

# DIRECT ACCESS SERVICES AGREEMENT



## **Direct Access Services Agreement**

**Between APS Energy Services Company, Inc.  
("APS Energy Services")**

**and**

**The Regents of The University of California  
and The Trustees of the California State University  
("UC/CSU")**

**dated: March 25, 2002  
Revised: September 10, 2002  
And June 2, 2003**

## DIRECT ACCESS SERVICES AGREEMENT

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The parties to this Direct Access Services Agreement (the "Agreement") dated March 25, 2002, as revised by agreement on September 10, 2002 and May 29, 2003, are APS Energy Services Company, Inc. ("APS Energy Services"), an Arizona corporation, and The Trustees of The California State University which is the State of California acting in its higher education capacity ("CSU") and The Regents of The University of California ("UC") (collectively referred to as "UC/CSU or Universities"), which are also referred to individually as "Party" and collectively as "Parties."

In consideration of the mutual promises set forth in this Agreement and subject to the conditions set forth herein, the Parties agree as follows:

#### 1. DESCRIPTION OF SERVICE AND PRICING.

1.1 Energy Supply. APS Energy Services shall supply the services set forth in this Agreement ("Direct Access Services") and shall sell all electricity requirements ("Energy") for UC/CSU at accounts listed in Exhibit A (the "Facilities") and UC/CSU shall purchase all of its requirements for Energy at such accounts, within the demand and usage limitations stated in Exhibit B, together with ancillary services, scheduling coordination, metering and dual billing services for the Services Period as defined in Section 8.1 below. Ancillary services shall include but are not limited to regulation, VAR support, spin and non-spin reserves, losses, and congestion. UC/CSU are each purchasing Energy under this Agreement for its own consumption or service to its tenants or licensees, and for no other use or purpose, including resale, unless mutually agreed. UC/CSU agrees to pay the price as specified in section 1.2.1 for the Services Period for the usage stated in Exhibit B, except as otherwise provided in this Agreement.

1.2 Pricing. In each Trigger Price Delivery Period as set forth in successive, duly executed Trigger Price Acceptances (Exhibit Ts), APS Energy Services shall provide a guaranteed fixed Energy price for the Energy supplied to the Facilities at a dollars and cents per megawatt hour Trigger Price for the usage stated in Exhibit B. This Energy price shall include such California Independent System Operator ("CAISO") and ancillary charges that are in effect as of the commencement of each Trigger Price Delivery Period, but excludes the transmission, distribution, public purpose and all other charges of the Utility Distribution Company ("UDC"), which are applicable to UC/CSU for each billing period. The Energy price applies to the usage limitations established in Exhibit B. Demand and Energy usage outside those set forth in Exhibit B shall be billed as described in Section 1.4 unless otherwise specified in Exhibit T. All Energy usage billed under this Agreement shall be adjusted for distribution loss factors ("DLF") pursuant to California regulations unless otherwise specified in Exhibit T. Unless otherwise specified in Exhibit T, the following charges shall be passed through to UC/CSU with no mark-up: any new CAISO charges not in effect as of the commencement of each Trigger Price Delivery Period; adjustments for distribution loss factors; and any charges or fees imposed by governmental authorities ("Exit Fees"), including but not limited to any charges, fees, assessments, adders or surcharges imposed or authorized by any governmental authority, however styled or payable, that are related to a utility's, or a governmental authority's energy procurement, including, without limitation, charges for system reliability, rate recovery, future payback of under-collections, amortization of above market purchases and energy load repurchases. APS Energy Services shall bill UC/CSU the guaranteed fixed Energy price, pass through charges, Exit Fees, and applicable taxes in accordance with Section 7.

1.2.1 Price. The Parties shall attempt to agree to establish one or more Trigger Prices during the Term of this Agreement, which shall apply to a specified Trigger Price Delivery Period through successive Exhibit Ts. For periods where there is no agreed upon Trigger Price ("Spot Price Periods"), the price for Energy shall be the California Independent System Operator Hourly Ex-Post Incremental Price, or as otherwise mutually agreed by the Parties, for the applicable zone plus all applicable fees, surcharges, and taxes as set forth in this section 1.2 (the "Spot Price"). For the first fourteen (14) days of a Spot Price Period, UC/CSU shall pay the Spot Price plus an additional \$2/MWh; if a Spot Price Period extends

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beyond fourteen (14) days then UC/CSU shall pay the Spot Price plus an additional \$4/MWh, unless otherwise mutually agreed by the Parties.

1.2.2 **Trigger Pricing.** UC/CSU may request APS Energy Services to offer a Trigger Price for a subsequent Trigger Price Delivery Period. Such Trigger Price shall be established by the following process:

A. UC/CSU and APS Energy Services shall first have executed this Agreement.

B. APS Energy Services shall give UC/CSU a verbal offer immediately followed by a fax of Exhibit T confirming the verbal offer and setting forth the price and term (the "Trigger Price Delivery Period") of a Trigger Price quote. APS Energy Services shall provide information, such as indicative pricing, gas price movement or related information, with respect to identified market indicators in support of such Trigger Price quote. The Parties shall be bound to the terms set forth in the Exhibit T if UC/CSU accepts such Trigger Price quote within one (1) hour of receipt ("Immediate Quote").

C. If UC/CSU desires to accept the Immediate Quote, UC/CSU shall jointly indicate its acceptance both verbally and in writing by executing and returning via fax the Exhibit T Trigger Price Acceptance that APS Energy Services had faxed to the UC/CSU. UC/CSU shall fax the Exhibit T Immediate Quote to APS Energy Services at the fax telephone number on said Exhibit T within one (1) hour of UC/CSU's receipt thereof.

1.3 **Taxes.** UC/CSU shall pay all taxes related to its Energy usage. UC/CSU represent that they are exempt from certain tax liabilities. Consequently, the Parties shall administer this Agreement in such a way that tax liability will be minimized and that all applicable exemptions will be preserved and reflected in UC/CSU invoices. In the event APS Energy Services is assessed any taxes on or resulting from UC/CSU's Energy usage, UC/CSU shall indemnify APS Energy Services for all such assessed tax, including applicable penalties and interest.

1.4 **Pricing for Deficiencies and Excesses.** April 2002 shall be a ramp-up month where individual account loads will be provided service starting on the switch date specified in their Direct Access Service Request ("DASR"). Parties acknowledge that therefore during the month of April 2002, the minimum and maximum limits specified in Exhibit B do not apply to UC/CSU loads.

1.4.1 **Pricing For Usage Less Than The Minimum Monthly Usage.** Effective as of May 1, 2002, UC/CSU shall have a minimum bill as defined in Exhibit B or a subsequent revised Exhibit B. UC/CSU's Monthly Minimum Bill will be calculated by subtracting the total number of kilowatt hours consumed during the calendar month from the Minimum Monthly Usage (kWH) amounts in Exhibit B. If UC/CSU's actual consumption is greater than the Monthly Minimum kWH Amount, no additional charges will apply. If UC/CSU's actual consumption is less than the Monthly Minimum kWH Amount, UC/CSU shall pay APS Energy Services the product of the kWH difference times the Trigger Price.

1.4.2 **Pricing for Usage Greater than the Maximum Monthly Usage.** Effective as of May 1, 2002, if UC/CSU's aggregate monthly consumption exceeds the maximum amounts in each month as set forth in Exhibit B or a subsequent revised Exhibit B, by and up to 5%, UC/CSU will pay APS Energy Services the Trigger Price for the additional consumption. Excessive recurring monthly usage over the maximum band may necessitate the reestablishment of new limits and a mutually agreed upon revised Exhibit B with a new Trigger Price for such excess. APS Energy Services, at its own option, may have to secure the excess consumption from the market. As a result, a new price will be mutually established for the excess power beyond the Maximum Demand based on the prevailing market prices and incurred costs, which include, but are not limited to, CAISO energy imbalance charges. APS Energy Services shall provide UC/CSU proof of the actual costs in excess of \$100,000 incurred in obtaining excess energy.

