



## Terms and Conditions of Empire Cooler's Premium Equipment Lease

### 1. Agreement

a. These terms and conditions ("Terms and Conditions"), together with the provisions of the Empire Cooler's Premium Equipment Lease Agreement (the "Lease") collectively constitutes the entire Agreement ("Agreement") between Empire Cooler Service, LLC ("ECS" or the "Lessor") and the Lessee (as defined on the Lease, and collectively "Lessee") with respect to equipment (the "Equipment") leased by the Lessor from the ESC (collectively a "Transaction").

b. Lessee will be deemed to have assented to these Terms and Conditions unless ESC 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 Transaction between 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 such Transaction.

### 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 firm for the duration of the Initial Term, as defined in the Lease. If delivery of equipment has not occurred within 30 days due to a delay by the Lessee, the Lease may be adjusted to then prevailing rates subject to a notice and Lessee approval. If the Lessee has not paid the Security Deposit (as defined in the Lease) within 30 days of invoice, ECS may at its sole discretion cancel the lease. If after Lease execution, delivery or installation requires specialized transport or use of special equipment, ECS will inform the Lessee of the additional installation charges in advance. If approved by Lessee, Lessee expressly agrees to pay for such charges in advance. Other than for its own liability, ECS is not responsible for any additional tax, fee or charge of any nature whatsoever imposed by any governmental authority, on the Transaction.

b. **Automatic Renewal:** Unless specified to the contrary in the Lease, at the end of the Initial Term, this Agreement will be automatically renewed for an additional one-year term. 30-days prior to the renewal, ECS will notify Lessee of any price increase associated with the new term of this Agreement. Lessee's assent to the increase will be considered affirmative unless either party has provided notice pursuant to Termination as defined in Section 5d.

### 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 including electrical, plumbing, ventilation and ambient temperature requirements. Lessee specifically acknowledges ECS is not responsible for, and that Lessee will provide code compliant backflow preventers, water shutoff(s), dedicated electrical circuit(s), electrical disconnects and drains within six feet or less of the equipment location. ECS reserves the right to inspect the Equipment location, and to request evidence (via photos or video) of the existence of a proper site location 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 affiliates, at the location designated by Lessee. ECS 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 a drain that will terminate one inch above an appropriate sewer drain or as required by code. The Lessee is responsible to ensure designated location meets the provisions of Section 3a. Lessee acknowledges the absence of a proper site environment, or proper site access, may materially delay installation. If the site is not compliant with the provisions of 3(a) within thirty days (30) of execution of the Agreement, the Lessee agrees ECS has the sole and exclusive right to (i) charge the Lessee a storage fee for Equipment purchased

by ECS for Lessee's benefit until the site is ready, (ii) cancel this Agreement, and if canceled, if the Equipment returned by ECS to any vendor is subject to a restocking fee, to invoice the Lessee for such fees, plus accumulated storage fees, if any. Should ECS attempt initial installation and find the site unsuitable, the Lessee recognizes and agrees to pay for subsequent installation at prevailing rates.

c. **Moving Equipment:** If Lessee moves during any term of this Lease, or desires to move Equipment to a new site, only the Lessor is authorized to move and reinstall the Equipment at the new location, and Lessee agrees to pay for labor and material required. Relocation is subject to technician availability, the site environment and acceptance by ECS and is not included in this Agreement.

d. **Equipment Maintenance and Repair:** ECS shall provide preventative maintenance and repair services (hereinafter defined and collectively "Services") in support of the Lease at no cost to the Lessee for the duration of this Agreement.

e. **Preventative Maintenance Services:** Preventative Maintenance ("Preventative Maintenance") includes cleaning, as determined by manufacturer's recommendations, at a frequency as specified in manufacturer's service manual. If Preventative Maintenance is scheduled with ECS and subsequently cancelled by the customer with less than forty-eight (48) hour notice, ECS will consider its annual contractual obligation satisfied and any additional Preventative Maintenance requests will be considered additional equipment cleaning. Additional equipment cleaning is not included in this Agreement and may be purchased from ECS at prevailing rates. **For purposes of clarity, bin or ice maker drains that are fouled by debris or any organic growth are not the responsibility of ECS to maintain or repair. Drain lines are provided at installation and ongoing maintenance (cleaning), replacement or repair is not a part of this Agreement. Should Lessee desire ECS to clean a drain, Lessee agrees to for such service when invoiced.**

f. **Equipment Repair Services:** Repair ("Repair") services provided under this Agreement include labor and parts required to keep leased Equipment functional. Repairs to Equipment will conform to manufacturers' specifications as outlined in each manufacturer's service manual.

g. **Services Disclaimer:** Equipment damage due to abuse/misuse, alteration, modification, third party interference, use of non-standard parts, improper installation not conducted by ECS, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty, or other natural force are not covered under this Agreement. ECS is not responsible for overflow or leakage of water, or refrigerant from the equipment, connections, or accessories. Service requests which fall outside the scope of this Agreement may be billed at prevailing hourly rates with prior Lessee authorization. Failure by Lessee to timely authorize Services is a breach of this Agreement and may result in suspension, termination or ECS seeking legal remedy.

h. **Access and Readiness for Service:** Lessee is responsible for readying Equipment for Service before arrival of ECS personnel. Specifically, this includes clearing the area around the Equipment to allow for access. Lessee shall also remove food or ice from storage/bins. Lessee shall arrange and ensure that one of its designated agents is *always present* when ECS is performing Services. The Lessee acknowledges failure to comply with these rules may result in additional charges that are not a part of this Agreement.

i. **Timing of Services:** ECS will make every effort to provide timely delivery of Service. The Lessee acknowledges Service times can be impacted by many factors, and not all requests for Service can be accomplished the same day. If emergency requests are made, or if requests are made outside of ECS's Service Hours, Lessee agrees to promptly reimburse ECS for such work when invoiced.

j. **Service Coverage Hours:** ECS's service coverage hours ("Service Hours") under this Agreement are include 8am-5pm, Monday through Friday, exclusive of core National holidays observed by ECS.



