

P.U.C.O. NO. 1
RULES AND REGULATIONS
GOVERNING
DISTRICT COOLING
(CHILLED WATER)
PROVIDED BY
CLEVELAND THERMAL CHILLED WATER DISTRIBUTION, LLC
WITHIN THE
DOWNTOWN CLEVELAND AREA

000

**P.U.C.O. NO. 1
RULES AND REGULATIONS GOVERNING
DISTRICT COOLING**

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APPENDIX A – DISTRICT COOLING AGREEMENT AND EXHIBITS

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1. DEFINITIONS

As used in these Rules and Regulations the following are defined terms to mean:

“Actual Demand” means the Customer’s demand for cooling expressed as Tons of refrigeration during any one-hour period during a particular calendar month.

“Annual Peak” means the highest amount of chilled water demanded (expressed as Tons of refrigeration) by the Customer for a one-hour period during the calendar year.

“Building” shall mean the structure(s) or premises owned or leased by the Customer for which District Cooling is provided by the Company.

“Chilled Water” shall mean the same as “District Cooling.”

“Company” shall mean Cleveland Thermal Chilled Water Distribution, LLC, its officers, agents, or employees.

“Contract Capacity” means the specific amount of cooling capacity on the Company’s system which the Customer and Company agree should be reserved to adequately serve the Customer. The Company has no obligation to provide service in excess of the Contract Demand but will use reasonable efforts to do so. Contract Capacity is also one of the billing determinants in determining the monthly rates.

Issued: February 18, 2005

Effective: February 18, 2005

Filed in accordance with the September 1, 2004 Finding and Order of the Public Utilities Commission of Ohio in Case No. 04-1179-HT-UNC.

ISSUED BY

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“Customer” shall mean that entity, its officers, agents, or employees, which enters into a District Cooling Agreement with the Company to receive district cooling in downtown Cleveland.

“Deg F.” means degrees on the Fahrenheit temperature scale.

“District Cooling Agreement” means the written agreement between the Customer and Company which includes not only these rules and regulations but also rates and any other considerations unique to that relationship. See Appendix A.

“District Cooling” shall mean the process by which chilled water is sent out from the Company’s plant and circulated through a network of pipes to the premises of customers from which air is cooled; the water is then returned through pipes to the Company’s plant.

“Point of Delivery” means the place within, at or near the Customer’s premises where the Customer and Company agree that chilled water shall be delivered to the Customer and water shall be returned to the Company. The Point of Delivery shall be designated on Exhibit 3 attached to the District Cooling Agreement.

“PUCO” shall mean the Public Utilities Commission of Ohio.

“Service Commencement Date” shall mean the date the Customer first receives district cooling from the Company.

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2. AVAILABILITY OF DISTRICT COOLING

District Cooling is available to those commercial, industrial or institutional entities with buildings which are located in the Cleveland area and abut the Company's distribution system. District cooling will only be provided to Customers who are willing to enter into a District Cooling Agreement for a term of at least five (5) years, except as provided for in Sections 18 and 19 below.

3. DISTRICT COOLING AGREEMENT

- A. Except as provided for in Section 18 and 19 below, all terms, conditions, regulations, rates, and other provisions governing District Cooling Service are found in the District Cooling Agreement attached as Appendix A to these Rules and Regulations. Except as provided for in Sections 18 and 19 below, all customers must sign a District Cooling Agreement prior to receiving District Cooling Service.
- B. The Company and the Customer may mutually agree to add, delete, or supplement any term, condition, regulation, rate, or other provision of the District Cooling Agreement by reducing the same to writing. Any change which substantially deviates from the terms of Appendix A attached hereto shall be submitted to the Commission for approval pursuant to Section 4905.31, Revised Code. All contracts for service are subject to change in rates, service and in rules and regulations, hereinafter put into effect by the Company, the PUCO, or other public authority, as provided by law.

RECEIVED-DOCKETING DIV
2010 MAY -6 PM 5:25
PUCO

Issued: May 6, 2010

Effective: May 6, 2010

Filed in accordance with the Finding and Order dated May 5, 2010 of the Public Utilities Commission of Ohio in Case No. 10-0446-CC-ATA.

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4. RESPONSIBILITY FOR CHILLED WATER

The Customer shall be responsible for all chilled water used on the Premises until 48 hours after written notice has been given at the office of the Company to discontinue the supply.

5. DENYING SERVICE DUE TO INDEBTEDNESS

Service may be refused to any applicant in debt to the Company for service previously rendered.

6. DENYING SERVICE DUE TO LOCATION

Applicants shall be accepted for District Cooling at locations served by existing street mains. The Company may, at its sole discretion, extend its facilities to serve prospective loads but shall not be required to provide such service.

7. TEMPORARY SERVICE

Unless otherwise agreed upon, any applicant desiring temporary service shall, in addition to the rates, pay the entire costs of installing and removing such temporary service.

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8. CREDIT REQUIREMENTS

A. SECURITY REQUIREMENTS

The Company may require of a Customer as security for the payment of bills, a cash deposit not exceeding an amount sufficient to cover an estimate of the monthly average of the annual consumption by such Customer plus thirty percent, unless the Customer is a freeholder and financially responsible, or unless the Customer gives a reasonably safe guaranty in an amount sufficient to secure the payment of bills for sixty days' supply; upon which deposit there shall be allowed and paid to the Customer interest at the rate of not less than three percent per annum to the date of the final bill, provided it remains on deposit six consecutive months.

B. USE OF DEPOSITS

The Company may retain any deposit and apply the same upon bills for service or any indebtedness to the Company.

9. RESALE OF CHILLED WATER

Chilled water furnished is for the sole use of the Customer, who shall not sell any of such chilled water to any other person, or permit any other person to use the same without the specific written permission of the Company to Submeter or Redistribute. The following general standards shall govern the granting of such permission:

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- (a) Any request for permission shall be in writing.
- (b) Submetering or Redistribution shall not be permitted under any circumstances to Premises not owned, leased or otherwise controlled by the Customer.
- (c) Redistribution may be permitted for residential uses.
- (d) Redistribution only shall be permitted where in the opinion of the Company it is incidental to the business conducted by the Customer and is not prohibited by Paragraph (f) hereof.
- (e) Redistribution or Submetering shall not be permitted with respect to aggregations of separate commercial or retail users such as those commonly known as shopping centers.
- (f) Notwithstanding the above standards, the Company and the Customer may agree to submeter on the basis of unique circumstances and conditions such as year round load or heat rejection equipment (e.g., switch gear, data center, etc.).

10. REASONS FOR DISCONNECTING CHILLED WATER

- A. Chilled Water may be disconnected without charge and the Company may remove its pipes, meters, appliances and other property for any of the following reasons:

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- a. For any violation or refusal to comply with the District Cooling Agreement and/or the general service rules and regulations on file with this Commission which apply to the customer's service;
- b. In the event the Customer uses chilled water in a manner detrimental to other customers;
- c. When providing chilled water is in conflict or incompatible with any order of the Commission, laws of the State of Ohio, or any political subdivision thereof or of the federal government or any of its agencies;
- d. When the customer has moved from the Premises;
- e. When supplying chilled water to any Customer creates a dangerous condition on the Customer's Premises or where, because of conditions beyond the Customer's Premises, termination of the supply of chilled water is reasonably necessary. Chilled water will not be restored until a dangerous condition or conditions have been corrected;
- f. In the event the customer resorts to any fraudulent practice in the obtaining of chilled water supplied, or is the beneficiary of any fraudulent practice, or the Company's meter, metering equipment or other property used to supply the service has been damaged

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- by the Customer, his servants or agents. Chilled water will not be restored until the Customer has given satisfactory assurance that such fraudulent or damaging practice will be discontinued and has paid the Company an amount estimated by the Company to be a reasonable compensation for the service fraudulently obtained and not paid for and for any damage to the property of the Company including any costs to repair the damage.
- g. For repairs to the Company's equipment;
 - h. Upon the request of the Customer;
 - i. The Customer's failure to pay any indebtedness to the Company;
 - j. The Customer's connection of any unauthorized devices to the Company's lines or equipment;
 - k. The Customer's unauthorized use of the Company's chilled water, lines or equipment;
 - l. The Customer's construction or apparatus that does not meet governmental codes and regulations and/or with the reasonable requirements of the Company; and
 - m. The Customer's construction, facilities, operations or activities by reason of a location, pollution, contamination or corrosion, which may cause reduced

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reliability, unsafe conditions, or other unreasonable impacts or disturbances on the Company's facilities or property.

