



Terms and Conditions of Equipment Lease

1. Agreement

a. These Terms and Conditions (the “Terms and Conditions”), together with the provisions of the Equipment Lease Agreement (the “Lease”) collectively constitutes the entire Agreement (the “Agreement”) of Empire Cooler Service, LLC (“ECS” or the “Lessor”) and the Lessee, as defined on the Equipment Lease Agreement, (the “Lessee” and collectively the “Parties”) with respect to Equipment (the “Equipment”) leased from ECS (collectively the “Transaction”) by the Lessee and supersedes any other agreement or understanding of the parties with respect to such Transaction.

b. Lessee will be deemed to have assented to these Terms and Conditions unless ECS receives written notice of any objection by Lessee within 72 hours after Lessee’s submission of a signed Lease.

c. This Agreement represents the complete and final expression of the agreement of the parties, and no terms or conditions in any way adding to, modifying, or otherwise changing the provisions stated herein, including by custom, usage of trade or course of dealing or performance, shall be binding upon ECS unless expressly agreed in writing and signed by an authorized officer of ECS. Notwithstanding the foregoing, if ECS and Lessee have a written agreement in effect that covers the Transaction hereunder that has been signed by an authorized officer of ECS, that agreement will govern the terms and conditions of lease solely to the extent that its terms are in addition to and do not conflict with the terms and conditions of this Agreement.

2. Terms and Conditions of Lease

a. **Pricing, Other Charges and Taxes:** All prices in effect at the time of execution of the Agreement are subject to adjustment without notice. If delivery or installation requires specialized transport or use of special equipment, ECS reserves the right to increase Lease price or bill Lessee for any reasonable additional charges and Lessee expressly agrees to pay for such charges when invoiced. Unless otherwise provided in the Lease, any use tax, sales tax, service tax, excise tax, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on the Transaction between ECS and Lessee shall be paid by Lessee.

b. **Automatic Renewal:** Unless specified to the contrary in the Lease, at the end of the initial term, this Agreement will be extended for an additional one-year term at then prevailing rates, unless either party has provided notice pursuant to Termination 5d.

c. **Lessee Price Protection:** Unless specified to the contrary in the Lease, at the end of the initial term of this Agreement, and for each successive term, ECS may increase the price of this Agreement without notification. The increase in the aggregate lease price at the end of each term will not exceed 10%.

3. Terms and Conditions of Installation and Services

a. **Site Environment:** Lessee shall be responsible to ensure that Equipment is placed in a location that meets manufacturer’s requirements for space, electrical, plumbing, and operating temperature. Lessee specifically acknowledges ECS is not responsible for trade-work, and that Lessee will provide code compliant backflow preventer(s), water shutoff(s), dedicated electrical circuit(s), electrical disconnect(s) and drains within six feet or less of the Equipment’s location. ECS reserves the right to inspect the location, and to request evidence (either via photos or video) the location is properly prepared before initial installation.

b. **Initial Installation:** Physical installation, removal of packing material and initial setup of Equipment will be performed by ECS, or ECS designated subcontractors, at the location designated by Lessee. ECS or its subcontractors will only provide electrical whip termination, water connection to ice maker(s) from a Lessee supplied backflow preventor(s) and shut-off valve(s) and an Equipment drain that will terminate one inch above an appropriate sewer drain as determined by health code. The Lessee is responsible to ensure the designated location meets manufacturer’s requirements and the provisions of Section 3a. Lessee acknowledges the absence of a proper site environment may materially delay installation. ECS has the right to cancel this Agreement if a proper site is not provided within thirty days (30) of execution of this Agreement and should

ECS attempt initial installation and find the site unsuitable, the Lessee recognizes and agrees to pay for subsequent installation at prevailing rates.

c. **Equipment Maintenance and Repair Service:** In support of the Lease, ECS shall provide at no cost to the Lessee preventative maintenance and repair services (collectively the “Services”) as determined by manufacturer’s recommendation for the duration of the Lease. For purposes of clarity, Preventative Maintenance (“Preventative Maintenance”) is the cleaning, sanitizing and inspection of Equipment conducted at regular intervals as recommended by the manufacturer. More frequent Preventative Maintenance intervals are not included in this Agreement and may be purchased from ECS at prevailing rates.

d. **Ice Delivery, Emergency Ice:** After completion of Preventative Maintenance, if requested, ECS will provide ice, or at ECS’s sole option reimburse the Lessee for ice purchased on ECS’s behalf up to fifty percent (50%) of the capacity of each ice maker’s bin. In the case of a breakdown of an ice maker, ECS will provide emergency ice or at ECS’s sole discretion reimburse the Lessee for emergency ice. *Following a service call to repair the ice maker, if ECS demonstrates the ice maker was working without making any repairs, the Lessee acknowledges they will be invoiced for the emergency ice at prevailing rates.*

e. **Services Disclaimer, Equipment Damage by Lessee:** Equipment damage due to abuse, misuse, alteration, modification, neglect, fire, water, theft, third party interference, use of non-standard parts, improper installation not conducted by ECS, usage beyond recommended operating parameters, or from other natural forces (“Equipment Damage”) is not covered under this Agreement. Lessee acknowledges it is responsible to report Equipment Damage to the Lessor and the Lessee further acknowledges and agrees if the Lessor chooses to make repairs, the Lessee may be billed for such repairs at prevailing rates. Failure to report and pay for Equipment Damage may result in suspension of Services or termination of this Agreement.

