EXHIBIT C: Evaluation Checklist-Direct Access Services Agreement-Electricity

Summary

Financial Instrument or Contract Reviewed: Direct Access Services Agreement for Electricity with Constellation New Energy
Evaluation as of: Evaluation of standard agreements under the program used as of June 2009 and beyond.
Evaluation Prepared By: J. Plotts **Reviewed By:** M. Anguiano

Interest rate swap		Swaptions	
Commodity swap		Forward contracts	
Interest rate lock		Futures contracts	
Options:		Energy contracts	Electricity-Direct Access Services Agreement
Caps		Other:	
Floors		Describe	
Collars			

Is this financial instrument is a derivative instrument under GASB 53?

	Reference Questions	Check as Appropriate
Derivative instrument	1-3	No
Hybrid instrument	4-7	
Synthetic Guaranteed Investment Contract	8-14	
If a derivative instrument, is it excluded from scope?	15-19	N/A
This is not a derivative instrument		N/A
Is this an investment derivative or a potential hedging derivative?		**Check one**
Investment derivative	20	N/A
Potential hedging derivative:		
Existing or expected financial instrument?	21	
Existing or expected commodity?	21	N/A
For existing or expected financial instruments:	21-29	**Check one**
Effective hedge (hedge accounting applies): (1)		
Cash flow hedge		
Fair value hedge		
Indicate method used to document effectiveness		
Ineffective hedge (hedge accounting does not apply)		
For existing or expected commodity transactions:	30-37	**Check one**
Effective hedge (hedge accounting applies): (1)		
Cash flow hedge		N/A
Fair value hedge		N/A
Indicate method used to document effectiveness:		
Ineffective hedge (hedge accounting does not apply)		N/A

(1) Once determined to be an effective hedge, an eveluation must be performed each subsequent year to validate continued effectiveness.

EXHIBIT C: Evaluation Checklist for Energy Contracts-Direct Access Services

Evaluation Checklist for:

Prepare an inventory of all energy contracts entered into by UCOP and its campuses

Refer to the GASB Statement No. 53-1 and 53-2 Outline for details

Note: A ttach comments as necessary for further discussion of the conclusion. Certain questions may not result in simple "yes" or "no" answers and the substance of the financial instrument or contract must be considered in in order to arrive at the conclusion.

Determine whether the financial instrument or contract qualifies as a derivative instrument. If so, evaluate whether it is a hedging derivative. If a hedging derivative, determine whether it is a cash flow or fair value hedge.

Does this Meet the Definition of a Derivative Instrument? (¶7-13)

	YES/ NO	Source Document/ X - Reference
1. Does the financial instrument have settlement factors that include a) a reference rate and b) a notional amount?	No, UC agrees to take delivery of electricity at a contract price, not a "take or pay " contract. Amounts over forecasted demand is billed at another price; amounts under the demand is credited at a different price.	Amended and Restated Direct Access Services Agreement, section 3.
2. Is there leverage, i.e. little or no initial net investment?	No, there is no leverage.	Amended and Restated Direct Access Services Agreement, section 3.
3. Are there net settlement provisions?	No	Amended and Restated Direct Access Services Agreement, section 3.

If "yes," to question 1-3, the financial instrument or contract is a derivative instrument. However, continue the evaluation beginning with question 15 to determine whether the type of financial instrument or contract is excluded from the scope of Statement No. 53.

If "no" to any one of questions 1-3, the financial instrument or contract is not be a derivative instrument. However, continue the evaluation beginning with question 4 to assess whether a hybrid instrument is involved.

If Not, Does this Meet the Definition of a Hybrid Instrument? (¶64)

4. Is this a situation where there may be a derivative instrument that accompanies, or is incorporated within, a companion document?

If "yes," to question 4, the financial instrument or contract may be a hybrid instrument and must be further evaluated. Continue the evaluation beginning with question 5 to determine whether the type of financial instrument or contract is is a hybrid instrument.

If "no" to question 4, the financial instrument or contract is not a hybrid instrument. However, continue the evaluation beginning with question 8 to determine whether an SGIC is involved.

5. Is it a true statement that the companion instrument is not measured at fair value on the Statement of Net Assets?
6. Would a separate instrument with the same terms as a derivative instrument meet the definition of a derivative instrument using questions 1-3 above?
7. Is it a true statement that the economic characteristics and risks of the derivative instrument are not closely related to the economic characteristics and risks of the companion instrument?

If "yes" to all questions of 5-7 the financial instrument or contract is a hybrid instrument. However, continue the evaluation beginning with question 15 to determine whether the type of financial instrument or contract is excluded from the scope of Statement No. 53.