11. RECONNECTION CHARGES

- A. When chilled water has been disconnected for failure to comply with the terms and conditions of the District Cooling Agreement or rules and regulations of the Company or has been disconnected at the Customer's request, a reconnection charge of \$250.00 plus the actual labor and materials costs will be required when the Customer requests reconnection.
- B. If chilled water is disconnected at the Customer's request, the Company shall not be under any obligation to resume said chilled water to the same Customer on the same Premises until the Customer has made payment of an amount equal to the minimum monthly charge (if any) for each month of the intervening period, but not to exceed twelve (12) months, plus the cost of making such reconnection.
- C. If payment in full on the outstanding balance is made to a Company employee whose original purpose was to disconnect the chilled water, then a charge of \$150.00 shall be assessed on the Customer's next billing. Chilled water which otherwise would have been disconnected shall remain intact.

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12. FILTER OR STRAINER INSPECTION

The Customer shall inspect its filters or strainers annually.

13. CUSTOMER BILLS

Customers shall be billed on the basis of monthly meter readings and shall pay for the District Cooling on a monthly basis. All bills for service shall be payable on or before the due date indicated on the monthly bill. Interest, at the rate of 1.5 percent per month, may be charged on the previous month's capacity/usage consumption charges if unpaid at the next billing date.

14. METER TESTING, INACCURACY OR FAILURE

Meters shall be tested on the request of a customer, in his presence if desired by the customer, by a representative of the Company. The meter shall be deemed accurate if the variation is not less than three percent (3%); if the meter is deemed accurate, the party requesting the testing shall be charged for the expense of removing it for the purpose of testing. If the meter is proved inaccurate, then it shall be replaced or repaired without charge to the Customer.

If accurate meter readings are not available or if meter readings cover more or less than the usual billing period, bills shall be pro-rated or estimated by the Company on the basis of use during a similar period.

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Where leaks occur in Customer's pipes or apparatus resulting in loss of chilled water, the Customer shall be required to make immediate repairs, and the billing for the period of such leakage shall be adjusted on the basis of an estimated amount of chilled water.

15. ACCOUNTING

The Company shall keep accurate and satisfactory records and books in accordance with the generally accepted accounting principles and the uniform system of accounts showing all costs, payments, rate adjustments, credits and other data.

16. CONTINUITY OF SERVICE AND LIABILITY

A. SERVICE CONTINUITY

The Company does not guarantee but will endeavor to furnish a continuous supply of chilled water and to maintain pressure within reasonable limits.

B. LIABILITY

The Company shall not be liable for direct and consequential damages which the Customer may sustain due to interruptions in service, variations in pressure, the use of chilled water apparatus or the presence of the Company's property on the Customer's Premises.

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Approval of the above tariff language by the PUCO does not constitute a determination by the Commission that the limitation of liability imposed by the Company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequential damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

17. COMPANY FACILITIES

A. STANDARD SERVICE

The Company shall, where the Customer's Premises abut upon an existing chilled water main adequate and suitable for Customer supply, install and maintain at its own expense one standard chilled water service (which includes one supply pipeline and one return pipeline) from such main to the property line of such Customer, and shall also install and maintain a service valve; provided, however, any Customer now receiving chilled water from a chilled water main of the Company, directly or indirectly, but whose Premises do not abut upon such chilled water main may continue to receive chilled water if such Customer shall construct and maintain piping satisfactory to the Company from his Premises to such chilled water main.

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18. CHILLED WATER DISTRIBUTION DEFAULT SERVICE

A. Applicability

This service shall be applicable to: (i) all current Customers whose District Cooling Agreement has expired and who have not executed either a new District Cooling Agreement or an extension of their then current Agreements; and (ii) new Customers who elect not to execute a District Cooling Agreement provided for in Section 3, but whose service needs can be accommodated, in the sole judgment of the Company, without impairing the quality of chilled water service to Company's other Customers.

B. General Performance Obligations

1. Subject to the more specific identification of Customer's requirements set forth herein, Company shall obtain for and distribute to Customer and Customer shall receive from Company's existing distribution system and at the *Point of Delivery* specified by the Company the total chilled water and cooling requirements of Customer's buildings or premises (hereinafter, the *Building*). Company shall also receive returned water from Customer at the Point of Delivery pursuant to the terms of this Tariff. Company is not obligated to provide uninterrupted service to Customer, and Customer's service may be interrupted or discontinued by Company when Company cannot maintain service through commercially reasonable measures. In the event that Company cannot provide continuous chilled water distribution service to Customer in accordance with the terms and conditions of this Tariff for a period exceeding twenty-four (24) hours, Company shall make a pro rata adjustment to Customer's *Chilled Water and Distribution Capacity Charges* (as defined herein) based on the amount of time such service was not provided during the applicable *Billing Period* (as defined herein). Company shall also provide Customer with periodic invoices stating the charges Customer owes Company for service provided pursuant to this Tariff and, notwithstanding any other provision in this Tariff, Company may discontinue service under this Tariff in the event that Customer has not made full payment for any Billing Period invoice within the period specified in Paragraph F(1) below. Company shall furnish, install, own and maintain, at its expense, isolation valves and such metering equipment as it deems appropriate to measure the chilled water distributed to Customer and water returned to Company by Customer.

2. Customer shall use commercially reasonable efforts to receive chilled water from Company's distribution system for the Building, return water in sufficient quantity and without abnormal loss to Company, meet the conditions established by Company to receive chilled water distribution service from Company and timely pay Company for service provided pursuant to this Tariff. Upon Company's request and at no cost to Company, Customer shall provide adequate space and any interest in real property suitable to Company on Customer's property and within the Building to permit Company to meet its initial and ongoing service obligations under this Tariff or otherwise and shall allow Company reasonable access thereto at all times upon request by Company. Customer shall authorize Customer's property manager, any Building manager or such other person that may have the ability to do so, to permit Company to enter the Building for

Issued: May 6, 2010

Effective: May 6, 2010

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Commission of Ohio in Case No. 10-0446-CC-ATA.

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the purpose of meeting the terms of this Tariff. Customer acknowledges it is solely responsible for establishing and maintaining such facilities, pumps and other equipment as may be required to redistribute chilled water within the Building and to install and operate such equipment, plant and facilities as may reasonably be necessary to prevent the actions or inactions of Customer, its tenants and other occupants of the Building from negatively affecting Company's ability to safely and adequately meet the needs of its other customers. Upon request, Customer shall furnish Company with information that is sufficient, as determined solely by the Company, to demonstrate that Customer has installed plant, facilities, and equipment and implemented operating procedures to avoid imposing overpressure or pressure-related shocks on Company's distribution system. Beyond such chilled water redistribution as Customer may need to perform to meet the chilled water needs within the Building, Customer shall not redistribute chilled water for any other purpose without prior written consent of Company. The temperature at which Customer returns water to Company's distribution system has a significant effect on Company's ability to effectively distribute chilled water to Customer and Company's other customers and, therefore, Customer shall install and operate such Building equipment and facilities as may reasonably be required to keep the temperature of water returned to Company's distribution system within the range specified herein. Customer shall design, own, construct, install, operate and maintain, at its own expense, piping necessary to receive chilled water from Company at the Point of Delivery and all cooling equipment, including but not limited to pumps, valves, insulation, gauges, and controls necessary to return water to Company at the Point of Delivery within the temperature range specified herein. Customer shall not cause any additive, chemical, or other such item to enter Company's chilled water system or otherwise affect the chemical content of the chilled water received from or returned to the Company.

3. Each party shall, respectively, design, construct, operate and maintain its plant, facilities, equipment and piping in an efficient, safe and reliable manner. Prior to commencing service, Company shall have the right, but not the duty, to inspect, review and approve the connection of Customer's equipment and piping to Company's chilled water distribution system. Company's right of inspection shall in no way impose a duty or liability on Company with respect to the lawful, safe or proper operation of Customer's equipment and piping. Customer is solely responsible for the design or operation of Customer's equipment and the redistribution or use of chilled water within the Building. If at any time a local regulatory authority, other regulatory authority, or Company judges that Customer's plant or equipment may be unsafe, Company may withhold or discontinue service until Customer has completed corrective actions and the actual or potential unsafe condition has been eliminated. Except in the case of an emergency, Company will attempt to provide Customer with reasonable notice prior to discontinuing or suspending service due to an unsafe condition. By accepting service in accordance with the terms of this Tariff, Customer represents to Company that it is not relying upon Company's expertise or knowledge in connection with the design or operation of Customer's equipment and the redistribution or use of chilled water within the Building.

