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CONDITIONS OF SERVICE (DCS)

1.0 INTRODUCTION


- 1.1 These Conditions of Service set forth the terms and conditions under which Empower provides District Cooling Services (DCS) to its Customers. For the avoidance of doubt, any individuals, persons, companies or any other organisation whatsoever receiving, agreeing to receive, re-selling, and/or paying for Chilled Water from Empower shall be deemed to be a Customer, including a Master Developer, Building Owner and/or Individual Customer in such capacity, as the context requires.
- 1.2 These Conditions of Service may be revised, amended, supplemented or otherwise changed by Empower from time to time, and such changes, when effective, shall have the same effect as the present Conditions of Service and the Customer shall be bound thereby.
- 1.3 The Customer shall have the right to request, and Empower shall make available, the Conditions of Service current at any moment in time.
- 1.4 The failure of Empower to demand strict performance of the Conditions of Service or to exercise any right conferred by the Conditions of Service, shall not be construed as a waiver or relinquishment of Empower's right to assert or rely upon any such terms or rights in the future.

2.0 DEFINITIONS & INTREPRETATION

The Definitions and Interpretation of these Conditions of Service shall be the same as those stipulated in the Agreement for District Cooling Services between Empower and the Customer.

3.0 CHARACTER OF SERVICE

- 3.1 Empower produces and distributes Chilled Water and will use all reasonable effort to furnish a continuous supply and to maintain Chilled Water temperature within reasonable limits.
- 3.2 Empower shall not be liable for interruptions in the DCS including without limitation, variations in the service characteristics, or for any loss or damage of any kind or character occasioned thereby, due to causes or conditions beyond Empower's reasonable control, and such causes or conditions shall be deemed to specifically include, but not be limited to, the following:
 - a) acts or omissions of the Customer or third parties;
 - b) operation of safety devices except when such operation is caused by the negligence of Empower;
 - c) loss of electrical power needed to operate Empower's DCS Plants and Equipment, or part thereof;
 - d) absence of an alternate supply of service;
 - e) failure, malfunction, breakage, necessary repairs or inspection of machinery, DCS Plant and Equipment or Facilities when Empower has carried on a program of maintenance consistent with the general standards prevailing in the industry;
 - f) any and all cases of Force Majeure.

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- 3.3 Notwithstanding any other provision of these clauses, Empower may temporarily interrupt or limit the DCS to the Customer without prior notice and in a manner that appears most equitable under the circumstances then prevailing to necessarily protect the health and safety of any person and/or damage to any property. Empower shall be under no liability with respect to any such interruption or limited supply.
- 3.4 Except as provided by Empower in writing, Empower disclaims, and the Customer waives, all other representations and warranties, expressed or implied, regarding the provision of DCS, including any warranty of merchantability or fitness for a particular use, and in particular, without limiting the foregoing Empower does not warrant that the DCS will be uninterrupted.

4.0 USE OF DCS

4.1 General

DCS is supplied to the Customer for exclusive use in the Customer's Building and/or Customer's Unit to which it is delivered by Empower. Chilled Water may not be shared with another, sold to another, or transmitted off the premises without the prior written agreement of Empower. Use of Chilled Water is only for the purposes authorised by Empower and is not to be extended to another Building and/or Unit without prior written agreement of Empower.

4.2 Chilled Water Quality and Disturbances


Building Owners will be required to operate their Building Facilities in a manner that does not cause surges, water hammer or any other problems or disturbances whatsoever to the DCS Plant and Equipment or to other customers receiving DCS. If Empower notifies a Building Owner of such a condition, the Building Owner shall be required to immediately correct or discontinue operation of equipment causing such condition until a correction has been made. Failing which, Empower shall have the right to suspend the supply of DCS until a correction has been made. Subject to the proper performance of the Building Facilities, Empower shall be responsible for the supply of Chilled Water to, and the return of returned water from, the Energy Transfer Station to the Network.

4.3 Improper Use and Tampering

Empower shall have the right to discontinue providing DCS and seek criminal charges, if it is determined that the Metering Equipment or piping connected to or within a Customer's Building or Customer's Unit have been tampered with or altered in any manner to unlawfully use DCS. If Empower discontinues providing DCS for this reason, Empower shall restore service only after the Customer has paid a reconnection fee, made appropriate restitution for stolen service and made provisions for metering and/or piping changes as may be required by Empower.