1.4.3 **Pricing for Usage Greater than the Maximum On Peak and/or Off Peak Demand.** Effective as of May 1, 2002, if UC/CSU's Maximum On Peak and/or Off Peak Demand exceed the

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amounts as set forth in Exhibit B, or a subsequent revised Exhibit B, UC/CSU will pay APS Energy Services the Trigger Price hereunder. In addition, should UC/CSU's Maximum On Peak and/or Off Peak Demand exceed the amounts as set forth in Exhibit B (a) for more than 25 hours per month; or (b) by more than 10%, UC/CSU will pay APS Energy Services an additional amount equal to the positive difference, if any, calculated by subtracting the Trigger Price from the actual costs incurred, which include, but are not limited to, CAISO energy imbalance charges.

1.4.4 Administrative Fees. Beginning July 1, 2003, APS Energy Services shall pay, up to six months in advance, an administrative fee of \$.50 per projected UC MWh to UC and \$.50 per projected CSU MWh to CSU which cost will be recovered through a separate line item on campus bills. Such estimated payments shall be tried up at the end of each six month period.

1.5 Title and Risk of Loss. APS Energy Services shall deliver and UC/CSU shall receive Energy in accordance with this Section. APS Energy Services shall cause the Energy to be delivered to the applicable UDC or CAISO at any point of interconnection between the applicable third party transmission systems and those of the UDC or CAISO (the "Delivery Point"), at its sole cost and expense. Each UDC shall be responsible for receiving the Energy and distributing it to the Facilities. Therefore, as between the Parties, APS Energy Services shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Energy to be delivered to UC/CSU prior to the Delivery Point, and UC/CSU shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Energy at and from the Delivery Point. Title to the Energy shall transfer to UC/CSU at the Delivery Point, and APS Energy Services shall no longer bear the risk of loss. Upon failure by APS Energy Services to deliver all or part of a Facilities' Energy requirements, APS Energy Services shall pay pursuant to Section 14.3. No failure to deliver on APS Energy Services' part shall excuse UC/CSU from timely payment of all the undisputed portions of the invoices in full.

## 2. CREDIT.

If APS Energy Services has a reasonable, good faith belief that the Universities' ability to meet its financial obligations is substantially impaired, APS Energy Services may request financial information relevant to the Universities' creditworthiness from the Universities. UC/CSU agrees to promptly provide all financial information, to the extent it is available and disclosure is not prohibited by law, reasonably requested by APS Energy Services to evaluate UC/CSU's creditworthiness. Failure to provide such financial information within fifteen (15) business days of receipt of a written request shall give rise to the right for APS Energy Services to return UC/CSU to UDC Bundled Service, as specified in Section 11.1.3 hereof; provided however, that UC/CSU shall have a right to cure any failure to comply with this section within fifteen (15) days of written notice from APS Energy Services.

## 3. ADJUSTMENTS IN ENERGY REQUIREMENTS.

3.1 Adjustments of Energy Requirements. UC/CSU's demand requirements may be changed from those stated in Exhibit B due to planned decreases in or expansions of Facility operations, the effects of UC/CSU energy management and energy efficiency enhancements, or Facility closures, with written notice as described in this Section 3. If UC/CSU elects to adjust its Energy requirements during any time period where there is a currently effective Trigger Price and Trigger Price Delivery Period it shall provide APS Energy Services with at least thirty (30) calendar days' prior written notice, as provided in Section 19, of the increase or decrease from those requirements described in Exhibit B. The Minimum and Maximum limitations in Exhibit B shall still apply; however, upon receipt of UC/CSU's timely notice, APS Energy Services shall take such steps as are commercially reasonable and practicable to adjust its supply to better match the increased or decreased Energy requirements from that set forth in Exhibit B. The objective is to minimize the costs for usage outside the Minimum or Maximum limitations; however, UC/CSU shall be responsible for the added cost of purchasing the additional power or loss from disposing of the surplus power incurred by APS Energy Services to serve UC/CSU's increases or decreases from the forecasted Energy requirements for each time UC/CSU's demand falls outside the Minimum or Maximum limitations established in Exhibit B. Once the supply is increased or liquidated, whichever is applicable, for the agreed upon time period, the Minimum or Maximum limitations in Exhibit B shall be adjusted accordingly.

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If UC/CSU fails to provide such notice on a timely basis, UC/CSU shall reimburse APS Energy Services as specified in Section 1.4 hereof.

3.2 UC/CSU may adjust their demand requirements for a prospective Trigger Price Delivery Period without penalty. The Parties shall mutually agree to corresponding adjustments in the Minimum and Maximum limitations in Exhibit B which accompany a new Trigger Price and a new Exhibit T.

3.3 Unplanned Outages of Cogeneration System. In the event of any unplanned outages of UC/CSU cogeneration systems lasting more than two (2) hours, UC/CSU shall provide notice to APS Energy Services as soon as possible. Upon receipt of such notice, APS Energy Services agrees to take such steps as are commercially reasonable and practicable to adjust its supply to better match the increased Energy requirements from that set forth in Exhibit B for the period of time of the outage specified by UC/CSU.

3.4 Sale or Purchase of Surplus Energy. APS Energy Services shall use its best efforts to sell or purchase or develop the ability to sell or purchase surplus Energy produced by the Campus generation units not subject to other contractual obligations, at a price to be mutually agreed upon by the Parties.

### 4. SCHEDULING COORDINATION SERVICES.

APS Energy Services shall provide Scheduling Coordination Services at no additional charge to UC/CSU. Scheduling Coordination Services shall consist of daily load forecasting, scheduling load with the CAISO, reporting UC/CSU's meter data to CAISO, and processing UC/CSU's CAISO settlements.

### 5. INFORMATION AND LIMITED AGENCY REQUIREMENTS.

5.1 Prerequisite Information. The Parties agree that thorough and accurate information about UC/CSU's current electric service is necessary to transfer the Facilities to APS Energy Services promptly and with minimal problems. UC/CSU shall make best efforts to promptly provide or cause the UDCs and/or its current Energy Service Provider ("ESP") to provide all the prerequisite information necessary to prepare accurate and appropriate electronic direct access service requests ("DASRs") and plan reprogramming of existing meters or installation of any new direct access meters that may be required pursuant to this Agreement. Prerequisite information shall include, but is not limited to, copies of a recent UDC bill for each account; twelve months' historical usage data, if available; model and configuration of the meter(s) for each account, method of interrogation for each meter and status of telephone lines, if any.

5.2 Limited Authorization. UC/CSU hereby authorizes APS Energy Services to obtain information from each UDC with respect to billing, credit, usage, load shape, and other data, and to interact with UDCs on matters related to this Agreement. The limited authorization under this Agreement is confined to the subject matter of this Agreement and those tasks appropriate to providing the services hereunder and does not create or result in the imposition on APS Energy Services of, and UC/CSU hereby waives, any other duties of any kind or nature, including fiduciary duties and duties which may otherwise arise by operation of law. APS Energy Services shall inform UC/CSU regarding any interactions with the UDCs with regard to this Agreement as soon as practicable and provide copies of any documents, including but not limited to DASRs, submitted to the UDCs. APS Energy Services shall not submit any DASRs without written authorization from UC/CSU.

### 6. METERING, TELECOMMUNICATIONS, METER READING, DATA MANAGEMENT.

6.1 Meters. UC/CSU already possesses or will purchase and install direct access-ready meters capable of collecting and transmitting interval data through telephone lines at its own expense for each account, if necessary to implement this Agreement. UC/CSU already has or shall install a dedicated telephone line to serve each meter at UC/CSU's expense prior to commencement of direct access. For meters that are not compatible with telephonic communication, APS Energy Services or its subcontractor shall use best efforts to obtain meter data from UC/CSU radio frequency meters or develop acceptable alternate methods of obtaining timely meter data that meets billing quality standards. Any such equipment

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reasonably required to obtain meter data shall be at UC/CSU's expense. APS Energy Services will provide or may contract with a third-party, which may be the local UDC, as the meter service provider ("MSP") for UC/CSU's meters to provide any programming and maintenance required by UC/CSU's meters during the Term of this Agreement. APS Energy Services shall be responsible for all costs incurred for the Ongoing Meter Services (as defined in Subsection 6.6, below), including any UDC costs, unless such services are required as a result of UC/CSU's negligence or are costs related to installing replacement meters for the UC/CSU radio frequency meters. APS Energy Services or its subcontractor will use best efforts to obtain required meter data from a third party where such data is not supplied directly to UC/CSU.

6.2 Meter Reading. APS Energy Services or its MSP shall remotely read all meters as required for billing, posting interval meter data in accordance with Subsection 6.1 and acquiring the prior day's hourly load data, if necessary, for scheduling purposes under this Agreement, at no charge to UC/CSU, except as provided in section 6.1.