C. Commencement, Termination, and Disconnection of Service

1. Company shall commence providing service to Customer on the *Service Commencement Date*, which shall be the date on which Company commences providing chilled water distribution service at the Point of Delivery by opening the Building's supply and return isolation valves to, if needed, initially fill Customer's chilled water redistribution system and cooling equipment within

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the Building or otherwise commences the flow of chilled water to the Building. Customer may terminate this service by providing the Company with written notice at least thirty (30) days prior to the effective date of such termination and by making a lump sum termination charge payment to Company equal to the unamortized balance of any connection costs incurred by Company to commence service under this Tariff as identified in Paragraph C(5), provided there is such an unamortized balance.

2. Company may terminate this service upon thirty (30) days prior written notice to Customer in the event of any default by Customer which default continues for a period of more than thirty (30) days following a written demand by Company to cure such default. Any cure right that Customer may have pursuant to this Paragraph shall not extend to any default that arises as a result of Customer's failure to make timely payment. In such event, Customer shall pay to Company a cancellation charge equal to the unamortized balance of any connection costs incurred by Company to commence service under this Tariff as identified in Paragraph C(5). This cancellation charge shall be in addition to any other damages incurred by Company as a result of Customer's default.

3. In the event of termination of service, Customer shall provide Company with such access to Customer's Building and property as Company may reasonably require to remove Company's plant, equipment, facilities and piping for so long as Company may reasonably require to remove such equipment and piping.

4. Customer's obligation to pay any unpaid invoices plus late charges for service provided by Company prior to termination of service, shall survive the termination of service. No eminent domain or condemnation proceedings with respect to Customer's premises shall relieve Customer of its obligations hereunder.

5. In accordance with Paragraph C(2) and (3), Customer is obligated to pay to Company certain rates and charges upon early termination of service, including the balance of unpaid connection costs. The formula that shall apply for the purpose of determining any balance of such connection costs and the amount of such balance that Customer shall pay Company upon early termination service is specified in this paragraph. The actual connection costs incurred by Company pursuant to this Tariff shall be calculated using on a straight-line basis at a rate of twelve percent (12%) per annum applied to the starting balance. Upon Company's final determination of the actual connection costs, Company shall provide Customer with written notice of such actual costs. For purposes of determining the amount of the unpaid balance that is outstanding on the date of early termination, each payment installment shall be deemed to occur on the last business day of each month of service. Below, for illustration purposes only, is an example of an amortization schedule that assumes the actual connection and carrying costs total \$ 85,000.

Amortization Schedule

Beginning Balance	\$ 85,000	Ending Balance
Last Day -- Year One		\$ 95,200
Last Day -- Year Two		\$ 75,281
Last Day -- Year Three		\$ 52,972
Last Day -- Year Four		\$ 27,985

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6. When chilled water has been disconnected for failure to comply with the terms and conditions of this Tariff, or rules and regulations of the Company or has been disconnected at the Customer's request, a reconnection charge of \$250.00 plus the actual labor and material costs will be required when the Customer requests reconnection.

7. If the chilled water is disconnected at the Customer's request, the Company shall not be under any obligation to resume said chilled water to the same Customer on the same premises until the Customer has made payment of an amount equal to the minimum monthly charge (if any) for each month of the intervening period, but not to exceed twelve (12) months, plus the cost of making such reconnection.

D. Installation of Equipment

1. Company shall design, locate, own, construct and install, at its own expense, all equipment and piping necessary for Customer to receive chilled water from Company at the Point of Delivery in such amounts as may be reasonably required to meet Customer's cooling needs as identified to, and accepted by, Company in accordance with the provisions below and to receive into its distribution system returned water from Customer at the Point of Delivery. In order to assist Company with chilled water acquisition and distribution capacity planning efforts, Customer shall notify Company of any anticipated changes in Customer's capacity requirements and shall do so not later than thirty (30) days prior to the start of each calendar year and promptly at any time during the year if the information provided in the annual notice changes. By accepting service under this Tariff, Customer acknowledges that failure to provide Company with information identifying anticipated changes in Customer's capacity requirements may negatively affect Company's ability to timely obtain and distribute sufficient chilled water to meet Customer's needs.

2. If the Point of Delivery is located within the Building or other structure, then Customer shall provide Company with suitable pipe penetrations through the Building's or structure's wall or foundation to provide for suitable space for the installation and maintenance of Company's piping, metering and other plant, facilities or equipment associated with the provision of service to Customer. However, upon Customer's request, Company may elect to install, on behalf of Customer, such pipe penetrations for Customer, provided that Customer's request for Company to act in such capacity on behalf of Customer shall obligate Customer to hold Company harmless from any claim or liability arising from Company's actions and provided that Customer first properly executes and delivers to Company the form of a release as specified by the Company, the terms and provisions of which, if and when executed and delivered, shall automatically be incorporated into this Tariff as applicable to Customer.

E. Cooling Capacity Requirements and Billing Determinants

1. The initial amount of chilled water distribution capacity (hereinafter, *Tariff Capacity*) reserved by the Company for Customer's use under this Tariff shall be the amount identified in writing by Company and the Customer. Identification of Tariff Capacity shall be made prior to the provision of service under this Tariff.

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Effective: May 6, 2010

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2. If Customer's highest actual demand for chilled water measured over an integrated sixty (60) minute period during any Billing Period (hereinafter, *Actual Demand*) exceeds the then existing Tariff Capacity, the then existing Tariff Capacity shall be restated to the level of such Actual Demand, thereby prospectively establishing Customer's new Tariff Capacity. Upon written request by Customer, Company may agree to forgive an Actual Demand's restatement of Customer's Tariff Capacity where the Actual Demand was the result of conditions or circumstances not reasonably within Customer's control.
3. In the event a new Tariff Capacity has been established as described in Paragraph E(2), Company shall, upon Customer's written request and at the end of the next Summer Period, make a downward adjustment to and reset the Tariff Capacity in recognition of actions taken by Customer to effectively manage its demand for chilled water distributed by Company. Such downward adjustment shall be based on an examination of the two most recent Summer Period's highest actual monthly demands with the average of such actual demands becoming the Customer's new Tariff Capacity. In no event, however, shall the Customer's Tariff Capacity be less than 0 tons.
4. Company is not obligated to distribute chilled water to Customer in excess of the Tariff Capacity as it may be revised from time to time. Company will, consistent with generally accepted industry practices and subject to its other service obligations, use reasonable efforts to meet Customer's Actual Demand to the extent that it exceeds the stated amount of Tariff Capacity then in effect. To the extent that Company reasonably believes that Customer's Actual Demand may negatively affect Company's ability to meet the needs of its other customers, Company may restrict or otherwise limit the distribution of chilled water to Customer.

F. Rates, Charges and Billing

1. The Rate Schedule for Chilled Water Service is set out in Section 19 below. Customer shall be billed by Company on billing cycle basis (herein, the *Billing Period*) with approximately twelve Billing Periods in each calendar year and each Billing Period approximating one service month. Company's invoices shall be based on the rates, charges and fees stated herein as applied to Customer's billing determinants during the Billing Period. Customer shall pay Company's invoice within fifteen (15) days of the invoice date. Any invoice unpaid in full within thirty (30) days of the invoice date shall be deemed late and subject to an additional charge of one and one-half percent (1.5%) per month multiplied by the balance not timely paid. Company's invoice for service supplied to Customer pursuant to this Tariff shall include the following:
 - a. *Distribution Capacity Charge*. The *Distribution Capacity Charge* shall be equal to the product of the *Distribution Capacity Rate* (as shown in Section 19) multiplied by Customer's then current Tariff Capacity for the Billing Period as such Tariff Capacity has been established in accordance with Paragraph E(2). The *Distribution Capacity Charge* shall escalate on an annual basis each April 1st following the Service Commencement Date, in an amount equal to two percent (2%) plus one-half (1/2) of any annual increase in the Consumer Price Index- All Urban Consumers (hereinafter, *CPI-AUC*) for the prior calendar year.
 - b. *Distribution Consumption Charge*. The *Distribution Consumption Charge* shall be equal to the product of the *Distribution Consumption Rate* (as shown in Section 19) multiplied

Issued: May 6, 2010

Effective: May 6, 2010

Filed in accordance with the Finding and Order dated May 5, 2010 of the Public Utilities
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1921 Hamilton Avenue
Cleveland, OH 44114

