



## **KWIK ES, LLC Roll off Container Agreement**

This SERVICE AGREEMENT (hereinafter referred to as the "**Agreement**") is effective on the date which the roll off container has been reserved by a party (hereinafter "**Client**") and Kwik ES, LLC (hereinafter "**Service Provider**") (collectively referred to as the "**Parties**" and each a "**Party**").

WHEREAS, Client and Service Provider desire to enter into a business relationship upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1) **SERVICES TO BE PROVIDED.** Under this Agreement, the Service Provider shall be expected to perform all the following services:
  - a. Provide roll off dumpster containers at a site
  - b. Retrieval of roll off dumpster containers and empty within twenty-four (24) hours after notification outlined in "Pick Up Schedule" section.
- 2) **TERM.** Service Provider will begin providing Services under this Agreement upon final payment for the roll off dumpster
- 3) **COMPENSATION**
  - a. The reservation and conformation payment will be made prior to delivery of the roll off dumpster. This compensation includes any applicable sales taxes and duties, as required by law.
  - b. Roll off containers exceeding two (2) tons is billed at \$60 for every ton over two (2).
  - c. **Pay Period.** Service Provider will be paid once upon reservation of the roll off dumpster and the client understands that if the containers exceed 2 tons, they will be accrued and pay an additional cost.

### **CLIENT'S AGREEMENT TO PAY FOR SERVICES.**

CLIENT payment is due to KWIK ES, LLC for the service charge and adjustments as set forth in this contract at the time of ordering. CLIENTS with pre-approved payment arrangement with KWIK ES, LLC shall pay within the allotted time on the billing invoice. Additional extended service area fuel charges may apply, and if so will be noted in the "Additional Charges" section of the invoice. KWIK ES, LLC may terminate this agreement if CLIENT fails to pay the service charge or should the credit worthiness of the CLIENT not be acceptable to KWIK ES, LLC. No container shall be removed unless paid for.

### **PICK UP SCHEDULE.**

The container shall be picked up within twenty-four (24) hours after notification. If unable to pick up container due to excessive load size, a portion of the load must be removed by CLIENT. If all excess debris is not removed, KWIK ES, LLC may dump excess on site to collect said container. If the container is unable to be picked up, Client will be charged a \$125 dry trip fee.

### **EXCLUSIONS:**



**NO** Hazardous waste, industrial waste, chemical products, oil filters, herbicides & pesticides, radioactive material, solvents, paint (except completely dried latex paint cans, no liquids), other flammable liquids, aerosol cans, propane tanks, motor oil, transmission oil/lubricating/hydraulic oil/oil filters, contaminated oils (mixed with solvents, gasoline, etc.), antifreeze, appliances, petroleum-contaminated soil, lead paint chips, **tires**, computers, monitors, televisions, microwaves, fluorescent tubes, railroad ties, medical waste, asbestos, animals, barrels, all liquids, flammable, toxic, and/or hazardous material, thinners, lacquers, batteries, infectious waste, contaminated soils, fuels, car batteries, food wastes, adhesives or industrial drums, or “Special” waste, as defined by applicable Local, State and Federal laws or regulations. We **cannot** accept refrigerators, freezer units, and air conditioners. Any of these items found in the container must be removed or we have the right to dump the load at the job site. **If such items are hidden in the dumpster and KWIK ES, LLC is charged at the dump site, CLIENT agrees to reimburse and pay actual charges and fines imposed by local, state, and Federal agencies due to the illegal dumping of said material. If the container is rejected the Client shall be responsible for all costs associated with rejection of the load and agrees to reimburse us for the said costs. In addition, Client agrees to be responsible for all fines imposed by local, state, or federal agencies due to the illegal dumping of said material. CLIENT is responsible for contents of container during rental period, and for any charges associated with restricted contents.**