6.3 Energy Usage Data, Notification and Reports. Under this Agreement, APS Energy Services will maintain a secure Internet Protocol system on which it shall post available UC/CSU interval meter data by account so that UC/CSU campuses may obtain up to date information about their account usage. UC/CSU will provide an active phone line required for proper operation of the Internet Protocol System.

Prior to the establishment of such Internet Protocol system, APS Energy Services shall provide UC/CSU written information faxed or e-mailed to the contract administrators for both UC and CSU on the sixteenth (16<sup>th</sup>) of each month of the Delivery Period stating the Energy usage of the Interval Data Read ("IDR") metered accounts for the preceding fifteen (15) days so as to facilitate UC/CSU energy management efforts. APS Energy Services shall only provide the usage for IDR metered accounts that have an active phone line to which APS Energy Services has access.

Once the Internet Protocol system is established, the following information will be posted for each interval data meter account and for multiple accounts aggregated in a manner consistent with the loads described in Exhibit B:

- Hourly interval data meter readings posted hourly
- Month-to-date kWh data posted daily
- Aggregate hourly maximum demand limits as described in Exhibit B
- Aggregate monthly minimum and maximum usage limits as described in Exhibit B
- Aggregate percentage comparison of actual month-to-date kWh data with monthly minimum/maximum limits as described in Exhibit B

APS Energy Services shall use its best efforts to notify campus representatives if the aggregate hourly demand is within an agreed upon percentage of the monthly maximum demand pursuant to Exhibit B. This notification will take place via pager or telephone and will be within 15 minutes of the last hourly meter data posting. Each UC/CSU account with an IDR meter shall pay the fee for hourly data set forth in Exhibit U. Once this process of setting up the Internet Protocol System is completed, then APS Energy Services will schedule training sessions with all UC/CSU participants the following week. Training will include training manuals and three WebX training sessions lasting one hour.

6.4 Campus Usage Reports. APS Energy Services shall provide access to basic monthly reports to Participating Campuses, which shall include:

- Weekly load data
- Weekly load data peaks
- KVA peak summary (The meter must be capable of recording KVA.)
- Typical days (weekday, weekends and holidays)
- Monthly summary data
- Monthly detail

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All special reports or requests for work not specified in this Agreement will be provided at the prices set forth in Exhibit V.

6.5 University System Summary Reports. APS Energy Services shall make available two monthly summary reports for all accounts: one to the UC's Office of the President and one to the CSU Chancellor's Office, each of which shall include the information set out in Subsection 6.4 - Campus Usage Reports. The cost for the basic monthly summary reports is included in the price by the UC/CSU accounts pursuant to Subsection 6.3 above.

6.6 Ongoing Meter Services. The services described in this Subsection 6.6 ("Ongoing Meter Services") shall be provided by APS Energy Services on and after the Effective Date of this Agreement to all Accounts listed in Exhibit A.

6.6.1 APS Energy Services' Obligations. For UC/CSU owned or leased meters, APS Energy Services shall provide or cause to be provided in accordance with all applicable legal and/or regulatory requirements, including but not limited to, direct access tariff requirements, the following services: Ongoing Meter Service Provider ("MSP") Services; and meter maintenance services. Ongoing MSP Services include the following:

- (i) One time account set up (to set up each meter on APS Energy Services' MSP server).
- (ii) Daily UC/CSU meter reading showing consumption in hourly intervals for all IDR meters only, as specified in Subsection 6.3 above.
- (iii) Meter reading for all UC/CSU meters for billing purposes. APS Energy Services shall obtain monthly meter reads from all applicable Meter Data Management Agents ("MDMA"), including the UDCs for the IDR and load-profiled accounts that they read.

The costs of Ongoing Meter Services shall be included in the Trigger Price specified in Exhibit T except as specified in Subsections 6.1 and 6.3.

A. APS Energy Services may use UC/CSU metering and load information only as necessary to meet its responsibilities as the Energy Service Provider and Scheduling Coordinator for UC/CSU and, as requested by Participating Campuses. APS Energy Services shall not use UC/CSU metering and load information for any other purpose, or provide such information to any non-UC/CSU entity, without express prior written permission by UC/CSU.

B. Upon request, APS Energy Services shall supply to UC/CSU any metering information received by APS Energy Services from the UDC. UC/CSU may request, and APS Energy Services shall provide, such information in the format received from the UDC.

C. APS Energy Services shall maintain or cause to be maintained the meters installed by APS Energy Services throughout the Term of the Agreement in accordance with all applicable CPUC and ANSI specifications.

6.6.2 UC/CSU's Obligations. Following the Term of the Agreement, Participating Campuses will be solely responsible for all costs associated with conversion of meters to allow for data retrieval and associated reporting by the applicable UDC or alternate ESP.

## 7. BILLING, PAYMENT, DISPUTES.

7.1 Dual Billing. Pursuant to the Dual Billing rules and procedures of the California Public Utilities Commission and the UDCs, UC/CSU shall receive bills directly from the UDCs for their distribution, transmission, public purpose and other miscellaneous charges according to the UDCs' regular billing cycles. APS Energy Services is not responsible for the calculation or accuracy or the payment of the UDC charges. APS Energy Services shall bill UC/CSU monthly for Energy usage and services based on meter data for each account served pursuant to this Agreement. APS Energy Services reserves the right to estimate charges, including CAISO charges, only if meter data is not available, in which case APS Energy

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Services shall use its best efforts to obtain such meter data and send a true-up invoice to UC or CSU, as appropriate, as soon as practicable after such data becomes available throughout the Term of this Agreement and for a period of approximately four months after the end of the Term. APS Energy Services shall communicate its best estimates of true billing amounts at UC/CSU's request so that UC/CSU may plan for actual expenditures during a fiscal year cycle.

7.2 Payment. UC/CSU shall pay the total charges and applicable taxes on the invoice to APS Energy Services by check, wire transfer or electronic funds transfer to APS Energy Services' designated bank by the payment Due Date, which is fifteen (15) days after receipt by UC/CSU of the invoice ("Due Date"). Payments made by check, must be received by APS Energy Services on the fifteenth (15th) day following the date of receipt by UC/CSU of the invoice, or it shall be considered a late payment. Late payments shall accrue interest daily at the lesser of the Prime Rate as quoted from time to time in "Money Rates" in the Wall Street Journal, plus two percent (2%), or the maximum interest rate permitted by law, whichever is less (the "Interest Rate"), for each calendar day following the Due Date.

7.3 Disputed Amounts. In the event UC/CSU desires in good faith to dispute all or any part of any bill submitted by APS Energy Services under this Agreement, UC/CSU shall nevertheless pay the undisputed portion of the invoice when due and shall give notification in writing within three (3) months from the date of receipt of any invoice or true-up of a prior estimated invoice, stating the grounds for the dispute and the amount of such dispute, and in no event shall the disputed portion include a dispute for the UDC separate charges. UC/CSU shall not be entitled to an adjustment on any bill that is not brought to APS Energy Services' attention in writing within three (3) months of the date of receipt of the disputed invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly, and upon determination of the correct billing amount, UC/CSU shall promptly pay or be paid the remaining portion or refund due (if any), with interest at the Interest Rate from the date payment was due until paid (in the case of an underpayment) or from the date paid until refunded (in the case of an overpayment). Notwithstanding anything to the contrary contained herein, it is the Parties' intent that the late payment fees shall not be applied to amounts which are subject to a good faith dispute until the dispute is resolved and interest is calculated in accordance with this Section 7. In the event the Parties are unable to resolve a billing dispute, the Parties shall seek to resolve said dispute in accordance with the procedures set forth in Section 21 of this Agreement.

7.4 Interfaces. If a Participating Campus requires interfaces to be developed between APS Energy Services' billing and accounting systems and the Campuses' accounting or financial systems, APS Energy Services shall develop such an interface and shall bill the Participating Campus for its development costs at no more than the prices shown for consulting services set forth in Exhibit V.