If "no" to any one of questions 4-6, the financial instrument or contract is not a hybrid instrument However, continue the evaluation beginning with question 8 to assess whether an SGIC is involved.

If Not, Does this Meet the Definition of a Synthetic Guaranteed Investment Contract (SGIC)? (¶67)

8. Does the SGIC prohibit the University from assigning or selling the contract or its proceeds to another party without the consent of the issuer?
9. Are prospective interest crediting rate adjustments provided to plan partcipants and UC on a designated pool of investments by a financially responsible third party?
10. Do the adjustments provide assurance that probable future rate adjustments would result in an interest crediting rate of less than zero is remote?
11. Do the pool of investments in total meet both of the following criteria?
    * The pool is of high credit quality such that the possibility of credit loss is remote?
    * The pool may be prepaid or otherwise settled in such a way that UC and its plan participants would recover contract value?
12. Do the terms of the SGIC require all permitted participant-initiated transactions with UC to occur at contract value with no conditions, limits, or restrictions? (permitted participant-initiated transactions are those transactions allowed by UC, such as withdrawals for benefits, loans, or transfers to other investment choices)
13. Some events may limit UC's ability to transact with participants at contract value. Examples are premature termination of contracts, layoffs, plan terminations, bankruptcies, and early retirement incentives. Is the probability of such an event occurring within one year of the date of the financial statements remote?
14. Does UC allow participants reasonable access to their investments?

If "yes" to all questions of 8-14 the financial instrument or contract is an SGIC under Statement No. 53. Measure at contract value and disclose in accordance with that Statement. The evaluation does not continue.

If "no" to any of questions 8-14, the financial instrument or contract is not an SGIC under Statement No. 53. The evaluation does not continue.

If this Meets the Definition of a Derivative Instrument, is it Excluded from the Scope of GASB Statement No. 53? (¶14-18)

15.	Is the derivative instrument a normal purchase or sale contract for a commodity used in the normal course of operations? Consider whether the contract results in the purchase or sale of a commodity such as natural gas or electricity, whether the contract includes a net settlement feature, whether the University has entered into such a contract in the past, whether the University has a practice of taking delivery or selling a commodity, and whether the quantity of the commodity in the contract is consistent with the volume used in the University's activities.	N/A	N/A
16.	Is this a risk financing or insurance related contract?		
17.	Is this a financial guarantee contract that does not respond to changes in a reference rate?		
18.	Is this a specific type of contract that is not exchange traded and includes a reference rate based upon climate, geological, other physical variables, or the price of a nonfinancial asset?		
19.	Is this a loan commitment contract?		

If "yes" to any one of questions 15-19, the financial instrument or contract is excluded from the scope of Statement No. 53 and the evaluation does not continue.

However, if "no" to all of questions 14-19, the financial instrument or contract is a derivative instrument that must be further evaluated under Statement No. 53 to determine whether it is an "investment derivative" or a "hedging derivative," and if a "hedging derivative," whether it is "effective" or "ineffective" hedge. Begin the next stage of the evaluation with question 20.

Determine Whether the Derivative Instrument is an "Investment Derivative" or a Potential "Hedging Derivative" (¶20)

20.	Was the derivative instrument or contract entered into for the purpose of making a profit?	N/A	N/A

If "yes" to question 20, the financial instrument or contract is an investment derivative under Statement No. 53. Apply investment derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to question 20, the financial instrument or contract is a hedging derivative and must be further evaluated to determine whether it is an "effective" or "ineffective" hedge. Begin the next stage of the evaluation with question 30.

21.	Is the hedgeable item an existing or expected financial instrument?		

If "yes" to question 21, skip to question 24 and continue the evaluation.

If "no" to question 21, the hedgeable item item is an existing or expected commodity transaction. Skip to question 30.

Evaluate Whether the Potential Hedging Derivative Where the Hedgeable Item is a Existing or Expected Financial Instrument is an "Effective" or Ineffective" Hedge. (¶34-48)

If the derivative instrument is an interest rate swap or forward contract, determine whether it is "effective" under the Consistent Critical Terms Method by continuing with question 22a, 23a or 24a.

Based upon the answers to the following, determine whether the Consistent Critical Terms Method of evaluating an interest rate swap or forward contract results in an "effective" hedge:

EXISTING OR EXPECTED FINANCIAL INSTRUMENTS

Consistent Critical Terms Method

For an "effective" interest rate swap-cash flow hedge (¶37):

22a. Is the notional amount of the interest rate swap the same as the principal amount of the hedgeable item throughout the life of the hedging relationship? This criterion is met if the notional amount of the interest rate swap and principal amount of the hedgeable item are equal for each hedged interest payment, even if the hedged item amortizes or otherwise adjusts subsequent to the inception of the hedge.