f. **Access:** Lessee shall provide ECS personnel with access to the location where the Equipment is installed. Lessee shall arrange and ensure that one of its designated agents are present at all times when ECS is performing Services.

g. **Timing of Services:** ECS will make every effort to provide timely delivery of Services. The Lessee acknowledges service times can be impacted by many factors, and not all requests for Services can be delivered the same day. If emergency Services requests are made, or if requests are made outside of Standard Service Coverage hours, additional charges may apply.

h. **Standard Service Coverage and Ice Delivery Hours:** Services under this Agreement are provided during normal business hours 8am-5pm, Monday through Friday, exclusive of core National holidays observed by ECS. Ice delivery, including emergency ice delivery is available 8am to 10pm seven days per week, on a best-efforts basis. ECS disclaims and the Lessee specifically acknowledges emergency ice delivery may be impacted by mechanical and seasonal factors, as such ECS cannot guarantee same-day ice delivery. ECS reserves the right to modify or extend its hours of operation at any time.

i. **Readiness for Services:** Pursuant to paragraph 3a, the Lessee is responsible for readying Equipment for Services before the arrival of ECS technicians. Specifically, this includes clearing the area around the Equipment to allow for proper access and removing food or ice from storage or bins. The Lessee acknowledges failure to do so may result in additional charges added to this Agreement, and the failure to pay such charges will result in breach of this Agreement.

4. Relocation, Removing, Adding and Swapping Equipment

a. **Relocation of Equipment:** If requested by Lessee, ECS will move and relocate Equipment and *invoice the Lessee at prevailing rates*. Relocation is subject to technician availability, the site environment and acceptance by ECS.

b. **Removal of Equipment from Agreement:** If the Lessee desires removal of a portion of leased Equipment but intends to continue leasing remaining pieces of Equipment at a location subject to this Agreement, the Parties will execute an Addendum (the “Addendum”) to the original Lease. ECS reserves the right to increase the price of remaining leased Equipment at the time of Addendum execution for the remaining Lease term. Both parties agree

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that the Addendum is inclusive of this Agreement and all other Terms and Conditions of this Agreement will remain in full force and effect.

c. **Adding Equipment to Agreement:** If the Lessee desires to lease additional equipment at a location, the Parties will execute a second lease at prevailing prices ("Additional Lease") covering only the added equipment. Both Parties agree Additional Lease and its associated Equipment will become a part of this Agreement and all other Terms and Conditions of this Agreement will remain in full force and effect.

d. **Swapping Equipment in Agreement:** If Lessee desires to swap an existing leased piece of Equipment with a different piece of equipment, the Parties will execute an Addendum as determined by 4b and execute an Additional Lease as determined by 4c. The Addendum's price, the Equipment list and the new Additional Lease's term will supersede all original documentation and form a new Agreement bound to the Terms and Conditions hereunder.

5. Title, Insurance, Payment, and Termination

a. **Title:** Liability for loss or damage of Equipment referenced in this Agreement, the Lease, or any Addendum or Additional Lease to this Agreement, shall pass to Lessee upon delivery to Lessee's location. Title to any Equipment shall at all times remain with ECS. Lessee agrees to the filing of any liens and a UCC Security Agreement (including UCC-1) and acknowledges the financial interest of ECS in the Equipment which is the subject of this Agreement.

b. **Insurance of Lessor's Interests:** Lessee agrees to insure Equipment against loss, damage, destruction, fire, flood, or theft. Lessee agrees to annually provide ECS a certificate of insurance naming ECS as an additional insured for the full value of this Agreement. Lessee acknowledges failure to provide an annual certificate of insurance is a breach of this Agreement. For ECS's liability limits, refer to section 6e.

c. **Terms of Payments:** Unless specified to the contrary in the Lease, payments are due 10 days from the invoice date. Lessee shall be responsible to pay all applicable sales, use, personal property or other taxes when due. NO CASH PAYMENTS ACCEPTED. TECHNICIANS DO NOT HANDLE PAYMENT. Accepted manners of payment are by major credit card, check made payable to ECS, or electronic funds transfer.

d. **Termination:** After the initial term of this Agreement or any renewal thereof, the Lessee or ECS may provide the other party 30-day written notice of cancellation or intention not to renew with or without cause.

e. **Early Termination:** Subject to 5f and 5g, in the event Lessee terminates this Agreement during the initial term or ECS terminates due to material breach by the Lessee, the Lessee will be responsible to pay Lessor liquidated damages equal to the greater of 12 months billing or the remaining value of the Lease through the end of its initial term.

f. **Remedies and Collection:** Accounts that are past due are subject to a suspension of Services and may be subject to a monthly late fee assessed at 1.5% of the total amount due plus any reasonable costs associated with collections and equipment recovery.

g. **Default:** Should Lessee violate any aspect of this Agreement, including payment obligations, or in the event Lessee is insolvent and/or declares bankruptcy, ECS may suspend or terminate any or all portions of this Agreement and may enter the Lessee's premises to recover property or Equipment owned by ECS.

