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May 6, 2010

Renee J. Jenkins  
Secretary  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

**Re: Case Nos. 10-0446-CC-ATA and 89-6015-CC-TRF**

Dear Secretary Jenkins:

Pursuant to the Commission's May 5, 2010, Finding and Order in Case No. 10-0446-CC-ATA, Cleveland Thermal Chilled Water Distribution, LLC, hereby submits four copies of its final tariff; one for the docket in Case No. 10-0446-CC-ATA, one for the docket in Case No. 89-6015-CC-TRF, and two to be distributed to the Rates and Tariffs, Energy and Water Division of the Utilities Department.

Very truly yours,

  
Gretchen J. Hummel

Attorney for Cleveland Thermal Chilled Water  
Distribution, LLC

Enclosure  
GJH:vlp

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OCC

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

TABLE OF CONTENTS

<u>SECTION</u>	<u>SHEET NO.</u>
1. DEFINITIONS	1
2. AVAILABILITY OF DISTRICT COOLING	3
3. DISTRICT COOLING AGREEMENT	3
4. RESPONSIBILITY FOR CHILLED WATER	4
5. DENYING SERVICE DUE TO INDEBTEDNESS	4
6. DENYING SERVICE DUE TO LOCATION	4
7. TEMPORARY SERVICE	4
8. CREDIT REQUIREMENTS	5
9. RESALE OF CHILLED WATER	5
10. REASONS FOR DISCONNECTING CHILLED WATER	9
11. RECONNECTION CHARGES	9
12. FILTER OR STRAINER INSPECTION	10
13. CUSTOMER BILLS	10
14. METER TESTING, INACCURACY OR FAILURE	10
15. ACCOUNTING	11
16. CONTINUITY OF SERVICE AND LIABILITY	11
17. COMPANY FACILITIES	12
18. CHILLED WATER DISTRIBUTION DEFAULT SERVICE	13
19. RATE SCHEDULE FOR CHILLED WATER DISTRIBUTION DEFAULT SERVICE	24

APPENDIX A – DISTRICT COOLING AGREEMENT AND EXHIBITS

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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.

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ISSUED BY  
Marc G. Divis, President  
President  
Cleveland Thermal Chilled Water Distribution, LLC  
1921 Hamilton Avenue  
Cleveland, OH 44114

## 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

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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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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

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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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- 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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ISSUED BY  
Marc G. Divis, President  
President  
Cleveland Thermal Chilled Water Distribution, LLC  
1921 Hamilton Avenue  
Cleveland, OH 44114

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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