22b. Upon association with the hedgeable item, does the interest rate swap have a zero fair value? (the value of a derivative instrument that is either entered into or exited with no consideration being exchanged. A zero fair value should be within a dealer's normal bid/offer spread.)

22c. Is the formula for computing net settlements under the interest rate swap the same for each net settlement? (That is, the fixed rate is the same throughout the term of the interest rate swap. Likewise, each variable payment of the interest rate swap is based on the same variable, such as the same reference rate or index.)

22d. Is the reference rate of the interest rate swap's variable payment consistent with one of the following:
(1) The reference rate or payment of the hedgeable item. For example, an interest rate swap provides variable payments to the University equal to the total variable payments of variable-rate bonds—a cost-of-funds hedge.
(2) A benchmark interest rate as specified in paragraph 35 if interest rate risk is the hedged risk. The reference rate cannot be multiplied by a coefficient, such as 68 percent of LIBOR, but it may be adjusted by addition or subtraction of a constant, such as the SIFMA swap index plus 10 basis points, provided that the constant is specifically attributable to the effects of state-specific tax rates.

22e. Do interest receipts or payments of the interest rate swap occur during the term of the hedgeable item, and no interest receipts or payments of the interest rate swap occur after the term of the hedgeable item? (For example, an interest rate swap that hedges the first 10 years of a 15-year variable-rate bond meets this criterion.)

22f. Is it true that the reference rate of the interest rate swap does not have a floor or cap unless the hedgeable item has a floor or cap. (If the hedgeable item has a floor or cap, does the interest rate swap have a floor or cap on the variable interest rate that is comparable to the floor or cap on the hedgeable item? (Comparable does not necessarily mean equal. For example, an interest rate swap's reference rate is the SIFMA swap index, while the hedgeable bond's variable rate is the SIFMA swap index plus 2 percent. A 10 percent cap on the interest rate swap would be comparable to a 12 percent cap on the bonds and would meet this criterion as both caps produce equal changes in cash flows if the SIFMA swap index exceeds 10 percent.)

22g. Is the time interval of the reference rate, commonly referred to as the designated maturity, employed in the variable payment of the interest rate swap the same as the time interval of the rate reset periods of the hedgeable item? (Examples that meet this criterion include an interest rate swap with a variable payment referenced to (1) the SIFMA swap index—a seven-day index—that hedges variable-rate bonds with a rate reset every seven days and (2) an interest rate swap with a variable payment referenced to the one-month LIBOR index that hedges taxable variable-rate bonds with a monthly rate reset.)

22h. Are the frequency of the rate resets of the variable payment of the swap and the hedgeable item the same? (For example, this criterion is met by an interest rate swap with a reference rate that resets monthly and hedges bonds with a variable interest rate that also resets monthly.)

22i. Are the rate reset dates of the interest rate swap within six days of the rate reset dates of the hedgeable item? (For example, this criterion is met by an interest rate swap with a reference rate that resets on the 15th day of the month that hedges bonds with a variable interest rate that resets on the 18th day of the month.)

22j. Are the periodic interest rate swap payments within 15 days of the periodic payments of the hedgeable item?

If "yes" to all of questions 22a-j, the interest rate swap is an "effective" cash flow hedge under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 22 a-j, the interest rate swap is not an "effective" cash flow hedge under the Consistent Critical Terms Method and must be further evaluated. Begin the next stage of the evaluation with question 23.

For an "effective" interest rate swap-fair value hedge (¶38):