## 8. TERM.

8.1 Effective Date and Term. This Agreement shall become effective on March 25, 2002 ("Effective Date"). Direct Access Energy Service shall commence on the date that the applicable UDC makes effective the first DASR switching service for an account listed in Exhibit A to APS Energy Services. The Term of this Agreement shall run from the Effective Date through the date the last account is transferred to another ESP or to UDC bundled service, as described in this Section 8 ("Services Period"). During a Trigger Price Delivery Period, either Party has the right to terminate this Agreement as of the end of the Trigger Price Delivery Period by providing 60 days prior written notice. At any time during a Spot Price Period, either Party has the right to terminate this Agreement upon 45 days prior written notice. APS Energy Services shall commence sending appropriate and timely electronic switch notices (DASRs) to the UDCs to assure all of UC/CSU's accounts are transferred to another provider as designated by UC/CSU as close as reasonably practical to the end of the last effective Trigger Price Delivery Period or as soon as possible if termination occurs during a Spot Price Period.

8.3 Delays in Initiating Service. The Parties acknowledge that there may be unforeseen or unexpected events associated with the transition to competitive retail electric sales, including but not limited to regulatory changes not anticipated by the Parties or changes in the UDC's procedures for transitioning

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UC/CSU's electric service to direct access. Consistent with the provisions of Section 9 (Uncontrollable Forces), the Parties agree to diligently and mutually cooperate with one another in good faith, utilizing commercially reasonable efforts, to overcome any unforeseen or unexpected contingencies that may interfere with the achievement of the intentions as expressed in this Agreement.

### 9. UNCONTROLLABLE FORCES.

9.1 Notice, Suspension of Obligations. If an event occurs that is beyond the control of a Party (an "Uncontrollable Force"), which prevents it from performing its obligations under this Agreement (other than the payment of moneys due under this Agreement) that Party shall not be considered to be in default. The affected Party shall promptly provide written notice to the other Party describing the nature of the event; the length of time it is expected to continue; and efforts (planned or under way) to overcome the effects of the event. The Parties shall cooperate in good faith to overcome the effects of the Uncontrollable Force. The obligations of each Party shall be suspended for the continuance of any inability to perform caused by an Uncontrollable Force, but for no longer period.

9.2 Definition. The term, "Uncontrollable Force," as used in this Section 9 means events that are not within the control of the Party affected by the event, and which such Party is unable to prevent or overcome. Uncontrollable Force may include occurrences such as acts of God, storms, floods, earthquakes, tornadoes, failure of the transmission system and/or distribution grid system to transmit or distribute electric energy, actions or omissions to act by the UDC, and actions or inactions by governmental authority unless otherwise specifically set forth in Subsection 9.3, whether valid or invalid, or the necessity for making unscheduled and emergency repairs. Uncontrollable Forces exclude economic events, such as changes in market conditions or prices, or changes in demand and usage limitation due to economic condition

9.3 Termination, Liquidation, Payment. In the event that an action by a governmental authority makes the purchase and sale of Energy under this Agreement illegal or impossible, this Agreement shall automatically terminate as of the date that the last account is transferred to bundled utility service. If such termination occurs during a Trigger Price Delivery Period, in a commercially reasonable time period, APS Energy Services shall liquidate the energy purchased by APS Energy Services not needed to serve the requirements of UC/CSU hereunder through the termination of this Agreement. APS Energy Services shall make commercially reasonable efforts to obtain the best price for the sale of this energy. APS Energy Services shall calculate the Termination Fee or Credit as set forth in Exhibit D. The Termination Fee or Credit shall be divided by the number of months remaining in the terminated Trigger Price Delivery Period (the "Monthly Credit" or "Monthly Fee", as applicable). If a Termination Fee is due, APS Energy Services shall invoice UC/CSU for the fee following the return of all accounts. UC/CSU shall pay the monthly invoiced amounts (which shall consist of the Monthly Fee) through the otherwise remaining Trigger Price Delivery Period in accordance with Section 7.2. If the calculation shows a Termination Credit is due UC/CSU, the Monthly Credit shall be paid by APS Energy Services monthly within fifteen (15) days following each calendar month after the return of all accounts through the otherwise remaining Trigger Price Delivery Period. This payment method shall also be used in the event of a termination pursuant to Section 27.

### 10. COMPLIANCE WITH LAWS AND REGULATIONS.

10.1 Compliance with Law. This Agreement shall be subject to all present valid, effective and applicable laws, orders, rules, regulations and directives of all duly constituted federal, state and local governmental authorities having jurisdiction. Each Party shall furnish to the other any information required to enable the requesting Party to comply with such laws, rules, and regulations.

10.2 Change in Law or Regulation. If the scope of Direct Access Services in California is altered by law or regulation, but the purchase and sale of Energy under this Agreement is not made illegal or impossible, the parties agree to cooperate in good faith to amend this Agreement to accommodate such changes such that the amendment reflects, to the extent possible, the benefits and burdens of the initial

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agreement between the Parties.

### 11. TERMINATION FOR MATERIAL DEFAULT.

11.1 Event of Default. If a Party (the “Defaulting Party”) fails to perform its material obligations under this Agreement, and such failure is not excused under Section 9 (Uncontrollable Forces), then the Non-Defaulting Party may elect to terminate this Agreement if,

11.1.1 in respect to the payment of moneys, the Defaulting Party has not cured the default within ten (10) business days after receipt of a written notice of default from the Non-Defaulting party; or

11.1.2 in the case of other defaults, the Defaulting Party has not cured the default or provided the Non-Defaulting Party with adequate written assurances of its intention to cure the default and otherwise perform its obligations under this Agreement within thirty (30) days after receipt of a written notice of default from the Non-Defaulting Party.

11.1.3 APS Energy Services default shall include but is not limited to, any APS Energy Services return of UC/CSU accounts to UDC Bundled Service that is not a result of (1) Termination, under Sections 2, 27, or 9, (2) termination as of right under Section 8.1 or (3) UC/CSU material default under this section 11. However, this subsection 11.1.3 shall not apply if UC/CSU has given prior written consent.

11.2 Remedies. Except as expressly stated otherwise in this Agreement, the rights and remedies granted to the Parties pursuant to this Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity; *provided, however*, that UC/CSU’s exclusive remedy for APS Energy Services’ unexcused failure to deliver energy shall be as stated in Section 14.3 (Measure of Damages For APS Energy Services’ Breach) and as set forth in Exhibit D. If UC/CSU is the Defaulting Party, APS Energy Services’ exclusive remedy shall be to receive payment of the Termination Fee pursuant to Exhibit D in addition to any amounts owed APS Energy Services for Energy or other services delivered pursuant to this Agreement prior to termination.

### 12. ASSIGNMENT AND DELEGATION.

12.1 No Assignment Without Consent. Neither Party may assign any of their respective rights, nor delegate any of their respective obligations under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld or delayed. If APS Energy Services subcontracts any of the services to be provided under this Agreement, APS Energy Services shall provide prior notice to UC/CSU of the identity of the subcontractor(s).

12.2 Assignment to Affiliates. No consent shall be required if a Party assigns this Agreement to a parent corporation, an affiliate or subsidiary, or merges with an affiliate or subsidiary or a third party that acquires materially all of the assets of the Party as long as such affiliated entity is not a California UDC. Any assignment or delegation under this Section 12 shall be binding on both Parties, their successors and assigns, and shall not relieve either Party of any duties or obligations set forth in this Agreement.

12.3 Unconsented Assignment/Delegation. Where consent is required, unconsented-to assignments or delegations shall be deemed void and not legally binding upon the Party from whom consent was required.

### 13. CONFIDENTIALITY.

APS Energy Services may disclose the terms and conditions of this Agreement to its contractors or subcontractors retained by it to provide services to UC/CSU under this Agreement without UC/CSU’s prior consent. Nothing contained in this Agreement shall be construed as conferring on any Party, any right to use the other Parties’ names as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other Parties. Nothing in this Agreement shall be construed as endorsement of any commercial product or service by UC/CSU, its

## DIRECT ACCESS SERVICES AGREEMENT

officers or employees. Nothing contained in this Section shall be construed as prohibiting APS Energy Services from referring to the fact that UC/CSU is its customer or providing UC/CSU's name as a reference to prospective customers. The Parties acknowledge that this Agreement is subject to the California Public Records Act.