5.0 ACCESS TO EMPOWER'S DCS PLANT & EQUIPMENT ON CUSTOMER'S PREMISES

- 5.1 The Customer will be required to provide and maintain appropriate access and working space around any Empower owned, installed and/or controlled DCS Plant and Equipment (including all Metering Equipment) as required by Empower so as to permit ready and safe operation and maintenance of such DCS Plant and Equipment.
- 5.2 Empower's authorized personnel or agents of Empower shall have the right to access a Customer's Building and/or a Customer's Unit at all reasonable hours (or in case of an emergency, at any time) for all purposes necessary to conduct business, including without limitation:

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- a) install, inspect, read, repair, maintain, test or remove its Metering Equipment
 - b) install, operate, test, repair, maintain or remove other DCS Plant and Equipment and/or Plant owned or controlled by Empower, and
 - c) inspect service installations, Building Facilities, and to determine the connected Chilled Water Demand.
- 5.3 If, for any reason beyond its control, Empower is unable to read a meter, operate, maintain or make an inspection, including but not limited to, reasons such as a Building, a Unit or areas being locked, a meter being inaccessible or because of unsafe conditions, then seven (7) calendar days after due written notice to the Customer, Empower will have the right to disconnect the DCS until such time as arrangements have been made to permit access for Empower inspection and approval and the Customer has paid the appropriate reconnection fee, in effect at the time.

6.0 DAMAGE TO EMPOWER'S DCS PLANT & EQUIPMENT ON CUSTOMER'S PREMISES

- 6.1 Customers will be required to use all reasonable effort to ensure that at all times the DCS Plants and Equipment on the Customer's premises, including but not limited to Metering Equipment and Energy Transfer Station, is kept safe and secure, and is not interfered with or damaged in any way.
- 6.2 If any DCS Plants and Equipment on the Customer's premises, including but not limited to, Metering Equipment and Energy Transfer Station, are damaged or destroyed through the neglect of a Customer, Empower shall have the right to charge, and the Customer shall pay, for the cost of necessary repairs or replacements.
- 6.3 The Customer agrees to notify Empower immediately if it identifies any defect in the DCS Plant and Equipment on the Customer's premises or any loss / leakage of Chilled Water.

7.0 BUILDING FACILITIES

- 7.1 Building Owners will be required, at their own expense, to install, operate, maintain, and replace their Building Facilities in their Buildings to ensure that they are capable at all times of receiving DCS from Empower during the term of the Agreement for DCS between Empower and the Building Owner.
- 7.2 All Building Owners will be required to ensure that the design, products and installation of their Building Facilities complies with Empower's requirements and are fully compatible with the DCS Plant and Equipment. Building Owners will be required to provide all assistance and information as may be necessary to enable Empower to validate and consent to the design, products and installation of their Building Facilities, which shall not be unreasonably withheld by Empower. Such consent by Empower will not in any way relieve the Building Owners of any of their duties or responsibilities under these Conditions of Service and/or any other Agreement for DCS between Empower and the Building Owner.
- 7.3 All Building Owners shall be required to carry out periodic water quality analysis on the secondary side (building chilled water circuit) at least once a year in order to ensure the integrity and performance of Empower's plate heat exchangers. The water analysis report shall show the required specifications versus actual water quality and shall be provided to Empower upon request by Empower's representative without prior notice.

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- 7.4 Empower shall have the right, but not the duty or responsibility, to inspect any Building Facilities for the purpose of determining that Empower's property or DCS Plant and Equipment shall not be damaged or otherwise rendered ineffective or inefficient because of the condition or operation of such Building Facilities. Empower shall not be held liable for any injury or damage resulting from the condition of any of the Building Owners Facilities.
- 7.5 Empower shall have the right to deny, suspend or terminate DCS to any Building whose Building Facilities do not meet Empowers requirements, or constitutes a hazard to Empower's employees, equipment or it providing DCS to others.
- 7.6 Building Owners may, with the prior written consent of Empower, which will not be unreasonably withheld, install and maintain the necessary equipment, facilities or devices to protect their Building Facilities against DCS interruptions and other disturbances from the DCS Plant and Equipment.