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k. **Ice Delivery:** *Complimentary ice delivery is not included in this agreement.* If Lessee desires ice delivery ECS will arrange on a best-efforts basis and invoice for such service. Lessee specifically acknowledges ECS does not deliver nor reimburse for any specialty ice including but not limited to flaked, crushed, cublet, or craft cocktail ice. Ice delivery hours are the same as outlined in Section 3(j).

l. **Removal of Equipment:** Following termination of this Agreement pursuant to Section 5(d) or 5(e), ECS will remove Equipment based on best efforts upon notification. At no time shall Lessee cause equipment to become permanently affixed or irretrievable from any premises. Lessee grants Lessor a right to enter Lessee's premises to remove equipment after default or termination without being guilty of trespass.

#### 4. Removing, Adding and Swapping Equipment to Agreement

a. **Adding Equipment to Agreement:** If the Lessee desires to add Equipment at a location a new Lease will be executed between the parties covering such Equipment.

b. **Partial Removal of Equipment to Agreement:** If the Lessee desires removal of a portion of leased Equipment, either solely or in connection with a new Lease, and intends to continue leasing the remaining pieces of Equipment subject to a prior Lease, the parties will execute an Addendum (the "Addendum") to the prior Lease. Both parties agree that the Addendum is inclusive of this Agreement, and all the Terms and Conditions will apply and remain in full force and effect.

c. **Equipment Swaps:** If Lessee desires to swap an existing leased piece of Equipment with a different piece of equipment, the Parties will execute an Addendum, which will cover the removal of Equipment from the original Lease, as well as a new Lease to cover the Equipment newly leased at the location. This Addendum's price, Equipment list and Initial Term will supersede the original Lease. Both parties agree that the Addendum is inclusive of this Agreement, and all other Terms and Conditions will remain in full force and effect.

#### 5. Title, Insurance, Payment, and Termination

a. **Title:** Liability for loss or damage of Equipment referenced in the Lease, the Agreement, or any Addendum to this Agreement, shall pass to Lessee upon delivery to Lessee's location. Title to Equipment provided through the Agreement shall remain with ECS. Lessee agrees to the filing of any liens and/or UCC Security Agreements (including UCC-1) and acknowledges the financial interest of ECS in the Equipment which is the subject of this Agreement. If Lessee abandons Equipment, Lessor may take custody thereof for the account of Lessee, whose obligation to pay the rent shall continue in full force.

b. **Insurance of Lessor's Equipment:** Lessee agrees to insure equipment against loss, damage, destruction, fire, flood, or theft. Upon request, Lessee agrees to annually provide ECS a certificate of insurance naming ECS as an additional insured party for the full value of the Agreement. For damage 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. Accepted manners of payment are by major credit card, or ACH transfer. Payment may be made through ECS's payment portal administered by YayPay a Quadient company.

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:** 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 liquidated damages equal to 12 months billing based on the greater of the Lease or Addendum price.

f. **End of Life Declaration and Termination:** In its sole discretion, if ECS determines any piece of Equipment is not serviceable Lessee will be informed verbally and via email the Equipment is at end-of-service-life

("EOL"). *Such declaration will automatically remove the item from this Agreement, and all Services will be suspended including further repairs.* Lessee will be provided with a quotation for equipment to replace the EOL equipment, at prevailing prices. If within five (5) business days of receiving the quotation the parties cannot agree to sign a new lease for equipment, Lessee agrees to provide ECS immediate access to the premises reclaim the EOL item.

g. **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.

h. **Default or Failure to Timely Pay:** Should Lessee violate any aspect of this Agreement, including payment obligations associated with any invoice tendered in connection with this Agreement, or in the event Lessee is insolvent and/or declares bankruptcy, Lessee agrees ECS may (i) suspend or terminate any or all portions of this Agreement; (ii) may enter the Lessee's premises to recover property or equipment owned by ECS; (iii) declare the rent for the remaining term of this lease immediately due and payable; (iv) take any and all actions necessary to enforce its rights under this Agreement, including actions associated with Section 5(e) and 5(f).

#### 6. General Legal

a. **Business Purpose:** Lessee warrants and represents that the Products under 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.

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 a recognized Officer of ECS, or by U.S. first class mail to the parties as follows: Lessee at the address listed in the Lease and to ECS at 600 W. Jackson Blvd., Suite 700, Chicago, IL 60661.

d. **WARRANTY:** ECS warrants that the 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



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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 officers, directors, employees and agents from all loss, liability, claims, or expenses (including reasonable attorney's fees) arising out of Lessee's use of Services, including but not limited to liabilities arising from illegal use of ECS's 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.