13.1 Technical Communications and Records. All technical communications and records originated or prepared by APS Energy Services pursuant to this Agreement, including papers, reports, charts, computer programs (to the extent they are originally and solely prepared by APS Energy Services for exclusive use by or at UC or CSU, as the case may be, and other documentation, but not including APS Energy Services' administrative communications and administrative records relating to this Agreement, shall be delivered to and shall become the exclusive property of UC/CSU and may be copyrighted by UC/CSU, as appropriate. Records and information, in whatever form or medium developed by APS Energy Services which contain, reveal or otherwise in any way address proprietary strategies and activities of APS Energy Services which enable it to discharge its obligations to UC/CSU under this Agreement shall not be deemed to be within the scope and requirements of the foregoing provision and shall not be the property of UC/CSU, nor shall APS Energy Services be obligated to deliver such records and information to UC/CSU.

13.2 Dual Use. Subject to the last sentence of Section 13.1, the ideas, concepts, know-how, or techniques relating to the provision of Energy, developed during the course of this Agreement jointly by APS Energy Services and UC/CSU can be used by either Party in any way it may deem appropriate. Nothing in this Section shall limit UC/CSU's ownership of data as described in this Section 13.

13.3 Usage Data. All data regarding UC/CSU electricity usage developed by APS Energy Services in the course of performing its duties under this Agreement including, but not limited to, meter inventory and data files, utility billing data files, revenue accounting and invoice files, shall be the property of CSU or UC as the case may be. APS Energy Services shall provide such data in both electronic and printed media, in a form reasonably acceptable to the appropriate University and in compliance with all applicable ISO or CPUC approved standards for such data. This data shall be provided in a format that allows its ready transfer to a successive Energy Service Provider of UC/CSU's choosing, at the expiration or termination of the Agreement.

13.4 Delivery of Data. APS Energy Services shall deliver the data described in Subsections 13.2 and 13.3 to each University, at the University's request, provided, however, that APS Energy Services shall be entitled at its election to retain a copy of all such data and to the extent covered by the copyright of UC/CSU, under Subsection 13.2. APS Energy Services is hereby granted a nonexclusive, royalty free, perpetual license to use such data in furtherance of its own business activities, but APS Energy Services shall not sell or license any such rights to a third party. When delivered, meter data shall be in a form and format suitable for settlements by UC/CSU's (or their successor's) Scheduling Coordinator and in compliance with standards established under the ISO tariff. APS Energy Services shall transfer such data no later than ten (10) business days after the date of UC/CSU's notice to APS Energy Services to transfer the data.

### 14. WARRANTIES; MEASURE OF DAMAGES; NO CONSEQUENTIAL DAMAGES.

14.1 EXCLUSION OF WARRANTIES. EXCEPT TO THE EXTENT EXPRESSLY STATED IN THIS AGREEMENT, APS ENERGY SERVICES MAKES NO WARRANTIES OF ANY KIND AND NATURE TO UC/CSU REGARDING THE ENERGY TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR PURPOSE.

14.2 LIMITATION OF DAMAGES. NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, THE LIABILITY OF A PARTY AND ITS AGENTS, EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS TO THE OTHER PARTY OR THE INSURERS OF THE OTHER PARTY WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT HEREUNDER SHALL IN NO EVENT INCLUDE DAMAGES FOR LOSS OF PROFITS OR REVENUE, OR THE LOSS OF

## DIRECT ACCESS SERVICES AGREEMENT

EITHER; OR, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE OF ANY KIND RESULTING FROM A PARTY'S PERFORMANCE OR FAILURE TO PERFORM SERVICES HEREUNDER.

14.3 MEASURE OF DAMAGES FOR APS ENERGY SERVICES' BREACH. REGARDING THE SALE OF ENERGY, APS ENERGY SERVICES SHALL NOT BE LIABLE TO UC/CSU FOR ANY DAMAGES OCCASIONED BY FLUCTUATIONS, INTERRUPTIONS OR CURTAILMENT OF ELECTRIC ENERGY. IN THE EVENT THAT APS ENERGY SERVICES FAILS TO SELL AND DELIVER TO UC/CSU ELECTRIC ENERGY AS PROVIDED IN THIS AGREEMENT, AND SUCH IS NOT EXCUSED BY UNCONTROLLABLE FORCES, APS ENERGY SERVICES SHALL PAY OR CREDIT TO UC OR CSU, AS APPROPRIATE, THE ADDED ELECTRIC ENERGY COST, IF ANY, INCURRED BY UC/CSU FOR REPLACEMENT SUPPLIES, UC/CSU'S REASONABLE ADMINISTRATIVE COSTS, AND ANY ACTUAL, DIRECT COSTS, INCLUDING ANY SURCHARGES AND FEES, IMPOSED ON UC/CSU AS A RESULT OF THE RETURN OF UC/CSU'S ACCOUNTS TO UDC BUNDLED SERVICE AS SET FORTH IN EXHIBIT D. THIS SHALL BE UC/CSU'S EXCLUSIVE REMEDY IN THE EVENT OF APS ENERGY SERVICES' UNEXCUSED FAILURE TO SELL AND DELIVER ELECTRIC ENERGY TO UC/CSU UNDER THIS AGREEMENT.

14.4 UC/CSU Representations. UC/CSU represent and warrant that they have full capacity and authority to enter into this Agreement and are not prohibited or otherwise precluded from entering into this Agreement by any prior contract or relationship. UC/CSU further represent and warrant that APS Energy Services shall have no liability for any billing or other invoices arising from any prior contract or relationship of UC/CSU for electric energy.

14.5 APS Energy Services Representations. APS Energy Services represents and warrants that it has full capacity and authority to enter into this Agreement and is not prohibited or otherwise precluded from entering into this Agreement by any prior contract or relationship.

### 15. INSURANCE REQUIREMENTS.

15.1 Without limiting any liabilities or any other of its obligations, APS Energy Services shall provide and maintain the minimum insurance coverage listed below unless otherwise agreed to in writing. Coverage shall be provided with forms and insurers acceptable to UC/CSU, until all obligations under the Agreement are satisfied; provided, however, that APS Energy Services may self-insure all or a portion of the coverages provided for in the following subsections.

15.1.1 If applicable, Worker's Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of its employees engaged in the performance of this Agreement, and Employers' Liability insurance with a minimum limit of one hundred thousand dollars (\$100,000.00).

15.1.2 Comprehensive General Liability insurance with a minimum combined single limit of one million dollars (\$1,000,000) each occurrence. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), and completed operations. Said policy shall contain a severability of interests provision.

15.1.3 Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to APS Energy Services' owned, hired or non-owned vehicles, assigned to or used in performance of this Agreement.

### 16. INDEMNIFICATION.

16.1 APS Energy Services' Obligations. APS Energy Services shall indemnify, defend and hold harmless each University, and their respective officers, agents and employees from and against any claims, damages, or expenses, including an amount equal to reasonable attorney's fees, and liabilities arising out of or in any way connected with this Agreement including, without limitation, claims, damages, expenses, or

**DIRECT ACCESS SERVICES AGREEMENT**

liabilities for loss or damage to any property, or for any death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, or liabilities arise from the negligence or willful acts or omissions of APS Energy Services, its officers, agents, employees, invitees, and guests.

16.2. UC/CSU Obligations. Each University shall indemnify, defend and hold harmless APS Energy Services, its officers, agents and employees from and against any claims, damages, or expenses, including an amount equal to reasonable attorney’s fees, and liabilities arising out of or in any way connected with this Agreement including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for any death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, or liabilities arise from the negligence or willful acts or omissions of such University, its officers, agents, employees, invitees, and guests.

16.3 Representation and Warranty Obligations. UC/CSU shall indemnify, defend and hold harmless APS Energy Services, its officers, agents and employees from and against any claims, damages or expenses, including an amount equal to reasonable attorney’s fees, or liabilities arising out of or in any way connected with the representations and warranties of UC/CSU set forth in Subsection 14.4. Defense in such matter may be conducted by a single counsel representing both UC/CSU and APS Energy Services unless and until a conflict of interest with regard to such shared representation is identified, in which event APS Energy Services shall retain separate counsel, the cost of which shall be borne by UC/CSU.

16.4 Survival. The provisions of this Section 16 shall survive the termination of this Agreement.

17. NO WAIVER.

No waiver by a Party of any breach of the provisions of this Agreement by the other Party shall in any way be construed to be a waiver of any future breach or bar such Party’s right to insist on strict performance of the provisions of this Agreement.

18. MODIFICATIONS.

This Agreement can be modified or rescinded only by a writing signed by both Parties, or their duly authorized agents. No industry custom or course of dealing between the Parties shall be effective as a modification of the terms and conditions of this Agreement.