- by the total number of ton hours of chilled water distributed to Customer by Company during the Billing Period.
- c. *Purchased Chilled Water Cost Recovery Charge.* The *Purchased Chilled Water Cost Recovery Charge* shall recover the dollar-for-dollar delivered cost of chilled water which Company purchases to meet Customer's chilled water requirements at the Point of Delivery. The *Purchased Chilled Water Cost Recovery Charge* shall be adjusted and reconciled periodically based on such delivered cost in accordance with the formula specified in Section 19 and multiplied, as adjusted, on a bills rendered basis to the total number of ton hours of chilled water distributed to Customer by Company during the Billing Period.
 - d. *Lost Water Charge.* The *Lost Water Charge* shall be equal to the *Lost Water Rate* (as shown in Section 19) times the total gallons of chilled water lost on the Customer's side of the Point of Delivery during the Billing Period, as verified by Company-installed flow device(s).
 - e. *Return Temperature Adjustment Charge or Credit.* The *Return Temperature Adjustment Charge or Credit* shall be equal to the charge or credit, as applicable, multiplied by the quantity of Billing Period ton hours at less than 55°F or in excess of 57°F, respectively. A Return Temperature Adjustment Charge shall be applied only during months when the Actual Demand is greater than or equal to twenty percent (20%) of the Tariff Capacity then in effect. No Return Temperature Adjustment Charge shall apply during a seasonal start-up or shut-down of Customer's system.
 - f. *Late Charge.* Company shall render invoices to Customer for chilled water for each Billing Period and such invoices shall be due and payable when issued by Company. The *Late Charge* shall be equal to the monthly interest rate specified herein times the balance not timely paid.
 - g. *Adjustments to Charges.* The Distribution Consumption Charge, the Lost Water Charge and the Return Temperature Adjustment Charge or Credit shall each be subject to annual escalations each April 1st following the Service Commencement Date, by an amount not to exceed one and one-quarter (1.25) times the annual increase in the CPI-AUC for the prior calendar year. In the event the publication of the CPI-AUC is discontinued, the Company will use a revised or replacement index that is similar to the discontinued CPI-AUC for purposes of computing all charge adjustments authorized by this Tariff based on changes in the CPI-AUC.
2. *Metering and Billing.* Company will install metering equipment sufficient to measure Customer's capacity requirements, usage of chilled water and amount and temperature of water returned to Company's system at each Delivery Point and to bill and collect for service provided by Company pursuant to this Tariff. Such metering equipment shall permit Company to measure and, over time, record chilled water flow and water temperature difference and convert this relationship to ton hours with each ton hour equivalent to 12,000 Btu's of cooling within sixty (60) minutes. No person, except a duly authorized employee of Company, shall be authorized to alter or interfere with the operation of any Company meter, or its connections, regulators or any other item of plant, facilities or equipment furnished by Company. In the event of an emergency,

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Customer may operate stop valves and meter stop valves provided that such operation is warranted based on emergency conditions, Customer notifies Company of such operation as quickly as possible, the operation is limited to the duration of the emergency and provided that the emergency does not arise after Company has discontinued or suspended service to Customer. A quantity of chilled water supply sufficient to initially fill Customer's system downstream of the *Delivery Point* shall be subtracted from Customer's initial invoice under this Tariff with any additional requirements beyond normal make-up charged at the Lost Water Charge Rate then in effect.

a. A meter shall be deemed accurate if it is measuring within three percent (3%), more or less, of actual quantities. When a meter fails to accurately register the quantity of chilled water consumed or returned, Company will change or repair the meter and invoice Customer for the relevant Billing Period(s) based on either of the following methods:

- i. Estimates of the chilled water consumed on the basis of past usage during a similar period and under similar conditions; or
- ii. Estimates of the chilled water consumed on the basis of usage registered by the new or repaired meter during a subsequent period.

b. Company may inspect and maintain its metering equipment located within the Building, as Company may determine to be reasonably necessary. In the event Customer believes that the meters located within the Building are not operating properly, Customer may request, in writing, a test of the meters whereupon Company shall conduct a test upon the meters located in the Building. If the results of such test show that the meters have overstated the amount of product used by Customer by at least three percent (3%), then Company will bear the costs of such test and shall either repair or replace the defective meters at its own expense. In all other cases, Customer shall bear the costs of such test. Customer and Company agree to negotiate in good faith the amount of any billing adjustment, if any, made by Company as a result of any meter test, whether such adjustment would result in payments by, or credits issued to, Customer.

c. Company may, at its option, estimate Billing Period invoices. Differences between estimated bills and actual amounts due for the Billing Period(s) subject to estimated invoices shall be reconciled in the first subsequent invoice that is based on actual meter data. In no event will Company estimate meter readings for more than three (3) consecutive months unless it is unable to read Customer's meter for reasons beyond Company's control.

d. Upon request by Customer, Company may, in its discretion, provide Customer with one or more additional Delivery Points. Unless otherwise specifically agreed by Company, service provided to each Delivery Point shall be separately metered and billed by Company and paid for by Customer.

3. For so long as the State of Ohio or any other taxing authority or authorities impose a tax on Company's gross receipts, the rates and charges established in this Tariff shall be increased by an amount equal to the total rate of gross receipts tax(es) imposed by all taxing authorities multiplied by the total of such rates and charges. In the event that any tax, fee, levy, surcharge, assessment, imposition or similar charge (other than a gross receipts tax) is imposed or assessed by any taxing authority on Company or Customer (but only to the extent that such charge is

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required to be collected by Company from Customer and remitted to such taxing authority), which tax or other charge is identifiable to, or measured by Customer's use, consumption, invoice, or purchase of Company's products or services (or the sale thereof by Company to Customer), the Customer's rates and charges established herein shall be increased by an amount equal to the amount necessary for Company to recover such charge(s) imposed or assessed on Company or which Company is required to collect.

G. Conditions to Receive and Maintain Service and Changes in Conditions

1. Customer's rights and Company's obligations under this Tariff are contingent on Customer satisfying the Conditions to Receive Chilled Water Distribution Service (hereinafter, *Conditions*) set out in Paragraph G(2) below. Company may, with written notice to Customer, change the Conditions to the extent that Company reasonably determines that such changes are necessary for proper, efficient, and safe operation of Company's system provided that such changes shall have effect on a prospective basis commencing thirty (30) days following the date of Company's written notice. All such changes shall, to the extent practicable, be applied uniformly and shall become effective automatically without need for regulatory approval.

2. *Conditions to Receive and Maintain Service.*

a. Company will distribute chilled water to Customer and receive returned water from the Customer through Company's distribution system at the Point of Delivery at a normal operating pressure of between 90 psig and 150 psig and a maximum pressure of 180 psig. Company shall use its best efforts to obtain and distribute chilled water to Customer at a temperature of between 40°F and 42°F during the calendar months of May through October (hereinafter, the *Summer Period*), and no more than 50°F during the calendar months of November through April (hereinafter, the *Winter Period*) provided that such temperature range shall only apply during Customer's normal business hours (8 AM to 5 PM) during the Winter Period. Company shall use commercially reasonable efforts to provide Customer with continuous chilled water distribution service and receipt of returned water from Customer from or through Company's existing distribution network.

b. During the Summer Period, Customer will return water to Company's distribution system at a temperature of not less than 55°F. In addition to all other rates and charges applicable according to this Agreement and if Customer returns water to Company at a temperature of less than 55°F during the Summer Period, Company may assess Customer a *Return Temperature Adjustment Charge* (as defined below) that applies when Customer is causing the return water temperature at less than 55°F. In addition to such other actions as the Company may take under this Tariff, Company may restrict or control Customer's service to insure the return chilled water temperature is 55°F or higher. If Customer returns water to Company at temperatures greater than 57°F during the Summer Period, Company may reduce Customer's bill by application of a *Return Temperature Adjustment Credit* (as defined below). Any Return Temperature Adjustment Charge and Return Temperature Adjustment Credit shall occur only when the Building is operating at or above 20% of *Contract Capacity* (as defined in the Agreement).