#### **CONTAINERS:**

All containers furnished by KWIK ES, LLC shall remain the property of KWIK ES, LLC and Client SHALL not modify or use the containers for any purpose other than relating to KWIK ES, LLC'S service. CLIENT shall not move, transport or otherwise relocate the container(s) while in the CLIENT'S possession. Upon 24 hours' notice, KWIK ES, LLC shall relocate the container on the premises for a service charge of \$75.00. CLIENT accepts responsibility and liability for any loss of, or damage to the container(s) while in CLIENT'S possession. CLIENT shall provide a suitable site for the container(s) and grants KWIK ES, LLC the right to access to the container(s) at all reasonable times. Additional charge of \$75.00 will apply if: (a) container(s) are unserviceable due to CLIENT'S failure to provide access and a return trip is required for pickup, or (b) driver arrives for requested pickup and Client requests dumpster not be taken (even if it is within the original rental period). Federal, state and local laws govern the transportation and gross vehicle weight of over-the-road vehicles. Construction and Demolition debris may be loaded to the top “FILL LINE – GENERAL DEBRIS” of the roll off container. Dirt, concrete, brick, block and asphalt materials shall only be loaded to the “FILL LINE – DIRT CONCRETE BRICK BLOCK” marked on the roll off container for these materials. **If KWIK ES, LLC is unable to tarp container due to overfill or if unsafe to transport, KWIK ES, LLC has the right to dump all or part of the load on site.**

#### **CLIENT'S RESPONSIBILITY.**

KWIK ES, LLC shall not be liable for any claims for damage to CLIENT'S pavement or driveway surface resulting from the roll-off container or KWIK ES, LLC truck servicing the container. If CLIENT requests placement of container on any grass or dirt surface, KWIK ES, LLC is not liable for any damages to such surfaces by truck or container. CLIENT must assure a minimum of 15' overhead clearance for all power, phone, cable, and other lines. CLIENT releases KWIK ES, LLC, and shall indemnify, defend and hold harmless KWIK ES, LLC against all claims, damage to property arising out of CLIENT'S use, operation or possession of the container. KWIK ES, LLC shall not be liable to CLIENT for failure to perform the services due to events beyond its control, including but not limited to strikes, riots, fires, floods, and governmental actions, changes in law, weather, traffic, or acts of God. CLIENT is responsible for any necessary permits, and agrees to pay any fines or fees associated with obtaining permits, or moving the dumpster in case a permit was not obtained and was required. Move fee is \$125.00. **If driver believes placement will cause damage to property, container or vehicles: driver can refuse placement of container and suggest a more suitable**

location. If CLIENT wants to take financial responsibility for damage resulting in placement of original request, initial here \_\_\_\_\_

1. **RELATIONSHIP OF THE PARTIES.** Service Provider is not Client's employee, and nothing in this Agreement will create an employment, agency, joint venture, or partnership relationship between the Parties.
2. **NO AUTHORITY.** Unless Client otherwise gives its prior written authorization, Service Provider will have no authority to act as agent for Client, to represent Client, or bind Client in any manner.

#### **TERMINATION.**

This Agreement may only be terminated as follows: (i) for just cause, including, without limitation, breaching a provision of this Agreement; (ii) upon either Party dissolving, becoming insolvent, filing bankruptcy, or ceasing all business operations; (iii) upon the sale of the business of either Party; or (iv) by mutual written agreement of the Parties.

#### **Notice Required.**

Where either Party is in breach of this Agreement, the other Party may terminate this Agreement at any time, with or without notice, or otherwise as permitted by applicable law.

#### **OBLIGATION OF CONFIDENTIALITY**

##### **Confidential Information.**

"Confidential Information" means any and all information which is possessed by or developed for Client and which relates to Client's existing or potential business or technology, which information is generally not known to the public and which information Client seeks to protect from disclosure to its existing or potential competitors or others, and includes, without limitation, for example: business plans, business strategies, business know-how and techniques, marketing plans, and the identities and business preferences of current or prospective customers or vendors. Confidential Information also includes information received by Client from others that Client has an obligation to treat as confidential. Confidential Information includes information and documents whether or not they are marked "confidential" or carry any other marks or designations.

##### **Trade Secrets.**

"Trade Secrets" means all information possessed by or developed for Client, including, without limitation, a compilation, program, device, method, system, technique, formula, pattern, or process to which all of the following apply: (i) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) the information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

##### **Non-Disclosure.**

Except as required in the conduct of Client's business or as expressly authorized in writing on behalf of Client, during this Agreement Service Provider may not use or disclose, directly or indirectly, any Confidential Information or Trade Secrets to any unauthorized third parties. This prohibition does not apply to Confidential Information after it has become generally known in the industry in which the Client conducts its business. This prohibition also does not prohibit Service Provider's use of general skills and know-how acquired during and prior to this Agreement, as long as such use does not involve the use or disclosure of Confidential Information or Trade Secrets. Finally, Service Provider will not disclose to Client, use in Client's business, or cause Client to use any Confidential

Information or Trade Secrets belonging to others. These restrictions apply to all Confidential Information and Trade Secrets regardless of the format (hard copy, electronic, or otherwise) or location in which they are created or maintained, including, but not limited to, all computers that Service Provider may possess or have access to in or away from Client's offices.