19. NOTICES AND OTHER COMMUNICATIONS.

19.1 General. Notices provided for in this Agreement or otherwise given in connection herewith shall be given, made, delivered or served in writing and delivered personally, or by certified United States mail, return receipt requested postage prepaid, or by facsimile or by electronic mail (e-mail) to the following addresses, as applicable:

<u>IF DIRECTED TO APS ENERGY SERVICES:</u>	<u>IF DIRECTED TO UC/CSU:</u>
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## DIRECT ACCESS SERVICES AGREEMENT

<p><b>Billing and Invoicing:</b> APS Energy Services Company, Inc. P.O. Box 53901, Mail Station 8103 Phoenix, Arizona 85072-3901 Attn: Susie Derbes Telephone: (602) 744-5183 Fax: (602) 744-5136 Email: <a href="mailto:Susie_Derbes@apses.com">Susie_Derbes@apses.com</a></p> <p><b>Contract Administration:</b> APS Energy Services Company, Inc. P.O. Box 53901, Mail Station 8103 Phoenix, Arizona 85072-3901 Attn: Renate_Lewis Telephone: (602) 744-5235 Fax: (602) 744-5136 Email: <a href="mailto:Renate_Lewis@apses.com">Renate_Lewis@apses.com</a></p> <p><b>Scheduling and Coordinating</b> <u>For changes in operations that shall effect forecasted energy usage and requests for Portfolio Management Services:</u> APS Energy Services Company, Inc. <b>Day-time Contact:</b> Jim Staggs Telephone: (602) 744-5318 Fax: (602) 744-5236 Email: <a href="mailto:Jim_Staggs@apses.com">Jim_Staggs@apses.com</a> <b>24 Hr. Contact:</b> Pinnacle West Power Marketing and Trading P.O. Box 53999, Mail Station 9831 Phoenix, Arizona 85072-3999 Attn: Off System Desk Telephone: (602) 250-4470 Fax: (602) 250-2326 Email: <a href="mailto:scaps@apsc.com">scaps@apsc.com</a></p>	<p><b>Billing and Invoicing</b> <b>Contract Administration</b> <b>Scheduling and Coordinating</b></p> <p><b>UC</b> Maric Munn, Assistant Director Energy and Utilities Planning University of California Office of the President 1111 Franklin Street, 61230 Oakland, California 94607-5200 Telephone: (510) 987-9392 Fax: (510) 987-0752 Email: <a href="mailto:maric.munn@ucop.edu">maric.munn@ucop.edu</a></p> <p><b>CSU</b> Len Pettis Chief of Plant, Energy and Utilities Capital Planning, Design and Construction California State University Office of the Chancellor 401 Golden Shore Long Beach, California 90802 Telephone: (562) 951-4122 Fax: (562) 951-4921 Email: <a href="mailto:lpettis@calstate.edu">lpettis@calstate.edu</a></p>
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19.2 **Changes.** Either Party may change the person or address to which notices are sent at any time upon written notice to the other Party. Notices shall be deemed received upon the date they are received by the appropriate Party.

### 20. GOVERNING LAW.

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of California, including but not limited to the California Uniform Commercial Code, without giving effect to California's laws and rules governing conflicts of laws.

### 21. DISPUTE RESOLUTION.

21.1 **General.** If a dispute arises between the Parties regarding a matter provided for in this Agreement, or a Party's performance of its obligations as stated in the Agreement, the Parties agree that such dispute shall be resolved in the manner prescribed in this Section 21.

21.2 **Initiation and Response.** Promptly upon the occurrence of the dispute, the aggrieved Party shall notify the other Party in writing (the "Claimant's Statement"), setting forth in sufficient detail the basis for the dispute, the aggrieved Party's position and its proposal for resolution of the dispute. Within five (5)

## DIRECT ACCESS SERVICES AGREEMENT

business days following receipt of the Claimant's Statement, the other Party shall respond in writing (the "Responsive Statement") setting forth in sufficient detail the respondent's position and its proposal for resolution of the dispute.

21.3 Good Faith Negotiation. Within five (5) business days after the aggrieved Party's receipt of the Responsive Statement, the Parties shall meet (either in person or telephonically) and attempt in good faith to expeditiously negotiate a resolution to the dispute. In attendance for each Party at that opening session and throughout the dispute resolution procedure described in this Section 21 shall be a representative or representatives of each Party who is authorized to act for the Party and resolve the dispute without resorting to higher authority.

21.4 Binding Arbitration. If the Parties cannot reach a mutually acceptable solution within thirty (30) days after discussions begin (or such longer period as to which they mutually may agree), the Parties may mutually agree to refer the matter to the American Arbitration Association ("AAA") for appointment of a qualified arbitrator who has no interest in the outcome of the dispute and who is qualified by training and experience in the arbitration of commercial disputes. The arbitration shall be held in a location mutually agreed to by the Parties and shall be conducted in accordance with the commercial arbitration rules of the AAA. The hearing shall be conducted within thirty (30) days after the arbitrator's appointment. The arbitrator shall be bound to accept the position presented by one of the Parties and shall not be authorized to effect a compromise in their respective positions. The arbitrator's award shall be binding. The Parties shall share equally in the arbitrator's fee and the cost of the arbitration, but each Party shall bear its own legal fees and expenses.

21.5 Confidentiality. Negotiations undertaken pursuant to this Section 21 shall be deemed confidential as settlement discussions. Nothing said by a Party, nor any position taken during the course of the negotiations shall be introduced as evidence by the opposing Party in any subsequent litigation concerning the same or related transactions.

21.6 Condition Precedent. The exhaustion of the dispute resolution procedure provided for in this Section 21 shall be construed to be a condition precedent to the initiation of arbitration or legal action in a court of law.

## 22. ENTIRE AGREEMENT.

Attached, and incorporated into this Agreement are the following Exhibits:

- Exhibit A - UC/CSU's Facilities to be Served;
- Exhibit B - Demand and Usage Limitations;
- Exhibit C - Sample Dual Bill;
- Exhibit D - Calculation of Termination Fee or Credit;
- Exhibit T - Trigger Price Acceptance.
- Exhibit U - Cost Per Point in the Internet Protocol System;
- Exhibit V - Consulting Pricing; and

These Exhibits apply to the services to be provided to UC/CSU under this Agreement, and are considered a part of this Agreement. In the event of an inconsistency between this Agreement and any of these Exhibits, the terms of this Agreement shall govern.

## 23. RELATIONSHIP OF THE PARTIES.

The Parties shall act as independent contractors and neither Party shall act as agent for or partner of the other Party for any purpose whatsoever, and the employees of one shall not be deemed employees of the other.

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### 24. ATTORNEYS FEES.

Except as provided in Section 21 (Dispute Resolution), in the event of litigation to resolve a dispute between the Parties, the prevailing Party shall be entitled to recovery from the other Party all reasonable legal costs for in-house and outside counsel and direct out of pocket costs.

### 25. UC/CSU REPRESENTATIVES.

APS Energy Services shall designate two customer service representatives, one assigned to assist UC/CSU Northern California accounts and one to assist UC/CSU Southern California accounts with ongoing operations and shall provide a toll-free telephone line for UC/CSU service. These APS Energy Services representatives shall attend campus energy manager meetings as needed. APS Energy Services representatives shall participate in bi-weekly conference calls with UC/CSU direct access contract managers. Such meetings and communications may include system wide briefings to participating campuses.

### 26. ANNUAL MEETING.

APS Energy Services will provide one full day workshop annually at a UC/CSU campus at a time and place mutually agreeable to the Parties during the Term of this Agreement. The purpose of the workshop shall be to answer questions and address issues regarding APS Energy Services' Direct Access Services.

### 27. FUNDING AVAILABILITY.

This Agreement is valid and enforceable only if sufficient funds are made available to the CSU by the California State Legislature for the purpose of this Agreement. It is mutually agreed that if the State Legislature does not appropriate sufficient funds, this Agreement shall be terminated with regard to CSU or amended to reflect any reduction of funds.

The CSU will include in its budget request each year during the term of the Agreement monies sufficient to fund the charges hereunder. The CSU will promptly notify APS Energy Services if it appears likely that a non-appropriation event will occur. If this Agreement is terminated for non-appropriation pursuant to this Section, the CSU will not substitute another vendor for the provision of direct access services and Section 11.1.3 shall apply.