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Effective: May 6, 2010

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c. Customer shall give immediate notice to Company of any leakage or escape of chilled water.

d. All repairs to or replacements of Customer's piping and equipment shall be made promptly by the Customer at Customer's expense and shall not interfere with Company's ability to meet the service needs of its other customers.

e. Customer will provide Company's duly authorized representatives with access at all reasonable times to all of Company's property on the premises of Customer and on all other premises which Customer may own or control for the purposes of meeting Company service responsibilities to Customer and its other customers. Company shall attempt to provide Customer with reasonable notice prior to accessing such property provided that the access sought by Company is not related to an existing or impending emergency condition.

f. On or prior to the Service Commencement Date, Company will furnish shut-off valves and cathodic protection isolation flanges when, in Company's judgment, such equipment is needed to efficiently and safely meet Customer's service needs. Company shall also furnish the meter primary flow element, separable thermometer wells, the meter proper and the necessary electronics and recorders and Customer shall properly install such items. Customer shall provide to Company, at Customer's expense and at a location or locations Company determines to be suitable, 120-volt, 60-cycle, single-phase and reliable electricity supply. Customer shall also provide to Company, at Customer's expense and at a location or locations Company determines to be suitable, secure land phone line, Ethernet, LAN, cable or WAN access communications capability suitable to meet Company's metering, monitoring and data collection needs.

g. Customer shall provide the temperature control indicated for the control valves in accordance with Company's specifications.

h. Customer shall furnish, install, and operate pressure gauges and a straining device or devices in its return line as close as possible to the Point of Delivery to prevent foreign matter from entering Company's chilled water system. Customer shall ensure that the pressure drop through the straining device or devices is included in Customer's determination of the friction losses that Customer shall be responsible for overcoming through the installation and use of booster pumps. Customer shall periodically inspect, clean and, as needed, replace filters and straining devices to ensure efficient operation of its and Company's system.

i. For design purposes, the maximum combined running head on the chilled water distribution system will be 180 psig measured at point chilled water is produced and supplied to Company's distribution system, the maximum supply pressure anticipated at Customer's main supply valve will be 150 psig and the maximum residual static head shall be 90 psig. Customer shall not design, install or operate its plant, equipment or facilities so as to exert static pressure head in excess of 90 psig. In addition, Customer shall install, operate and maintain any provide booster pumps that may be reasonably required to supply the dynamic

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head sufficient to overcome friction loss that may occur on its property or within the Building and to supply any elevation head required above that provided by Company at the Point of Delivery.

j. Company will be responsible for obtaining a chilled water supply sufficient to meet normal make-up water requirements of its distribution system. Customer shall not take any action to cause make-up water requirements met by Company to exceed normal levels, shall promptly notify Company any loss of chilled water that occurs on Customer's property or within the Building and act in a commercially responsible fashion to promptly minimize make-up water requirements. Chilled water supply requirements associated with thermal expansion of Company's chilled water distribution system will be the responsibility of Company.

k. Customer shall adopt and implement commercially reasonable practices to properly clean, degrease and flush the chilled water system within its control and install, operate and maintain such system so as to eliminate any leaks that might or do occur at the maximum operating pressure. Customer shall be responsible for determining the means and methods by which its system shall be cleaned, degreased and flushed and shall provide Company with reasonable notice of the means and methods selected by Customer so that Company has a reasonable opportunity to object to such means and methods. In the event Company does so object, Company and Customer shall promptly engage in good faith discussions to identify mutually acceptable means and methods. Nothing in this Tariff will be construed as causing Company to assent to an improper means or method in circumstances where Company has not stated an objection or to impose an affirmative duty on Company to communicate an objection to Customer.

H. Miscellaneous

1. Company shall use all commercially reasonable efforts to secure and maintain all necessary permits, easements, ordinances and licenses over private and public property and any other approvals that may be required to operate its distribution system. The obligations of Company to perform under this Tariff are contingent upon and subject to securing and maintaining all such permits, easements, ordinances, licenses and approvals. Customer agrees to assist and cooperate with Company, and further agrees to permit the installation, operation, maintenance and replacement of service lines and valve pits within and on Customer's property or within the Building, and hereby grants to Company, at no cost to Company, the right to access and use such property and Building for the purpose of performing the actions required or permitted by this Tariff. Company shall provide advance notice and coordinate the installation of such service lines and valve pits with Customer.

2. Except with regard to Customer's obligation to make payment(s) due pursuant to this Tariff, neither party shall be liable to the other for failure to perform an obligation to the extent such failure was caused by *Force Majeure*. The term *Force Majeure* as employed herein means any cause not reasonably within the control of the party claiming the suspension as further defined herein. Force Majeure shall include, but not limited to the following: (1) physical events such as acts of God, landslides, lightening, earthquakes, fires, storms or storm warnings, such as hurricanes or tornadoes, which result in evacuation of the affected area, floods, washouts,

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explosions, breakage or accident or necessity of repairs to machinery, plant or equipment or lines or pipe; (2) weather related events affecting an entire geographic region, such as low temperatures which cause freezing of lines or pipes; (3) interruption or curtailment of chilled water supply to Company's distribution system; (3) acts of others such as strikes, lockouts, or other industrial disturbances, riots, sabotage, insurrections or wars; and (4) governmental action such as the necessity for compliance with any court order, law, statute, ordinance, regulation or policy having the affect of law promulgated by a governmental authority having jurisdiction. Customer and Company shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Notwithstanding anything to the contrary herein, the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance. The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event and to the extent and duration of Force Majeure.

3. If Company has reasonable grounds for insecurity regarding Customer's performance of any obligation under this Tariff (whether or not then due), including, without limitation, the occurrence of a material change in creditworthiness, Company may demand that Customer provide adequate assurance of performance and provide sufficient security in the form, amount and for the term reasonably acceptable to Company, including but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty.

4. Company is not responsible for any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from Company's distribution of chilled water to the Point of Delivery pursuant to this Tariff unless such loss, damage, expense or claim is determined to be the direct result of a final determination by the PUCO that Company violated its public utility obligations. Customer shall indemnify and hold Company harmless against any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from Customer's receipt of chilled water at the Point of Delivery, Customer's utilization of such chilled water and Customer's return of water to Company's distribution system to the extent such loss, damage, expense or claim is caused by negligence of Customer, its employees or agents.

19. RATE SCHEDULE FOR CHILLED WATER DISTRIBUTION DEFAULT SERVICE

A. Distribution Capacity Rate

\$0.517 per ton hour consumed or \$71.09 per ton per month of refrigeration.

B. Distribution Consumption Rate

\$0.148 per ton hour consumed.

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C. Purchased Chilled Water Cost Recovery Charge

Base Charge: \$0.185 per ton hour consumed.

The Base Charge specified shall be adjusted up or down annually by Company to recover the delivered cost of chilled water purchased by Company to meet the chilled water needs of Customer at the Point of Delivery and annually reconciled to ensure that the revenues obtained by Company match the Company's delivered cost of purchased chilled water. On an annual basis Company shall forecast its actual delivered cost of purchased chilled water, net of any prior period over or under recovery, and the ton hours subject to the Purchased Chilled Water Cost Recovery Charge and compute a new Purchased Chilled Water Cost Recovery Charge based on such forecasts. The new Purchased Chilled Water Cost Recovery Charge shall be computed by dividing the forecasted annual ton hours subject to such Charge into the forecasted annual delivered cost of purchased chilled water net of any prior period over or under recovery. The Base Charge specified above shall be adjusted up or down annually by the positive or negative difference between each newly computed Purchased Chilled Water Cost Recovery Charge and the Base Charge. Company shall notify Customer of the as adjusted Purchased Chilled Water Cost Recovery Charge 30 days prior to the effective date of such Charge. Should events or circumstances indicate to Company that actual purchased chilled water costs or actual ton hours subject to said Charge are substantially different than the amounts forecasted, Company may adjust the Base Charge more frequently than annually to avoid abrupt annual adjustments and substantial swings or volatility in the over or under recovery of the actual delivered cost of purchased chilled water.

E. Lost Water Rate

\$ 0.086 per gallon lost in Customer's building during each Billing Period.

F. Return Temperature Adjustment Rate

\$0.065 per ton hour when the provisions of Paragraph 18G(2) of the Tariff are applicable.

- a. When return water temperature is between 55°F and 57°F, no adjustment is applied;
- b. When return water temperature is greater than 57°F, the metered volume of ton hours consumed under those conditions multiplied by the above rate is subtracted from Customer's invoice for the applicable Billing Period;
- c. When return water temperature is less than 55°F, the metered volume of ton hours consumed under those conditions multiplied by the above rate is added to Customer's invoice for the applicable Billing Period.

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APPENDIX A

DISTRICT COOLING AGREEMENT

BY AND BETWEEN

DOMINION CLEVELAND THERMAL. LLC

AND

**DISTRICT COOLING AGREEMENT
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DISTRICT COOLING AGREEMENT

This Agreement is entered into on this _____ day of _____, 2000, between _____, located at 1403 Lakeside Avenue (hereinafter referred to as *Customer*) and DOMINION CLEVELAND THERMAL, LLC, located at 1921 Hamilton Avenue, Cleveland, Ohio 44114 (hereinafter referred to as *Company*).

WHEREAS, *Company* is engaged in the business of processing and treating chilled water which is used to air condition buildings in certain areas of the City of Cleveland, Ohio; and

WHEREAS, *Customer* is owner of a certain building(s) and desires to use the processed chilled water for air conditioning purposes.

NOW THEREFORE, for mutual consideration, *Company* and *Customer* agree as follows:

1. SALE AND PURCHASE OF CHILLED WATER

- A. *Company* shall sell to *Customer* and *Customer* shall purchase from *Company* the total chilled water requirements of a certain building known as _____, subject to the terms and conditions agreed to by *Customer* and *Company* and set forth herein.
- B. *Customer* shall have the right to subcontract for the sale of chilled water to tenants within the Building; however, *Customer* shall not subcontract for the resale of the chilled water for use in any other building without prior written consent of *Company*. In order to assist *Company* with capacity planning efforts, *Customer* shall notify *Company* of any anticipated changes in *Customer's* capacity requirements.