#### **INSURANCE.**

Service Provider is required to maintain general liability insurance at all times during the Agreement, including coverage for property damage and bodily injury, at a coverage amount considered reasonable in Service Provider's industry given the potential risks associated with this Agreement.

#### **DISPUTE RESOLUTION.**

The Parties agree to submit any disputes arising out of this agreement to a court of law having jurisdiction in the State of Texas.

#### **INDEMNIFICATION.**

Each Party must indemnify and hold harmless the other Party, along with its officers, directors, employees, and agents, against all claims, liabilities, losses, costs, and all other legal and non-legal expenses, including, without limitation, reasonable attorney's fees and costs and insurance deductibles arising directly or indirectly from (i) the Party's breach of any provision of this Agreement, or (ii) the negligent, grossly negligent, or intentional act or omission of the Party or any of its directors, officers, employees, or agents that causes any type of damage to Client.

#### **EQUITABLE RELIEF AND REMEDIES.**

Service Provider acknowledges that a breach of this Agreement may cause substantial and irreparable harm to Client for which money damages would be an inadequate remedy. Accordingly, Client will in any such event be entitled to seek injunctive and other forms of equitable relief to prevent such breach, and the prevailing Party will be entitled to recover from the other the prevailing Party's losses, damages, and costs, including, without limitation, reasonable attorney's fees and costs, incurred in connection with enforcing this Agreement, in addition to any other rights or remedies available at law, in equity, or by statute.

#### **FORCE MAJEURE.**

The Client agrees that Service Provider will not be held liable, deemed responsible, or found to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or as a result of circumstances beyond the reasonable control of Service Provider. Such circumstances include, but are not limited to, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage. Notwithstanding the foregoing, the Parties also agree that if the event in question continues active for a continuous period in excess of 30 days, Client may, at its sole discretion, but not before sending the Service Provider written notice, terminate this Agreement.

#### **SEVERABILITY.**

The Parties have attempted to limit all provisions so that they apply only to the extent reasonably necessary to protect legitimate business and property interests. If any provision of this Agreement is held to be invalid or unenforceable for any reason, then that provision will be considered removed from this Agreement, and the remaining provisions will continue to be valid and enforceable according to the intentions of the Parties. However, if a court or arbitration panel finds that any provision of this Agreement is invalid or unenforceable as currently written, but that by rewriting or limiting such provision it would become valid and enforceable, then such provision will be deemed to



be written, construed, and enforced as is necessary to further the intent of the Parties to the maximum extent permitted by law.

**ENTIRE AGREEMENT.**

This Agreement contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Agreement may be changed only by an agreement in writing signed by the Party against whom any waiver, change, amendment, modification, or discharge is sought.

**GOVERNING LAW AND VENUE.**

To the extent not inconsistent with applicable law, Service Provider acknowledges and agrees that this Agreement will be governed by and construed in accordance with the laws of the State of Texas.

**NOTICE.**

Any notice required or permitted to be given under this Agreement will be sufficient if in writing and if sent by certified or registered mail, first class, return receipt requested, to the Parties at the following addresses or any other address so specified in writing by a Party:

**SERVICE PROVIDER ADDRESS**

Kwik ES, LLC  
8744 Airport Rd  
Temple, Texas 76502

**ACKNOWLEDGMENTS.**

Each Party acknowledges, understands, and accepts

its obligations under this Agreement;

that it freely enters into this Agreement;

that it has the right to seek independent advice at its own expense or to propose modifications prior to signing the Agreement and has negotiated proposed modifications to the extent it deems necessary;

that the covenants made by and obligations imposed upon Service Provider, including any and all covenants regarding confidentiality and ownership of Intellectual Property, are fair, reasonable, and minimally necessary to protect the legitimate business interests of Client, and such covenants and obligations will not place an undue burden upon Service Provider in the event of termination of Service Provider's contract with Client and the strict enforcement of the covenants contained herein;

that the above restrictions are not intended to deprive Service Provider of an opportunity to earn a living in the same profession as that of Client. Rather, Service Provider agrees to abide by the above restrictions in recognition of Client's legitimate and reasonable objective to protect its business interests and client relationships;

that each Party has been provided with good and valuable consideration in return for the execution of this Agreement; and

**THAT EACH PARTY HAS READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