23a.	Is the notional amount of the interest rate swap the same as the principal amount of the hedgeable item throughout the life of the hedging relationship? (This criterion is met if the notional amount of the interest rate swap and principal amount of the hedgeable item are equal over the entire term of the hedgeable item, even if the hedgeable item amortizes or otherwise adjusts subsequent to the inception of the hedge.)		
23b.	Upon association with the hedgeable item, does the interest rate swap have a zero fair value?		
23c.	Is the formula for computing net settlements under the interest rate swap the same for each net settlement? (That is, the fixed rate is the same throughout the term of the interest rate swap. Likewise, each variable payment of the interest rate swap is based on the same variable, such as the same reference rate or index.)		
23d.	Is it true that the interest rate swap that hedges interest rate risk has a variable payment based on a benchmark interest rate without multiplication by a coefficient, such as 68 percent of LIBOR? (The benchmark interest rate, however, may be adjusted by addition or subtraction of a constant, such as the SIFMA swap index plus 10 basis points, provided that the constant is specifically attributed to the effect of state-specific tax rates.)		
23e.	Is it true that the hedgeable item is not prepayable? (that is, the hedgeable item is not able to be settled by either party prior to its scheduled maturity). This criterion does not apply to a call option in an interest-bearing hedgeable item that is matched by a mirror-image call option in an interest rate swap if both of the following criteria are met: (1) A mirror-image call option matches the terms of the call option in the hedgeable item. The terms include maturities, strike price, related notional amounts, timing and frequency of payments, and dates on which the instruments may be called. (2) The University is the writer of one call option and the holder (or purchaser) of the other call option.		
23f.	Is the expiration date of the interest rate swap on or about the maturity date of the hedgeable item so that the University will not be exposed to interest rate risk or market risk?		
23g.	Is it true that the reference rate of the interest rate swap has neither a floor nor a cap?		
23f.	Does the reference rate of the interest rate swap reset at least every 90 days so that the variable payment or receipt is considered to be at a market rate?		

If "yes" to all of questions 22a-f, the interest rate swap is an "effective" <u>fair value hedge</u> under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 23 a-f, the interest rate swap is not an "effective" <u>fair value hedge</u> under the Consistent Critical Terms Method and must be further evaluated. Begin the next stage of the evaluation with question 24a.

For an "effective" forward contract-cash flow hedge (¶39):

24a. Is the object of the hedge an existing single asset or liability, or group of assets and liabilities, that are currently measured at fair value on the SRECNA, such as debt or equity securities denominated in a foreign currency?

If "yes" to question 24a, the derivative instrument is an investment derivative. Apply investment derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to question 24a, continue to 24b.

24b. Is the object of the hedge an expected single asset or liability, or group of assets and liabilities, that are not currently measured at fair value on the SRECNA, such as the future purchase of debt or equity securities denominated in a foreign currency?

If "yes" to question 24b, a hedgeable item exists and therefore continue the evaluation to 24c to determine whether the potential hedging derivative is "effective".

If "no" to question 24b, the derivative instrument is an investment derivative. Apply investment derivative financial reporting treatment and disclosures as outlined in the IRM.

24c. Is the forward contract for the purchase or sale of the same quantity or notional amount and at the same time as the hedgeable item?

24d. Upon association with the hedgeable item, does the forward contract have a zero fair value?

24e. Is the reference rate of the forward contract consistent with the reference rate of the hedgeable item?

If "yes" to all of questions 24c-e, the forward contract is an "effective" cash flow hedge under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM. Discontinue the evaluation.

If "no" to any one of questions 24a-c, the forward contract is not an "effective" cash flow hedge under the Consistent Critical Terms Method. Do not apply hedging derivative financial reporting treatment. Apply investment derivative financial reporting treatment and disclosures as outlined in the IRM. Discontinue the evaluation.

Quantitative Methods

If the interest rate swap or forward contract is not "effective" under the Consistent Critical Terms Method, continue the evaluation using at least one of the quantitative methods discussed below.

Synthetic instrument method-cash flow hedge (¶42-43):

25a. Is the notional amount of the potential hedging derivative instrument the same as the principal amount of the associated variable-rate asset or liability throughout the life of the hedging relationship? (This criterion is met if the notional amount of the swap and principal amount of the hedgeable item match for each hedged interest payment, even if the hedged item amortizes or otherwise adjusts subsequent to the inception of the hedge.)

25b. Upon association with the variable-rate asset or liability, does the potential hedging derivative instrument have a zero fair value or is the forward price at-the-market?

25c. Is the formula for computing net settlements under the potential hedging derivative instrument the same for each net settlement; that is, the same fixed rate, reference rate, and constant adjustment, if any, throughout the term of the potential hedging derivative instrument?

25d. Do the interest receipts or payments of the potential hedging derivative instrument occur during the term of the variable-rate asset or liability, and no interest receipts or payments occur after the term of the variable-rate asset or liability? (For example, a swap that hedges the first 10 years of a 15-year variable-rate bond meets this criterion.)

If "yes" to all of questions 25a-d, the Synthetic Instrument Method may be applied to evaluate the effectiveness of a potential hedging derivative. Continue with question 26.

If "no" to any one of questions 25a-d, the Synthetic Instrument Method may not be applied to evaluate the effectiveness of a potential hedging derivative. Skip to question 27 for another quantitative method.