2. TERM OF AGREEMENT

- A. The initial term of this Agreement shall be for a period of 20 years.
- B. At the end of the initial term, this Agreement may renew for: four five- year periods, upon mutual agreement of both parties. The decision to continue shall be reached at least six months prior to the end of the term.

- C. The Service Commencement Date is the date on which Company first opens Building supply and return isolation valves to provide initial fill of Customer's building air conditioning system. The Service Commencement Date is expected on or about the ____ day of _____, 2001

3.

COOLING SPECIFICATIONS

- A. Company shall supply chilled water to Customer through Company's distribution system from its central plant at a normal operating pressure of between 90 psig and 150 psig, subject to the pumping provisions of Paragraph 4E. Company's central plant relief valves are set to limit distribution pressure at the central plant to 180 psig.
- B. Company shall supply chilled water to Customer at a temperature of between 40°F and 42°F during the months of May, through October, and between 38°F and 50°F during the months of November through April.
- C. Temperature of the return water is critical to efficient and cost effective operation of the district cooling system. Customer shall return water to Company at a temperature of at least 55°F. If Customer returns water to Company at temperatures less than 52°F Company may assess Customer a return temperature surcharge according to the provisions of Paragraph 6D. If Customer returns water to Company at temperatures greater than 57°F, Company may credit Customer with a return temperature incentive according to same Paragraph 6D. Return temperature adjustment provision is only in effect when building is operating at or above 75% of Contract Capacity.

4. INSTALLATION OF EQUIPMENT

- A. Company shall design, locate, own, construct and install, at its own expense, all district cooling equipment and piping necessary to produce and deliver chilled water to Customer and to receive returned water from Customer at a point located within five feet at the southwest corner of _____. (*Point of Delivery*).

- B. If the Point of Delivery is located within a structure owned by Customer, then Customer agrees to provide pipe penetrations through the structure's wall or foundation for Company's piping. However, Customer may request and Company may elect to install such pipe penetrations for Customer, provided that Customer releases Company from any liability resulting from damage or loss to Customer's property. Customer election and release are contained in Exhibit 2 which exhibit is incorporated into this Agreement.
- C. Company shall furnish, install, own and maintain, at its expense, isolation valves and such metering equipment as it deems appropriate to measure the cooling service to the Building, and Customer agrees to provide adequate space to Company (at no additional cost to Company) in its Building for such purpose and to allow reasonable access thereto at all times. Except as provided in Paragraph 4B of this Agreement, Customer shall design, own, construct and install, at its own expense, piping necessary to connect to Company's piping at the Point of Delivery, and all cooling equipment including but not limited to pumps, valves, insulation, gauges, and controls capable of returning water to Company at a temperature of at least 55°F.
- D. Customer shall provide for the pumping requirements due to friction within its system and any head requirements above 90 psig, and take steps to assure at all times that no shocks or over pressure is placed on Company's district cooling system from Customer's system.
- E. Company shall have the right, but not the duty, to inspect, review and approve the connection of Customer's equipment and piping to Company's district cooling system for the purpose of determining that Customer's equipment and piping will operate safely and will not cause damage or adversely affect the performance of Company's district cooling system. Company's inspection right shall in no way impose a duty or liability on Company with respect to the lawful, safe or proper operation of Customer's equipment and piping. Customer represents to Company that it is not relying upon Company's expertise or knowledge in

connection with the design or operation of Customer's equipment or the use of district cooling in the Building.

5. COOLING CAPACITY

- A. The amount of cooling capacity reserved by the Company for Customer's use under this Agreement shall be _____ tons of refrigeration (*Contract Capacity*).
- B. During the term of this Agreement, Company will make reasonable efforts to meet Customer's demand for cooling during any one-hour period (*Actual Demand*), consistent with generally accepted industry practices. While the Company is not obligated to furnish cooling in excess of the Contract Capacity, Company will at all times use reasonable efforts to meet Customer's Actual Demand when in excess of Contract Capacity.
- C. *Billing Demand* is the Customer's highest one-hour Actual Demand during each month Billing Period (*Monthly Peak*) or the Contract Capacity, whichever is greater. The monthly Capacity Charge shall be equal to the product of Billing Demand times the Capacity Rate shown in Exhibit 1.
- D. If at any time after the third anniversary of the Service Commencement Date, Customer institutes a verifiable energy conservation program which reduces Customer's demand for cooling, Customer may request Company to reduce Contract Capacity. Such request must be in writing, and upon receipt of such request, Company shall study Customer's cooling requirements during the succeeding twelve (12) months by evaluating such parameters as Buildings' occupancy, Actual Demand vs. ambient dry bulb and wet bulb temperatures, and any other relevant information. Upon completion of Company's study, Company shall adjust Contract Capacity, if warranted, based upon Company's findings. The adjustment to Contract Capacity will be retroactive to the date of Company's receipt of request. In no event, however, shall Contract Capacity be adjusted to an amount less than _____ tons.

E. If Customer's highest one-hour Actual Demand during any calendar year (*Annual Peak*) exceeds 198 tons for any two (2) consecutive years, Contract Capacity shall be immediately increased to equal the average of the two (2) previous Annual Peak demands. For the purpose of Paragraph 5, the time between the Service Commencement Date and December 31st of the same year shall be deemed a calendar year only if the Service Commencement Date is prior to July 1st.

F. The determination of Customer's Actual Demand shall be based upon one-hour average demands for cooling and not upon Customer's instantaneous peaks. Actual Demand shall not include readings resulting from accidents involving the Buildings such as the malfunction of any equipment or any mechanical, electrical or any other system located within the Building.

6. RATES

Customer shall be billed and shall pay for cooling service on a monthly basis (*Billing Period*) the combined total of charges for capacity, consumption, and lost water and, if applicable, an adjustment for temperature differential performance. These charges are calculated as follows:

A. *Capacity Charge*. The Capacity Charge shall be equal to the product of the Capacity Rate shown in Exhibit 1 times the Billing Demand. Billing Demand shall equal the highest one-hour Actual Demand during the Billing Period (*Monthly Peak*) or the Contract Capacity, whichever is greater.

B. *Consumption Charge*. The Consumption Charge shall be equal to the product of the Consumption Rate shown in Exhibit 1 times the total number of ton hours of cooling consumed by Customer during the Billing Period.

C. *Lost Water Charge*. The Lost Water Charge shall be equal to the Lost Water Rate shown in Exhibit 1 times the total gallons of chilled water lost in Customer's Buildings during the Billing Period as verified by Company installed flow device(s).

D. *Return Temperature Adjustment.* The Return Temperature Adjustment is an incentive for efficient performance and a surcharge for non-compliance with return water temperature settings. The design return temperature is 55°F.

Pursuant to the terms of Paragraph 3C, a Return Temperature Adjustment may be applied to the Customer's monthly consumption volume only during those months when Actual Demand is greater than or equal to 75% of Contract Capacity. The Return Temperature Adjustment shall not be assessed during seasonal start-up or shut-down of Customer's system.

The monthly invoice amount for the Return Temperature Adjustment shall be equal to the Return Temperature Adjustment Rate shown in Exhibit I times all ton hours so delivered during that Billing Period.

The Adjustment is a credit to the Customer's monthly billing amount when Customer returns water to Company at more than 57°F. The Adjustment is added to the monthly billing amount when Customer returns water to the Company at less than 52°F. No Adjustment shall be assessed when Customer returns water to the Company between 52°F and 57°F.

E. *Adjustments.* In the event that Company cannot provide continuous chilled water service to Customer in accordance with the terms and conditions of this Agreement for a period exceeding twenty-four (24) hours, Company shall make a pro rata adjustment to Customer's Capacity Charge based on the amount of time such service was not provided during the applicable Billing Period.

F. *Escalations.* The rate in Paragraph 6A shall escalate on an annual basis each April 1st following the Service Commencement Date, in an amount equal to 2% plus 1/2 of any increase in the CPI-AUC for the prior calendar year.

The rates in Paragraphs 6B, 6C, and 6D can be escalated on an annual basis each April 1st following the Service Commencement Date, by an amount not to exceed 1.25 times the increase in the CPI-AUC for the prior calendar year.

At the beginning of each calendar year, Company shall prepare an estimate of operating costs (*Estimated Operating Costs*) per ton hour of cooling sold which Company will incur in furnishing district cooling service to its customers during that calendar year. This shall establish the rates for Paragraphs 6B, 6C, and 6D for the ensuing calendar year. In no event, shall the rate adjustment increase by more than 1.25 times the CPI-AUC index for the prior year as stated above.