### 28. NONDISCRIMINATION.

28.1 During the performance of this Agreement, APS Energy Services and its subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. APS Energy Services shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

28.2 APS Energy Services shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated there under (California Code of Regulations, Title 2, Sections 7285.0 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5).

28.3 APS Energy Services shall permit access by representatives of the Department of Fair Employment and Housing and CSU upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or CSU shall require to ascertain compliance with Section 28.

## DIRECT ACCESS SERVICES AGREEMENT

28.4 APS Energy Services and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

28.5 APS Energy Services shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

### 29. COMPLIANCE WITH NRLB ORDERS.

In submitting a bid or signing a contract APS Energy Services swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against APS Energy Services within the immediately preceding two-year period because of APS Services' failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

### 30. EXAMINATION AND AUDIT.

For contracts in excess of \$10,000, APS Energy Services shall be subject to the examination and audit of (a) the Office of the CSU University Auditor, and (b) the State Auditor, for a period of three (3) years after final payment under the contract in accordance with Government Code Section 8546.7 and with Education Code Section 89045(c&d), respectively. The examination and audit shall be confined to those matters connected with the performance of the Agreement, including, but not limited to, the costs of administering the Agreement; provided, however, that the foregoing shall not be interpreted to include the examination and audit of proprietary information relating to APS Energy Services' strategies and processes regarding energy procurement and marketing.

### 31. DRUG FREE WORKPLACE CERTIFICATION.

By accepting a contract or purchase order, APS Energy Services certifies under penalty of perjury under the laws of the State of California that APS Energy Services will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8355 et. seq.) and will provide a drug-free workplace by doing all of that which Section 8355 et seq. require.

### 32. DVBE AND SMALL BUSINESS PARTICIPATION.

The State of California supports statewide participation goals of 3% for disabled business enterprises, (DVBE Program) and requires agencies to provide a 5% preference when awarding contracts to small businesses. Only small businesses certified by the Office of Small Business Certification and Resources (OSBCF) are eligible to receive the preference. CSU encourages all contractors to use the services of DVBE and OSMB-certified small business enterprises whenever possible, and to report their use to CSU.

### 33. AMERICANS WITH DISABILITIES ACT.

APS Energy Services assures CSU that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

### 34. CHILD SUPPORT COMPLIANCE ACT.

APS Energy Services acknowledges in accordance with PUBLIC CONTRACT CODE Section 7110, that:

34.1 APS Energy Services recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

**DIRECT ACCESS SERVICES AGREEMENT**

34.2 APS Energy Services, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new California employees to the New Hire Registry maintained by the California Employment Development Department.

35. RENEWABLE ENERGY.

The Parties agreed to use best efforts to identify renewable generation resources that can be utilized to meet UC/CSU electric loads under this Agreement. APS Energy Services will secure any requested renewable energy at a mutually acceptable price. Any governmental agency credits resulting therefrom shall be passed through to UC/CSU.

36. COUNTERPARTS.

This Agreement may be executed in three or more separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

37. SIGNATURE CLAUSE.

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

<p>THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.</p> <p>_____</p> <p>BY: Joseph P. Mullinix ITS: Senior Vice President, Business and Finance</p>	<p>THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY</p> <p>_____</p> <p>BY: Charles Reed ITS: Chancellor</p>
<p>APS ENERGY SERVICES COMPANY, INC.</p> <p>_____</p> <p>BY: Vicki Sandler ITS: President</p>	

DIRECT ACCESS SERVICES AGREEMENT

EXHIBIT A

UC/CSU's Facilities to be Served

<u>Location/Participating Campus</u>	<u>UDC Account #</u>	<u>UDC Meter #</u>

Parties acknowledge that certain of these accounts utilize cogeneration for a portion of the account's energy needs. Operation of these cogeneration facilities is reflected in the load stated in Exhibit B.

**DIRECT ACCESS SERVICES AGREEMENT**

**PROPRIETARY AND CONFIDENTIAL**

**EXHIBIT B**

**Demand and Usage Limitations**

<b>UCCSU</b>	<b>Maximum On Peak Demand (kW)</b>	<b>Maximum Off Peak Demand (kW)</b>	<b>Minimum Monthly Usage (kWhr)</b>	<b>Maximum Monthly Usage (kWhr)</b>
Jul-03	146,400	122,400	83,816,000	92,639,000
Aug-03	148,000	112,400	80,601,000	89,086,000
Sep-03	157,000	117,800	82,366,000	91,037,000
Oct-03	152,500	119,500	83,817,000	92,639,000
Nov-03	158,900	120,300	78,665,000	86,945,000
Dec-03	147,000	112,600	75,314,000	83,242,000
Jan-04	151,300	123,700	79,863,000	88,269,000
Feb-04	156,000	126,700	82,120,000	90,765,000
Mar-04	153,500	126,100	85,233,000	94,205,000
Apr-04	153,500	126,100	82,382,000	91,054,000
May-04	150,400	114,900	79,957,000	88,374,000
Jun-04	152,300	121,800	82,118,000	90,762,000
Jul-04	146,400	144,400	83,709,000	92,520,000
Aug-04	148,000	112,400	81,152,000	89,694,000
Sep-04	157,000	117,800	82,831,000	91,550,000
Oct-04	152,500	119,500	82,548,000	91,237,000
Nov-04	158,900	120,300	80,022,000	88,445,000
Dec-04	145,300	111,000	75,565,000	83,519,000
Jan-05	151,300	123,700	80,406,000	88,870,000
Feb-05	156,000	126,700	79,682,000	88,070,000
Mar-05	153,500	126,100	85,046,000	93,998,000
Apr-05	153,500	126,100	81,760,000	90,366,000
May-05	150,400	114,900	80,456,000	88,925,000
Jun-05	151,500	121,800	82,113,000	90,757,000

On Peak Hours Starting 06:00 A.M. Ending 10:00 P.M. Monday to Saturday (16 Hours)

Off Peak Hours Starting 10 P.M. Ending 06:00 A.M. Monday to Saturday (8 Hours)

Off Peak Hours Starting 12:00 A.M. Ending 12:00 P.M. Sunday (24 Hours)

Off Peak Hours Holidays: New Years Day, Memorial Day, Independence Day, Thanksgiving Day, Christmas Day, Labor Day

DIRECT ACCESS SERVICES AGREEMENT

EXHIBIT C

SAMPLE DUAL BILL



# DIRECT ACCESS SERVICES AGREEMENT

## EXHIBIT D

### CALCULATION OF TERMINATION FEE OR CREDIT

- 1) This Termination Fee or Credit shall apply in the event of default or termination under Section 2, 11, 9 or 27.
- 2) APS Energy Services shall sell the quantities set forth in Exhibit B that would be attributable to UC/CSU's demand and energy pursuant to this Agreement for any future months of the unexpired portion of the Trigger Price Delivery Period of any executed Exhibit T hereof ("Future Month Termination Fee").
- 3) APS Energy Services shall sell the remaining power purchased on behalf of UC/CSU that is not needed to provide service during and after the end of the Trigger Price Delivery Period in the Exhibit T up to and including the date on which UC/CSU's last account is returned to UDC Bundled Service ("Intra-Month Termination Fee") on a daily or weekly basis.
- 4) APS Energy Services shall calculate and provide UC/CSU with supporting calculations for each of the Termination Fee or Credit using the following equation:

- 4.1 In the event of APS Energy Services Default:  
$$Q \times (RPP - TP) - AF + \text{Costs as specified in Section 14.3} = \text{Termination Credit}$$

where:

Q = Quantity of Power (MWh)

RPP = UC/CSU's Replacement Purchase Price (\$/MWh) is UC/CSU's cost of replacement power plus UC/CSU's reasonably incurred transaction costs attributable to the change to a new provider.

TP = Applicable Trigger Price (\$/Mwh)

AF = Any trueup balance for the Administrative Fee that has been advanced to UC/CSU per Section 1.4.4. The trueup balance shall be the difference between the Administrative Fee paid to UC/CSU by APS Energy Services less the amount collected from campuses.

- 4.2 In the event of UC/CSU default:  
$$Q \times (TP - LSP + UCC) + AF = \text{Termination Fee}$$

Where:

LSP = Liquidation Sales Price (\$/MWH) is APS Energy Services' actual sale price less APS Energy Services' reasonably incurred costs such as brokerage fees, commissions and other similar transaction costs. APS Energy Services shall use best efforts to mitigate costs to UC/CSU.