26. Under the synthetic instrument method, a potential hedging derivative instrument is effective if the actual synthetic rate is substantially fixed. The results of this analysis should be evaluated as follows:

26a. Is the actual synthetic rate within a range of 90 to 111 percent of the fixed rate of the potential hedging derivative instrument?

26b. If the actual synthetic rate is outside the required range for the current reporting period, the actual synthetic rate should be calculated on a life-to-date basis. Is the actual synthetic rate on a life-to-date basis within the required range?

26c. If a short time period has elapsed since inception of the hedge and the actual synthetic rate is outside the required range, the evaluation may include hypothetical payments, as if the hedge had been established at an earlier date. Effectiveness should then be reevaluated. For example, the first reporting period ends 90 days into a 10-year hedge, and when the government prepares its financial statements, it finds that the actual synthetic rate for the 90-day period is outside the 90 to 111 percent range. In that case, hypothetical payments from periods prior to the establishment of the hedge may be added to the evaluation. Does that analysis show a synthetic rate within the required range?

If "yes" to any of questions 26a-c, the derivative instrument is an "effective" cash flow hedge under the Synthetic Instrument Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 26a-c, the derivative instrument is not an "effective" cash flow hedge under the Synthetic Instrument Method and must be further evaluated. Skip to question 27 for another quantitative method.

Dollar-offset method-fair value or cash flow hedge (¶44):

27. The dollar-offset method evaluates effectiveness by comparing the changes in expected cash flows or fair values of the potential hedging derivative instrument with the changes in expected cash flows or fair values of the hedgeable item. This evaluation may be made using changes in the current period or on a life-to-date basis. Do changes in either the hedgeable item or the potential hedging derivative instrument divided by the other result within a range of 80 to 125 percent in absolute terms?

If "yes" to question 27, the derivative instrument is an "effective" as either a cash flow or fair value hedge under the Dollar Offset Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to question 27, the derivative instrument is not an "effective" cash flow or fair value hedge under the Dollar Offset Method and must be further evaluated. Skip to question 28 for another quantitative method.

Regression analysis method (¶45-47):

Cash flow hedges. If a potential hedging derivative instrument is employed as a cash flow hedge, the relationship analyzed should be relevant cash flows, rates, or fair values of the potential hedging derivative instrument and the hedgeable item. See ¶46.

Fair value hedges. If a potential hedging derivative instrument is employed as a fair value hedge, the relationship analyzed should be the changes in fair values of the potential hedging derivative instrument and the hedgeable item.

28. For either a cash flow or fair value hedge, under the regreession analysis method:

28a. Is the R-squared of the regression analysis is at least 0.80?

28b. Does the F-statistic calculated for the regression model demonstrate that the model is significant using a 95 percent confidence interval?

28c. Is the regression coefficient for the slope is between –1.25 and –0.80?

If "yes" to all of questions 28a-c, the derivative instrument is either an "effective" cash flow hedge or fair value hedge under the Regression Analysis Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 28a-c, the derivative instrument is not an "effective" cash flow or fair value hedge under the Regression Analysis Method and must be further evaluated. Skip to question 29 for another quantitative method.

Other Quantitative Methods (¶48):

The University may use a quantitative method to evaluate effectiveness not specifically identified in Statement No. 53 if the method meets all of the following criteria:

29a. Through identification and analysis of critical terms, does the method demonstrates that the changes in cash flows or fair values of the potential hedging derivative instrument substantially offset the changes in cash flows or fair values of the hedgeable item?

29b. Can replicable evaluations of effectiveness be generated that are sufficiently complete and documented such that different evaluators using the same method and assumptions would reach substantially similar results?

29c. Have the substantive characteristics of the hedgeable item and the potential hedging derivative instrument that could affect their cash flows or fair values been considered?

If "yes" to all of questions 29a-c, another quantitative method may be used to demonstrate effectiveness.

If "no" to any of questions 29a-c, another quantitative method may not be used to demonstrate effectiveness.