8.0 BUILDING DCS CONNECTION

- 8.1 In the case where there is more than one Chilled Water Main capable of providing DCS, Empower shall determine which Chilled Water Main will be used for connecting to the Building DCS Connection.
- 8.2 The Building DCS Connection shall be installed between the Chilled Water Main and the Building Facilities in the most direct manner reasonably possible.
- 8.3 Except in the case of an emergency, no person other than an authorized representative of Empower shall open or close any valve on the Building DCS Connection or alter, tamper or modify the Building DCS Connection or associated equipment in any way whatsoever. No person except an authorized Empower representative shall tap, revamp or connect to a Chilled Water Main or any of the pipes comprising the Building DCS Connection.
- 8.4 The Building Owners will be required to provide, at no expense to Empower, for the term of the Agreement executed between Empower and the Building Owner, a secure, enclosed room of suitable size, layout and location within the Building for the sole use of accommodating the required ETS and other necessary DCS Plant and Equipment. The Building Owner shall furnish the space and the provisions for the installation of the Energy Transfer Station to meet Empower requirements, including but not limited to, installation of sleeves in the Building wall for the Building DCS Connection, required power supply and suitable drainage provisions. The Building Owner shall provide an access card or key to the ETS Room to authorised Empower personnel to enter the room at any time.
- 8.5 The Building Owners shall be responsible for additional repair costs due to encumbered Building DCS Connection or damage as a result of negligence, wilful damage or carelessness by the Building Owners or any other third party.

9.0 MAINTENANCE OF DCS PLANT & EQUIPMENT

- 9.1 Empower shall at its own expense, unless otherwise stated, service, maintain and operate the DCS Plant and Equipment.
- 9.2 Empower may from time to time reduce or temporarily discontinue DCS for a reasonable period to carryout required scheduled maintenance. Empower shall use its best efforts to ensure that the timing of maintenance is notified to any affected Customers at least forty eight (48) hours in advance and is carried out at the least disruptive time with minimum durations.

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10.0 METERING

10.1 General

- 10.1.1 The Demand Charge and Consumption Charge Rates are predicated upon Empower providing only one set of Metering Equipment per Customer Building. Empower shall not separately meter and/or separately bill service at different points unless specifically requested by a Customer, which shall be additionally charged to the requesting Customer at Empower's rates in effect at the time.
- 10.1.2 Metering Equipment will measure and record Chilled Water flow and water temperature difference (Differential Temperature) which shall be converted to Ton Hours.
- 10.1.3 All DCS sold to a Customer shall be measured by commercially acceptable Metering Equipment owned and maintained by Empower except where it is impractical to meter, such as for temporary or special installation, in which cases the consumption may be calculated.
- 10.1.4 If for any reason all the DCS used cannot be registered accurately the unmetered portion shall be estimated by Empower on the basis of prior consumption or the operating characteristics of the Building and/or equipment therein.

10.2 Installation/Ownership

- 10.2.1. Empower shall furnish, install, own and maintain one set of Building Metering Equipment per Building to measure the DCS provided to a Building.
- 10.2.2. Empower shall install, own and maintain all communication and control wiring for the Metering Equipment.


10.3 Sub-Metering

At the request of a Building Owner, and at the sole discretion of Empower, Empower may enter into Individual Customer Cooling Services Agreements with Individual Customers. In such cases, the Building Owner shall be responsible for all costs related to the installation and provision of sub-meters and any other additional equipment required in the Building to enable the DCS to be supplied, metered and monitored by Empower directly to an Individual Customer. The Sub-Metering Equipment will remain at all times the property of Empower and no rights in or for the Sub-Metering Equipment shall accrue to the Building Owner except and to the extent expressly agreed by Empower.

10.4 Equipment Location

Customers will be required to provide, at no expense to Empower, a secure, space/enclosure of suitable size, layout and location within the Building and suitable to Empower for the installation of the necessary Metering Equipment and any other necessary DCS Plant and Equipment. Customers will be required to furnish the space and the provisions for mounting Metering Equipment to meet Empower requirements.