6. General Legal

a. **Business Purpose:** Lessee represents and warrants the Equipment subject to this Agreement will be used for business purposes and not for personal, household or family purposes or other uses deemed illegal or to compete with ECS business interests.

b. **Assignment:** Lessee may not assign this Agreement without ECS's express written consent. ECS may assign, without notice to Lessee, any of its rights under this Agreement.

c. **Notices:** All notices required to be given under this Agreement shall be in writing and sent either electronically to the email of an officer of ECS, or by U.S. first class mail to the parties as follows: Lessee at the address listed on the Lease and to ECS at 805 N. Milwaukee Ave Second Floor Chicago, IL 60642.

d. **WARRANTY:** ECS warrants that Services shall be performed in accordance with the manufacturer's recommendations and specifications for the Equipment. ECS makes no other warranties whatsoever express or implied with regard to the service, installation, repair, or maintenance, and expressly disclaims and Lessee waives all implied warranties of merchantability and fitness for a particular purpose.

e. **LIMITATIONS ON LIABILITY:** In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall ECS's liability to Lessee for any claim arising under this Agreement exceed the price paid by Lessee for this Agreement. Lessee agrees that in no event shall ECS's liability to Lessee and its customers and affiliates extend to include incidental, indirect, exemplary, consequential, contingent, or punitive damages. Without limiting the generality of the foregoing, **ECS SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, DAMAGES CAUSED BY WATER LEAKAGE, IMPROPER OR CLOGGED DRAINS, PRODUCT SPOILAGE, DELAY IN PERFORMANCE, PENALTIES, SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, SHUT-DOWN OR SLOW-DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF LESSEE'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.**

f. **Lessee's Remedy:** Lessee's exclusive remedy for breach of warranty shall be repair of the Equipment, replacement of a nonconforming part or replacement of the Equipment. If Equipment is replaced in satisfaction of this Agreement, ECS reserves the right to raise the price of the Lease to then prevailing rates. Lessee acknowledges the choice of remedy is at the sole discretion of ECS. In no event shall ECS's liability under the Agreement exceed the value of this Agreement. The Parties agree any claim must be brought within one year after the alleged damages are incurred.

g. **Applicable Law:** This Agreement between ECS and Lessee shall be governed solely by the laws of the State of Illinois, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to its choice of law provisions. No statutes, regulations, rules, or orders shall be incorporated herein unless specifically referred to herein. Any dispute arising under or in connection with this Agreement shall be brought in federal or state courts in Cook County, Illinois, and Lessee irrevocably submits to the jurisdiction of such courts and waives any objection it may have to the jurisdiction or venue of such courts. Any and all claims arising out of or relating to this Agreement shall be barred unless a judicial proceeding is commenced within 2 years from the date the complaining party knew or should have known of the facts giving rise to such claim.

h. **Force Majeure:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, labor dispute, or any other occurrence beyond its reasonable control.

i. **Waiver & Severability:** Waiver by Lessee of any breach of these Terms and Conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. In the event that any one or more of these Terms or Conditions is held invalid, illegal, or unenforceable, such provision or provisions shall be severed, and the remaining Terms and Conditions shall remain binding and effective.

j. **Jury Waiver:** ECS AND LESSEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OF COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

k. **Binding Authority:** Lessee is advised no employee, representative or agent of ECS has authority to bind ECS to commitments not specifically set forth in this Agreement.

l. **Indemnification:** Lessee shall bear all risk of theft, loss, or damage not caused by ECS's employees or agents to any Equipment covered under this Agreement. Lessee agrees to indemnify, defend and hold harmless ECS, its

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officers, directors, employees and agents from all loss, liability, claims, or expenses (including reasonable attorney's fees) arising out of Lessee's use of Equipment or Services, including but not limited to liabilities arising from illegal use of ECS's Equipment or Services as well as bodily injury, including death, or property damage to any person, unless said injuries, death, or property damage was caused solely as the result of ECS's gross negligence or willful misconduct.

m. **Original Document:** This Agreement may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original. The parties agree (a) that facsimile or electronic signature shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered original. ECS may accept orders electronically from Lessee pursuant to this Agreement. In any legal proceeding relating to this Agreement, the parties waive their right to raise any defense based on the execution of this Agreement in counterparts; or the delivery of such executed counterparts by copy, facsimile, or electronic delivery; or ECS's acceptance of orders electronically.

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