EXISTING OR EXPECTED COMMODITY TRANSACTIONS

Based upon the answers to the following, determine whether the Consistent Critical Terms Method of evaluating a commodity asset or expected transaction results in an "effective" hedge:

Consistent Critical Terms Method

For an "effective" commodity swap-cash flow hedge (¶51):

30a.	Is the commodity swap for the purchase or sale of the same quantity (notional amount) of the same hedgeable item at the same time and delivery location as the hedgeable item?	N/A	N/A
30b.	Upon association with the hedgeable item, does the commodity swap have a zero fair value?	N/A	N/A
30c.	Is the reference rate of the commodity swap consistent with the reference rate of the hedgeable item. (For example, a commodity swap hedges the University's natural gas purchases at the Henry Hub pricing point. That commodity swap also should have a reference rate based on the Henry Hub pricing point to meet this criterion.)	N/A	N/A
30d.	Is it true that the reference rate of the commodity swap does not have a floor or cap unless the hedgeable item has a floor or cap? (Floors and caps place limits on expected cash flows. If the hedgeable item has a floor or cap, the commodity swap has a comparable floor or cap on the variable commodity price.)	N/A	N/A

If "yes" to all of questions 30a-d, the interest rate swap is an "effective" cash flow hedge under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 30 a-d, the interest rate swap is not an "effective" cash flow hedge under the Consistent Critical Terms Method and must be further evaluated. Begin the next stage of the evaluation with question 31.

For an "effective" commodity swap-fair value hedge (¶52):

31a.	Is the commodity swap for the purchase or sale of the same quantity (notional amount) of the same hedgeable item at the same time and delivery location as the hedgeable item?	N/A	N/A
31b.	Upon association with the hedgeable item, does the commodity swap have a zero fair value?	N/A	N/A
31c.	Is it true that the hedgeable item is not prepayable? (that is, the hedgeable item is not able to be settled by either party prior to its scheduled maturity). This criterion does not apply to a call option in an interest-bearing hedgeable item that is matched by a mirror-image call option in a commodity swap if both of the following criteria are met: (1) A mirror-image call option matches the terms of the call option in the hedgeable item. The terms include maturities, strike price, related notional amounts, timing and frequency of payments, and dates on which the instruments may be called. (2) The University is the writer of one call option and the holder (or purchaser) of the other call option.	N/A	N/A
31d.	Is the expiration date of the commodity swap on or about the maturity date of the hedgeable item so that the University will not be exposed to interest rate risk or market risk?	N/A	N/A

31e.	Is it true that the reference rate of the commodity swap has neither a floor nor a cap?	N/A	N/A
31f.	Does the reference rate of the commodity swap reset at least every 90 days so that the variable payment or receipt is considered to be at a market rate?	N/A	N/A

If "yes" to all of questions 31a-f, the commodity swap is an "effective" fair value hedge under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 31 a-f, the commodity swap is not an "effective" fair value hedge under the Consistent Critical Terms Method and must be further evaluated. Begin the next stage of the evaluation with question 33a.

For an "effective" commodity forward contract-cash flow hedge (¶53):

32a.	Is the forward contract for the purchase or sale of the same quantity or notional amount and at the same time as the hedgeable item?	N/A	N/A
32b.	Upon association with the hedgeable item, does the forward contract have a zero fair value?	N/A	N/A
32c.	Is the reference rate of the forward contract consistent with the reference rate of the hedgeable item?	N/A	N/A

If "yes" to all of questions 32a-c, the commodity forward contract is an "effective" cash flow hedge under the Consistent Critical Terms Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 32 a-c, the commodity forward contract is not an "effective" cash flow hedge under the Consistent Critical Terms Method and must be further evaluated. Begin the next stage of the evaluation with question 33a.

Quantitative Methods

If the commodity swap or forward contract is not "effective" under the Consistent Critical Terms Method, continue the evaluation using at least one of the quantitative methods discussed below.

Synthetic instrument method-cash flow hedge (¶56-57):

33a.	Is the notional amount of the potential hedging derivative instrument the same as the quantity of the hedgeable item?	N/A	N/A
33b.	Upon association with the hedgeable item, does the potential hedging derivative instrument have a zero fair value or is the forward price at-the-market?	N/A	N/A

If "yes" to all of questions 33 a-b, the Synthetic Instrument Method may be applied to evaluate the effectiveness of a potential hedging derivative. Continue with question 34.

If "no" to any one of questions 33 a-b, the Synthetic Instrument Method may not be applied to evaluate the effectiveness of a potential hedging derivative. Skip to question 35 for another quantitative method.

34.	Under the synthetic instrument method, a potential hedging derivative instrument is effective if the actual synthetic rate is substantially fixed. The results of this analysis should be evaluated as follows:	N/A	N/A
34a.	Is the actual synthetic rate within a range of 90 to 111 percent of the fixed rate of the potential hedging derivative instrument?	N/A	N/A

Dollar-offset method-fair value or cash flow hedge (¶58):

35. The dollar-offset method evaluates effectiveness by comparing the changes in expected cash flows or fair values of the potential hedging derivative instrument with the changes in expected cash flows or fair values of the hedgeable item. This evaluation may be made using changes in the current period or on a life-to-date basis. Do changes in either the hedgeable item or the potential hedging derivative instrument divided by the other result within a range of 80 to 125 percent in absolute terms?	N/A	N/A

If "yes" to question 35, the derivative instrument is an "effective" as either a cash flow or fair value hedge under the Dollar Offset Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to question 35, the derivative instrument is not an "effective" cash flow or fair value hedge under the Dollar Offset Method and must be further evaluated. Skip to question 36 for another quantitative method.