Customers will be required to provide a location for the Metering Equipment inside the Building served in a well ventilated area with ample space for meter reading and maintenance.

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10.5 Testing of Metering Equipment

10.5.1 Metering Equipment Inspections, Tests and Calibration

Empower will make periodic inspections, tests and calibration of its Metering Equipment in accordance with the Metering Equipment manufacturer's specifications and using methods generally accepted in the industry. In any case, all Metering Equipment will be tested and calibrated prior to the time of their installation.

10.5.2 Request Tests

In the event a Customer believes that Metering Equipment is not operating properly, the Customer may request Empower, in writing, to make additional tests or inspections of its Metering Equipment. If the results of such test show that the Metering Equipment have overstated the amount of Chilled Water used by the Customer by at least three percent (3%), then Empower shall bear the costs of such test and shall either repair or replace the defective Metering Equipment at its own expense. In all other cases, the Customer will be required to bear the costs of such test.

10.5.3 Adjustment for Error


Should any Metering Equipment become defective or fail to register correctly within an allowance of plus or minus three percent (3%) determined by a test of the Metering Equipment, an adjustment shall be made by one or more of the following methods:

- (a) using the demand and consumption registered by the repaired or replaced Metering Equipment during the period next following the meter correction or change;
- (b) averaging the amount registered for the preceding billing period and the amount registered during not less than one week immediately subsequent to the adjustment or replacement of the Metering Equipment;
- (c) using the demand and consumption for the billing period preceding the Meter problem;
- (d) using or averaging the demand and consumption for the same time period(s) from the year(s) preceding the incorrect registration.

In each case Empower may take into consideration the character of use by the Customer, the month of the year, temperature conditions, changes to the Building Facilities, and any other information reasonably calculated to accurately estimate actual demand and consumption during the period of the Metering Equipment problem.

10.5.4 Testing Service

Empower will, upon request by a Customer, make tests to supply special information regarding the Customer's use of service, provided that the estimated cost of such special tests shall be paid by the Customer to Empower in advance.

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11.0 BILLING

- 11.1 Empower will issue a monthly invoice to the Customer that will include itemised charges applicable to the invoice.
- 11.2 Empower shall accurately calculate the Demand Charge and the Consumption Charge payable by its Customers recorded through the Metering Equipment.
- 11.3 Readings may be estimated when conditions warrant. Until reconciled by an actual reading, invoices rendered on estimated consumption will have the same force and effect as invoices rendered on actual meter readings.
- 11.4 When an error is found to exist in the Invoice rendered to a Customer, Empower will correct such error to recover or refund the difference between the original invoice and the corrected invoice. Corrected invoices will not be rendered for periods in excess of three (3) years. Refunds to Customers will normally be made promptly upon discovery of the error. Amounts due to Empower from the Customer will be subject to normal Empower collection policy and procedures.
- 11.5 When an error is found to exist in the Invoice of a contract or service agreement with or governing a Customer, Empower will correct such error to recover or refund the difference between the original invoice and the corrected invoice. Corrected invoices will not be rendered for periods in excess of three (3) years. Refunds to Customers will be made within sixty (60) days of discovery of the error. Amounts due to Empower from a Customer will be subject to normal Empower collection policy and procedures.

12.0 PAYMENT

- 12.1 Invoices are due on presentation and the Customer will be required to pay within the payment period specified on each Invoice.
- 12.2 Invoices are considered received by the Customer when delivered or mailed to the premises where DCS is supplied or an address mutually agreed upon.
- 12.3 Invoices are payable at any payment location designated by Empower or to any collector or collection agency duly authorised by Empower.
- 12.4 The provision of DCS to a Customer is contingent upon payment of all charges due from the Customer. Failure by a Customer to settle an Invoice within thirty (30) days after the Invoice was due shall give the right to Empower to suspend the supply of DCS to the Customer. Suspension of DCS will then only be lifted by Empower following cleared payment by the Customer of outstanding Invoices and any reasonable accruing financial costs. Empower at its sole discretion, may charge a reconnection fee, current at the time, for the resumption of DCS.
- 12.5 DCS shall not be discontinued for non-payment of a disputed invoice if Empower has been notified in writing within fourteen (14) days of any disputed invoiced amounts, pending investigation and resolution.