UCC = Unrecovered Commodity Cost is the positive difference between APS Energy Services' actual, past unrecovered commodity costs and revenues received from UC/CSU for that period. APS Energy Services shall use best efforts to mitigate costs to UC/CSU

## DIRECT ACCESS SERVICES AGREEMENT

4.3 In the event of a termination under Article 2, 27, or Section 9.3:

$$Q \times (\text{APP-LSP}) + \text{AF} = \text{Termination Fee or Credit}$$

Where:

APP=APS Energy Services' actual, wholesale cost of power for UC/CSU pursuant to this Agreement.

4.4 The total UC/CSU Termination Fee or Credit shall be equal to the sum of one hundred percent (100%) of the Future Month Termination Fee or Credit plus one hundred percent (100%) of the Intra-Month Termination Fee or Credit.

**DIRECT ACCESS SERVICES AGREEMENT**

**EXHIBIT T  
TRIGGER PRICE ACCEPTANCE**

<b>APS ENERGY SERVICES</b> 400 East Van Buren Street, Suite 750 Phoenix, AZ 85004 Attn: Jim Staggs Telephone: 602-744-5318 FAX: 602-744-5236 E-Mail: <a href="mailto:Jim_Staggs@apses.com">Jim_Staggs@apses.com</a>	<b>UC</b> Office of the President 1111 Franklin Street, 6 <sup>th</sup> Fl. Oakland, California 94607-5200 Attn: Maric Munn Telephone: (510) 987-9392 Fax: (510) 987-0752 E-Mail: <a href="mailto:Maric.Munn@ucop.edu">Maric.Munn@ucop.edu</a>	<b>CSU</b> Office of the Chancellor 401 Golden Shore Long Beach, California 90802 Attn: Len Pettis Telephone: (562) 951-4122 Fax: (562) 951-4921 E-Mail: <a href="mailto:lpettis@calstate.edu">lpettis@calstate.edu</a>
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This Trigger Price Acceptance is issued pursuant to the March 25, 2002 Direct Access Services Agreement between the above Parties, which is incorporated herein for all purposes, and which together with this Trigger Price Acceptance is collectively referred to as the Direct Access Services Agreement between APS Energy Services and UC/CSU regarding the transaction described herein.

**Immediate Quote**

Trigger Price Delivery Period 7/1/2003 to 6/30/2005 Price: \$60.98/MWh inclusive of DLF and CAISO charges\*. The accepted Trigger price shall correspond to and shall be billed separately as follows:

\$58.98/MWh to the SCE TOU-8T UC/CSU accounts

\$61.75/MWh to all the remaining UC/CSU accounts

By: Vicki Sandler APS Energy Services

TO BE VALID, AN ACCEPTED AND EXECUTED EXHIBIT T, MUST BE RECEIVED BY APS ENERGY SERVICES WITHIN THE TIME SET FORTH IN SECTION 1.2.1(B) OF THE DIRECT ACCESS SERVICES AGREEMENT.

Date: 6/2/03 Time: 16:24 PDT

**UC/CSU accepts the above Immediate Quote**

The Regents of the University of California By _____ Name: Maric Munn Title: Associate Director, Energy and Utility Services	The Trustees of the California State University By _____ Name: J. Patrick Drohan Title: Assistant Vice Chancellor
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\* During this Trigger Price Delivery Period, the UC/CSU usage shall be determined by the meter reads and the billed usage shall not be adjusted upwards for Distribution Loss Factors ("DLF"). APS Energy Services shall be responsible for all costs related to DLFs.

## DIRECT ACCESS SERVICES AGREEMENT

### EXHIBIT U

#### COST PER POINT IN THE INTERNET PROTOCOL SYSTEM

A point shall be defined as a metered, monitored, input or calculated entity that is stored in the Internet Protocol system and is available for UC/CSU's viewing and analysis (examples would be electricity usage, gas, water, flow rates, temperatures, production volumes, KVA, KVAR, KW and KwH).

APS Energy Services shall update and post each interval data meter hourly/or every 24 hours in the Internet Protocol system, depending on the pricing option chosen.

Monthly fee per point shall be \$76.65 for data updated once every hour.

Monthly fee per point shall be \$47.65 for data updated once every 24 hours.

# DIRECT ACCESS SERVICES AGREEMENT

## EXHIBIT V CONSULTING PRICING

### 1. REVIEW OF WORK ORDERS

After the execution of this Agreement, UC/CSU may request services beyond the scope of those covered in this Agreement but directly related to the purchase of the Energy Services. Such requests may include requests for customization or modification of reports, and/or similar consulting services. Such additional consulting services shall be performed in accordance with the following provisions. APS Energy Services acknowledges that services related to demand side management or energy conservation projects are subject to UC/CSU's normal contracting procedures.

UC/CSU shall submit such requests specifying the scope of work to be performed. APS Energy Services will, within five (5) working days submit a priced proposal for services in accordance with the requested scope. UC/CSU shall review the proposal documents within five (5) working days and submit its comments to APS Energy Services in writing upon completion of the review. APS Energy Services will implement the changes proposed by UC/CSU and the Parties will then execute the Work Order documents. Upon execution of the Work Order document, APS Energy Services will commence effort on the Work described in the approved Work Order.

### 2. WORK ORDER CALCULATIONS

The final price of the individual Work Order or Change Orders, if any, shall include but not be limited to the following cost components:

2.1 Subcontractors Costs. APS Energy Services may, at its discretion, subcontract aspects of the work described in this Exhibit V to be performed to others. Outside Services Costs shall be the actual costs charged to APS Energy Services by its sub-contractor for professional services performed, which may consist of but shall not be limited to the following components:

2.1.1 Labor costs, employer's contributions to employee benefits, allowances for vacation, sick leave, employee insurance, social and retirement benefits, all payroll taxes, contribution and benefits by any applicable law or regulation.

2.1.2 Supervision

2.1.3 Costs for consumable items

2.1.4 Subcontractor's overhead and profit

2.2 Overhead Cost. The overhead cost of fifteen percent (15%) shall be calculated on the total of 2.1 above, and consists of the following components:

2.2.1 Wages or salaries of APS Energy Services' supervisory, professional and administrative personnel directly engaged in the performance of the Work or who working in support of the Work but are not assigned to a specific Work Order. Such activities shall include but not necessarily be limited to the development or review of specifications, bidding and bid evaluations, scheduling, negotiations, and inspection and testing.

2.2.2 Costs associated with the transportation, inspection, testing, handling, and storage of materials, equipment, and supplies purchased by APS Energy Services for use and incorporation into the Work Order(s).

**DIRECT ACCESS SERVICES AGREEMENT**

2.2.3 Cost associated with travel and lodging within California related to development, implementation, training or testing of the Work.

2.2.4 Costs of communications, consisting of facsimile transmission costs, long distance telephone charges, postage, messenger delivery charges, express mail, and photocopying costs.

2.2.5 Film and developing costs.

2.2.6 Mileage reimbursement within California.

2.2.7 Costs incurred by APS Energy Services’ administrative personnel for the administration of the contracts and agreements with subcontractors.

2.2.8 Salaries of APS Energy Services’ executive personnel stationed at APS Energy Services’ principal or branch office that are engaged in the administration of the Agreement.

2.3 DIRECT EXPENSES.

2.3.1 Professional Services Fees. Hourly rates of professional personnel, fully assigned to a specific Work Order for Services provided in support of the individual Work Orders, which shall include, but not necessarily be limited to, the following services:

2.3.1.1 Project Management;

2.3.1.2 Design review; and

2.3.1.3 Training of UC/CSU’s personnel in operation and procedures. The professional service fees will be determined by the actual hours professional staff has provided services in support of the individual Work Order(s) at the Site or an off-site location at the hourly rates specified below:

Job Classification	Per Hour
Program Manager	\$223
Senior Level Programmer	\$137
Project Manager/Consultant	\$112
Junior Level Programmer	\$98
MyEnergy Pro Support Staff	\$88
Support Analyst	\$68
Administrative Assistant	\$38

2.3.2 Taxes. Actual cost of tariffs, duties, City, County, State, and Federal taxes, which were paid by APS Energy Services as a result of the Work.