Regression analysis method (¶59):

Cash flow hedges. If a potential hedging derivative instrument is employed as a cash flow hedge, the relationship analyzed should be relevant cash flows, rates, or fair values of the potential hedging derivative instrument and the hedgeable item. See ¶60.

Fair value hedges. If a potential hedging derivative instrument is employed as a fair value hedge, the relationship analyzed should be the changes in fair values of the potential hedging derivative instrument and the hedgeable item.

For either a cash flow or fair value hedge, under the regreession analysis method:

36a. Is the R-squared of the regression analysis is at least 0.80?	N/A	N/A
36b. Does the F-statistic calculated for the regression model demonstrate that the model is significant using a 95 percent confidence interval?	N/A	N/A
36c. Is the regression coefficient for the slope is between –1.25 and –0.80?	N/A	N/A

If "yes" to all of questions 36a-c, the derivative instrument is either an "effective" cash flow hedge or fair value hedge under the Regression Analysis Method. Apply hedging derivative financial reporting treatment and disclosures as outlined in the IRM.

If "no" to any one of questions 36a-c, the derivative instrument is not an "effective" cash flow or fair value hedge under the Regression Analysis Method and must be further evaluated. Skip to question 37 for another quantitative method.

Other Quantitative Methods (¶62):

The University may use a quantitative method to evaluate effectiveness not specifically identified in Statement No. 53 if the method meets all of the following criteria:

37a. Through identification and analysis of critical terms, does the method demonstrates that the changes in cash flows or fair values of the potential hedging derivative instrument substantially offset the changes in cash flows or fair values of the hedgeable item?	N/A	N/A
37b. Can replicable evaluations of effectiveness be generated that are sufficiently complete and documented such that different evaluators using the same method and assumptions would reach substantially similar results?	N/A	N/A
37c. Have the substantive characteristics of the hedgeable item and the potential hedging derivative instrument that could affect their cash flows or fair values been considered?	N/A	N/A

If "yes" to all of questions 37 a-c, another quantitative method may be used to demonstrate effectiveness.

If "no" to any of questions 37 a-c, another quantitative method may not be used to demonstrate effectiveness.

AMENDMENT NO. 1
TO THE
AMENDED AND RESTATED DIRECT ACCESS SERVICES AGREEMENT ("DASA")
BETWEEN
SEMPRA ENERGY SOLUTIONS LLC
AND
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

This Amendment No. 1 to the Amended and Restated Direct Access Services Agreement ("Amendment") is entered into this 22nd day of June 2009 by and between Sempra Energy Solutions LLC ("ESP") and The Regents of the University of California ("University"). ("ESP" and "University" are referred herein collectively as the "Parties").

Whereas the Parties executed the Amended and Restated DASA, dated May 12, 2008 and now desire to amend the terms and of the DASA as provided herein.

Now therefore, in consideration of the mutual promises set forth herein and intending to be legally bound by the terms and conditions of the DASA, as amended, the Parties hereby agree as follows:

1. Amendment of Definitions. The Definitions section of the DASA is augmented by the addition of the following defined terms inserted in alphabetical order:

"MRTU" means the CAISO Market Redesign and Technology Upgrade

"Supply Point" means CAISO EZGenHub NP15 or CAISO EZGenHub SP15

"LMP" means Locational Marginal Price

"LAP" means Load Aggregation Point

"Real time LMP" means CAISO Real time LMP for the Delivery Point as published at http://oasis.caiso.com/mrtu-oasis

"Day Ahead LMP" means CAISO LMP for the Delivery Point as published at http://oasis.caiso.com/mrtu-oasis

"Locational Basis Charge" means an hourly calculated amount equal to the Day Ahead LMP at the Delivery Point less the Day Ahead LMP at the Supply Point

The "Delivery Point" definition is restated as follows:
"Delivery Point" means CAISO LAP SDG&E, CAISO LAP PG&E and CAISO LAP SCE

The "Hourly Imbalance Energy Charge" is restated as follows:
"Hourly Imbalance Energy Charge" means the simple average of the twelve, 5 minute Real Time LMP for a given hour at a Delivery Point

2. Amendment of Section 1.5. The sixth sentence contained in Section 1.5 of the DASA is hereby deleted in its entirety and replaced with the following:

> The renewable energy resource must be connected to the WECC transmission system. RECs may be used to meet any portion of the renewable content requirement of this contract as long as they meet the above criteria and can be tracked and verified through the Western Renewable Energy Generation Information System.