At the completion of the calendar year, on or about May 1 of the following year, the Company shall prepare and deliver to Customer a statement of actual operating costs (*Actual Operating Costs*) per ton hour of cooling sold which Company incurred in furnishing district cooling service to Customer during the immediately preceding calendar year (prorated basis of costs). The Actual Operating Costs for the immediately preceding calendar year shall be compared to the Estimated Operating Costs earlier prepared for that same year. Subject to the annual limitation referenced above, the difference between the two figures multiplied by the Customer's total consumption of cooling for the year will produce an additional charge or credit (*Operating Cost Adjustment*). Any Operating Cost Adjustment owing by Company to Customer shall be either returned or credited within 30 days and any Operating Cost Adjustment owing by the Customer to the Company shall be paid by Customer to Company within 30 days of billing.

Operating costs shall be those costs which Company incurs in furnishing district cooling service to its customers, including but not limited to the following: wages, payroll tax and fringe benefit charges for labor, maintenance, supplies, fuel, electric power, water, steam, utilities, water treatment, insurance, professional fees, management fees, real estate taxes, personal property taxes, street use taxes, sales taxes and other legally imposed federal, state or local taxes, levies or fees, (but not including federal or state income taxes or federal or state gross profits taxes) and other miscellaneous charges. Operating costs may include amortization

of (1) major maintenance expenses, (2) special equipment necessitated by government regulations, or (3) equipment which, when combined with other operating costs, will result in a lower cost to the Customer than if such equipment were not installed, in accordance with generally accepted accounting practices. Except as provided in the preceding sentence, Operating Costs shall not include the amortization of capital expenditures incurred by the Company to furnish district cooling to Customer.

Company shall keep accurate and satisfactory records and books in accordance with generally accepted accounting principles showing all costs, payments, rate adjustments, credits and other data required for the purposes of this Agreement. Upon request, Company shall furnish to Customer a statement showing the calculations of any adjustments to the rates under Paragraph 6E. Each party shall have the right, upon written notice to the other, to inspect and examine these records and books as they pertain to this Agreement.

In the event the publication of the CPI-AUC is discontinued, the Company will use a revised or replacement index that is similar to the discontinued CPI-AUC.

- G. *Late Charge.* If Company has not received payment on any bill within thirty (30) days from the date thereof, then interest shall accrue on the unpaid balance at the rate of 1.5% per month from the date of the bill until the date of payment.

7. CONDITIONS TO RECEIVE DISTRICT COOLING

This Agreement is subject to the Conditions to Receive District Cooling attached as Exhibit 3 which Company may, with due notice to Customer, amend from time to time by revising or adopting additional conditions which are reasonably necessary in Company's opinion to assure proper, efficient, and safe operation of Company's district cooling system. All such amendments to the extent reasonably possible shall be applied uniformly throughout the system and shall become a part of this Agreement and Customer shall be bound upon receipt of a copy thereof.

8. PERMITS AND EASEMENTS

Company shall use all reasonable efforts to secure and maintain all necessary permits, easements, ordinances and licenses over private and public property and any other approvals that may be required to operate the district cooling system. Company and Customer agree that all obligations of Company to perform under this Agreement are contingent upon and subject to securing and maintaining all permits, easements, ordinances, licenses and approvals referred to in the preceding sentence; otherwise, unless specifically agreed to the contrary this Agreement shall terminate and neither party shall have any further obligation hereunder. Customer agrees to assist and cooperate with Company, and further agrees to allow the running of service lines and placement of valve pits within and on Customer's property, and hereby grants to Company an easement for such purpose at no cost to Company. Company shall provide advance notice and coordinate the installation of such service lines and valve pits with Customer.

9. CANCELLATION OF AGREEMENT

- A. Customer may cancel this Agreement without penalty upon an event of default by Company arising from the failure of Company to perform hereunder, which failure continues for a period of more than 30 days following a written demand to Company by Customer to cure such default, and which default materially affects the delivery of chilled water hereunder.
- B. Customer may cancel this Agreement at any time by paying to Company a cancellation charge equal to the Capacity Rate (at the time of cancellation) multiplied by the Contract Capacity then in effect and the number of months remaining under the term of the Agreement.
- C. Company may cancel this Agreement upon prior written notice to Customer of a default arising from the failure of Customer to perform hereunder, which failure continues for a period of more than 30 days following a written demand by Company to cure such default. In such event, Customer shall pay to Company a cancellation charge equal to the Capacity Rate (at the time of cancellation) multiplied by the Contract Capacity (then in effect) and the number of months remaining under the term of the Agreement. This cancellation charge shall be in

addition to any other damages incurred by Company as a result of breach of this Agreement by Customer.

D. In the event of cancellation by either party, Company shall discontinue providing chilled water hereunder, and may enter Customer's premises to remove Company's equipment and piping.

E. All obligations of Customer that arose prior to the cancellation of this Agreement (including, without limitation, the obligation to pay the cancellation charge and any amount outstanding for chilled water supplied to the Customer prior to cancellation) shall survive the cancellation hereof. No eminent domain or condemnation proceedings with respect to the premises shall relieve Customer of its obligations hereunder.

10. INDEMNIFICATION

Each party shall indemnify, hold harmless and defend the other party against any injury, damage, claim, loss, cost or expense incurred by the party, its employees, contractors, agents, successors or assigns, caused by the negligent act or omission of the other party.

11. OBLIGATION OF PARTIES

Company will at all times use reasonable efforts to provide Customer with district cooling under this Agreement. However, due to events beyond its control, Company does not warrant or guarantee uninterrupted service and shall not be liable for any special, direct, indirect or consequential damages relating to or arising from an interruption in service (or other breach of this Agreement) including, without limitation, damages for lost rents or lost profits.

Customer shall at all times use reasonable efforts to receive chilled water in the Building and each party shall design, construct and operate its equipment and piping in an efficient, safe and reliable manner and shall maintain it in good working condition.

The obligations of either party to perform under this Agreement (other than the obligation of Customer to pay for chilled water hereunder) shall be suspended to the extent that such party is

unable to perform as a result of causes beyond the reasonable control and without the fault or negligence of that party, including but not limited to equipment breakdown, accidents, strikes, acts of nature and governmental action. In such event, a party shall give notice thereof to the other party and use reasonable efforts to eliminate the cause as quickly as possible.

12. WAIVER OF REMEDIES

Each remedy under this Agreement shall be cumulative and in addition to any other remedy provided by law. The failure of either party to insist on strict performance of any provision under this Agreement, or to take advantage of any right hereunder shall not be construed as a waiver of such provision or right. This Agreement, including the exhibits attached hereto, represents the sole agreement between the parties with reference to the service contracted for herein.

13. NOTICES

All notices, demands, requests, reports and statements provided for in this Agreement shall be made in writing and delivered in person or by regular mail addressed as follows:

To Company: Dominion Cleveland Thermal, LLC
 1801 E. 12th Street
 Suite 201
 Cleveland, Ohio 44114
 Attention: General Manager

To Customer: _____

or to such other address and person as either party may, from time to time, notify the other in writing.

14. WARRANTIES AND REPRESENTATIONS

Except as expressly stated herein, Company makes no warranties or representations, express or implied, as to any matter whatsoever related to the interconnection or performance of the district

cooling system to Customer's Building including the design, capacity, efficiency and operation thereof.

15. AMENDMENTS

Except as provided in Paragraph 7 of this Agreement with respect to amendments to Exhibit 1 (Conditions to Receive District Cooling), any amendments or changes shall be in writing and by mutual agreement of both parties.

16. ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the parties' respective successors and assigns; provided, however, that neither party shall be relieved of its obligations and liabilities in the event of an assignment of this Agreement except as set forth below. In the event Customer (a) conveys fee title to the Building to a third party and (b) assigns its interest in this Agreement to the same third party and if that third party executes a written agreement in a form satisfactory to Company, (wherein such third party assumes and agrees to keep and perform promptly all of the Customer's obligations under this Agreement to be kept and performed from and after the date of assignment), and provides evidence reasonably satisfactory to Company of its financial ability to discharge the obligations of this Agreement, then Customer shall be relieved of all its obligations under this Agreement not having theretofore accrued. In the event Company (a) conveys fee title to its chilled water plant to a third party and (b) assigns its interest in this Agreement to the same third party, and if that third party executes a written agreement wherein such third party assumes and agrees to keep and perform promptly all of Company's obligations under this Agreement to be kept and performed from and after the date of assignment, then Company shall be relieved of all its obligations under this Agreement not having theretofore accrued. Notwithstanding any other provision of this Agreement, Company and Customer agree that Company's performance under this Agreement shall be solely for the benefit of Customer.

