CEO |
| Springfield, GA 31329 | 1751 County Road B West, Suite 300 |
| | Roseville, MN 55113 |

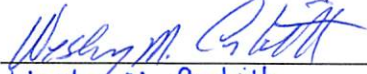
- 10.6 **Excused Performance.** If performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, regulation, decree or order by any federal, state, or local court, governmental agency or governmental authority, or because of riot, war, public disturbance, strike, lockout, differences with workmen, fire, flood, Act of God or any other reason whatsoever, which is not within the control of the party whose performance is interfered with, and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option, suspend, without liability, the performance of its obligations hereunder (other than the payment of monies) during the period such cause continues.
- 10.7 **Assignment or Transfer.** Neither party may assign or transfer this Agreement, or any part thereof, without written consent of the other party. Such consent shall not be unreasonably withheld. Provided, however, that this shall not apply to Company's transfer to a parent, sister or successor company where Company provides Client at least thirty (30) days written notice.
- 10.8 **Entire Agreement; Waiver.** This Agreement, including any Exhibits hereto, constitutes the entire Agreement between the Parties with respect to the provisions of Company's services, and there are no other or further written or oral understandings or agreements with respect thereto except as otherwise set forth herein. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of Company and Client. This Agreement supersedes all other agreements between the Parties or their predecessors for the provision of Company Food Services.
- 10.9 **Counterparts; Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format ("PDF") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.
- 10.10 **State Guidelines.** Client hereby agrees that the validity and construction of this Agreement shall be governed by Georgia law. Should a lawsuit be necessary to enforce this Agreement, Client hereby waives any objection to venue or personal jurisdiction and agrees to be subject to the jurisdiction of the courts located in Georgia. A facsimile copy or photocopy of this Agreement shall be valid as an original thereof.
- 10.11 **Limitation of Liability.** Company's entire liability and Client's exclusive remedy for damages arising out of or related to this Agreement or the Food Services shall not exceed the total amount paid by Client to Company for the current term of this Agreement. COMPANY SHALL NOT BE LIABLE FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFIT IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY.
- 10.12 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.
- 10.13 **Authority.** Company and Client represent that the individual executing this Agreement has been duly and validly authorized to execute this Agreement on each party's respective behalf with the

full power and authority under all applicable laws and respective articles of incorporation, bylaws or other governing instrument to enter into this Agreement and to perform their obligations hereunder.

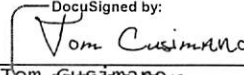
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused their appointed and duly assigned officers to execute this Agreement.

CLIENT

Signature: 
Name: Wesley M. Corbitt
Title: Chairman
Date: 03/06/2018

COMPANY

Signature: 
Name: Tom Cusimano
Title: President & CEO
Date: 3/6/2018

This agreement was approved by the BOC
02/20/2018