This Agreement shall not be construed as to confer any rights of a third party beneficiary upon any person or entity.

17. ESTOPPEL CERTIFICATE

Customer and Company agree, upon written request of the other to execute and deliver to the other, or to such person or entity as may be designated by the other, a certificate which:

(a) identifies this Agreement and any amendments and states that this Agreement as so amended is in full force and effect and has not been further amended; (b) specifies the date through which amounts owing under this Agreement have been paid; and (c) states, that, to the best of the knowledge of the party delivering such certificate, neither Company nor Customer are in default of any of its respective obligations under this Agreement (or, if any such default or defaults is claimed, identifying the same).

18. ARBITRATION

Any claim or dispute involving an amount in controversy less than \$200,000 that arises out of or related to this Agreement or any breach thereof, shall be resolved by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any arbitration shall be conducted in Cleveland, Ohio. Reasonable discovery shall be permitted in any such arbitration subject to the control of the arbitrators and shall include, but not be limited to, depositions of the parties and production of documents. Claims or disputes involving an amount in controversy in excess of \$200,000 may be resolved by arbitration, but only at the election of the parties at the time of the dispute.

19. AUTHORIZATION

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first above written.

CUSTOMER:

By: _____
Witness _____

Its: _____
Witness _____

COMPANY: DOMINION CLEVELAND THERMAL, LLC

By: _____
Witness _____

Its: **General Manager**
Witness _____

EXHIBITS

EXHIBIT 1--RATE SCHEDULE FOR DISTRICT COOLING SERVICE
(Effective April 1, 2002 through March 31, 2003)

A. CAPACITY RATE

\$15.73 per month per ton of refrigeration.

B. CONSUMPTION RATE

\$0.1869 per ton hour consumed.

C. LOST WATER RATE

\$0.01 per gallon lost in Customer's building during each billing period.

D. RETURN TEMPERATURE ADJUSTMENT

\$0.015 per ton hour for all ton hours delivered pursuant to subparagraph 6D of this Agreement. This adjustment is only valid when Customer is operating at or above 75% of Contract Capacity.

- a. When return temperature is between 52°F and 57°F, no adjustment is applied;
- b. When return temperature is greater than 57°F, the metered volume of ton hours consumed under those conditions is subtracted from monthly invoice;
- c. When return temperature is less than 52°F, the metered volume of ton hours consumed under those conditions is added to monthly invoice.

EXHIBIT 2—CUSTOMER RELEASE PIPE PENETRATIONS

Pursuant to Paragraph 4B of the Agreement, Customer hereby requests Company to provide wall sleeves to Customer's contractor for installation during the pouring of Customer's foundation to accommodate the Company's piping. Further, Customer releases Company, its officers, employees, successors and assigns from any liability, claims, demands, actions and causes of action because of any injury, damage or loss to Customer's person or property that result or arise from Company's provision of wall sleeves for the pipe penetrations through Customer's foundation, unless such injury, damage or loss to person or property shall proximately result from the sole negligence of Company or Company's agents or employees.

Customer:

Name:

Title:

Date:

EXHIBIT 3—CONDITIONS TO RECEIVE DISTRICT COOLING

A. Metering and Billing

- (i) Metering of the Customer's usage of chilled water supply and return will utilize a device which measures and records chilled water flow and water temperature difference and converts this relationship to ton hours. A *ton hour* is equivalent to 12,000 Btus of cooling. Company will supply the initial fill of treated water for the Customer's system. Any additional requirements beyond normal make-up will be charged at the Lost Water Rate then in effect.
- (ii) When a meter fails to register the quantity of chilled water consumed, Company will change or repair the meter and render a bill for the period of non-registration based on either of the following methods:

 - a. Estimates of the chilled water consumed on the basis of past usage during a similar period and under similar conditions; or
 - b. Estimates of the chilled water consumed on the basis of usage registered by the new or repaired meter during a subsequent period.
- (iii) Company may inspect and maintain its metering equipment located within the Building as needed. In the event Customer believes that the meters located within the Building are not operating properly, Customer may request, in writing, a test of the meters whereupon Company shall conduct a test upon the meters located in the Building. If the results of such test show that the meters have overstated the amount of product used by Customer by at least three percent (3%), then Company shall bear the costs of such test and shall either repair or replace the defective meters at its own expense. In all other cases, Customer shall bear the costs of such test. Customer and Company agree to negotiate in good faith the

amount of any retroactive adjustment, if any, to be made as a result of any meter test, whether such adjustment would result in payments by, or credits issued to Customer.

(iv)

(v) Bills for chilled water will be rendered on a monthly basis and are due and payable on presentation.

(vi) Company may, at its option, estimate the billing. Over or under charges shall be compensated for at the next monthly billing.

(vii) Should Company provide Customer with one or more additional delivery points, the chilled water supplied at each such point shall be separately metered and billed unless otherwise agreed to by the parties in writing.

B. Authorized Personnel

The stop valves and meter stop valves shall be operated only by authorized personnel of Company, except that the stop valves and meter stop valves may be closed by Customer in an emergency, but in no event shall they be opened by Customer after shut-off. Company shall be notified immediately of such shut-off.

No person, except a duly authorized employee of Company, shall be permitted to break or replace a Company seal or lock, or to alter or interfere with the operation of meters, or its connections, regulators or any other item of service equipment furnished by Company.

C. Maintenance and Repair of Customer Equipment

All repairs to Customer's piping and equipment shall be made by the Customer at Customer's expense. Customer shall give immediate notice to Company of any leakage or escape of chilled water.

Company shall not be required to supply chilled water until Customer's installations have been approved by all local authorities having jurisdiction over the same. If at any time a local authority or Company deems Customer's plant or equipment to be unsafe, Company reserves the right to

withhold or discontinue services until the necessary corrective actions have been taken by Customer, and the local authority and Company determine the Customer's plant or equipment to be in safe condition. Except in the case of an emergency, Company will notify Customer prior to discontinuing its delivery of chilled water for the reasons stated above.

D. Access to Customer's Premises and Building

Company's duly authorized representatives shall have the right of access to all of Company's property on the premises of Customer and on all other premises, with respect to which Company has secured easements, at all reasonable times, for the purposes of installing lines, inspecting, protecting, maintaining, and replacing, where necessary, its lines, meters and equipment, removing its property, or any other proper purpose. Except in the case of an emergency, Company shall give reasonable notice of its presence on Customer's premises.

E. Design Requirements for Compatibility of Equipment at Point of Delivery

Company will provide shut-off valves and cathodic protection isolation flanges when required. All other equipment and installation will be furnished as provided in Paragraph 4, with the exception that Company will furnish the meter primary flow element, separable thermometer wells, the meter proper and the necessary electronics and recorders for installation by Customer. Customer shall provide at the location determined for the meter a 120-volt, 60-cycle, single phase outlet.

The temperature control indicated for the control valves shall be provided by Customer.

The maximum combined running head on the chilled water system will be 180 psig at the central chilled water plant discharge. The maximum supply pressure anticipated at Customer's main supply valve is 150 psig. The maximum residual static head shall be 90 psig. Customer connections shall not exert static pressure head in excess of 90 psig. Customer shall install approved devices to reduce such excess pressures.

Customer shall provide booster pumps to supply the dynamic head required to overcome friction loss within its premises, and to supply any elevation head required above that provided by the supply system.

The accuracy of the metering is dependent upon maintaining a reasonably steady and high temperature rise across the system. This can be most easily accomplished by varying the flow.

All normal make-up water requirements will be provided by Company in the central chilled water plant. However, the make-up required should be very small and Customer is not to draw off water from the chilled water system. Company should be notified of any loss of chilled water.

All provisions for thermal expansion of the chilled water distribution system water volume will be provided by Company.

F. Clean and Flush of Customer's System

Customer shall properly clean, degrease and flush its chilled water system and make certain there are no leaks at the maximum operating pressure. Customer's own consulting engineers may recommend cleaning solutions and methods, but any such recommendations must be acceptable to Company. In the event no specific cleaning methods are proposed, Customer and Company will agree on mutually acceptable procedures.

G. Pressure Gauges and Strainer

Customer will furnish and install pressure gauges and a strainer in its return line as close as possible to the system connection to prevent foreign matter from its system entering Company's chilled water system.

The pressure drop through the strainer should be included in Customer's system friction losses for the sizing of its chilled water booster pumps. Filters shall be inspected by Customer at regular intervals and cleaned as required.

EXHIBIT 3—TYPICAL INTERCONNECTION DIAGRAM