3. Amendment of Section 3.1. Section 3.1 of the DASA is hereby deleted in its entirety and replaced with the following:

> 3.1 Pricing for Full Requirement. University shall pay the Contract Price specified in Exhibit T as long as hourly usage is within the parameters for usage set forth in Exhibit B (Demand and Usage Limitations) and as further specified in this Section. Usage shall be adjusted to include the applicable DLF on an account-by-account basis. The Contract Price shall include all Direct Access Services pursuant to California regulation. All applicable California Independent System Operator ("CAISO") charges, including MRTU charges, shall be excluded from the Contract Price as specified in Exhibit T. Such charges shall be passed through to University with no mark-up or profit. CAISO Imbalance Energy charges may not be charged for any usage that is within the parameters specified by Exhibit B and Sections 3.1.1, 3.1.2, and 3.2 below. Contractor's direct costs of complying with the CPUC's RA and RPS requirements applicable to the University's load shall be passed through to University with no mark-up or profit. Contractor shall make commercially reasonable efforts to minimize all above costs and upon University's request shall provide documentation sufficient to support Contractor's charges. University shall pay the Contract Price times the Energy Usage, with the following adjustments when Energy Usage exceeds Maximum Hourly Usage or is below Hourly Minimum Usage.

4. Amendment of Section 3.1.3. Section 3.1.3. of the DASA is hereby deleted in its entirety and replaced with the following:

> University shall pay the Locational Basis Charge for the Contract Quantity. The Locational Basis Charge shall be calculated each hour as an amount equal to the Day Ahead LMP at the relevant Delivery Point less the Day Ahead LMP at the respective Supply point.

5. Amendment of Sections 3.2 and 3.3. The words "ICE Market Price" appearing in the third and fourth sentences of Section 3.2. and in the first sentence of Section 3.3.of the DASA are hereby deleted in their entirety and replaced with the words "Day Ahead LMP at the delivery point."

6. Amendment of Exhibit T. The form of Exhibit T attached to the DASA is hereby deleted in its entirety and replaced with the form of Exhibit T attached hereto and incorporated into the DASA by this reference.

7. General Provisions. Except as otherwise modified by this Amendment, all other terms and conditions of the DASA shall remain unchanged and in full force and effect and are hereby ratified by the Parties. In the event of a conflict between the terms of the DASA and this Amendment, the provisions of this Amendment shall control and take precedence over confliction provisions in the DASA. This Amendment may be executed in two counterparts, which together shall constitute the fully executed Amendment

In WITNESS WHEREOF, the authorized representatives of both Parties have executed this Amendment, effective as of the date above written:

SEMPRA ENERGY SOLUTIONS LLC	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
BY: _____	BY: _____
NAME: James M. Wood	NAME: Katherine N. Lapp
TITLE: President	TITLE: Executive Vice President

Amended and Restated Direct Access Services Agreement

Between

Constellation NewEnergy, Inc

and

The Regents of The University of California

Dated: May 12, 2008

This Amended and Restated Direct Access Services Agreement (the "Agreement") dated May 12, 2008 ("Effective Date"), is by and between Constellation NewEnergy, Inc., a Delaware corporation ("Contractor") and The Regents of The University of California, a California corporation ("University").

Definitions:

"Accounts" means all University UDC electricity accounts covered under this Agreement, as itemized in Exhibit A and are categorized as Full Requirement Accounts or Variable Requirement Accounts

"Agreement" means an executed Direct Access Services Agreement, also referred to as DASA in exhibits.

"ANSI" means American National Standards Institute.

"Average Demand" means the kilowatt ("kW") value obtained by dividing the Energy used by University over a specified period by the number of hours in that period.

"Average Monthly CAISO Imbalance Energy Price" means the simple average of the Hourly Imbalance Energy Price that was applied in the pertinent billing period and is expressed in dollars per MWh ("$/MWh").

"CAISO" means California Independent System Operator.

"CAISO Congestion Zone" means a portion of the electric grid under authority of the CAISO that the CAISO has defined for the purpose of characterizing transmission capacity into and out of each such portion of the grid.

"CAISO Imbalance Energy Charges" means amounts charged to Scheduling Coordinators for its actual loads deviating from its scheduled loads.

"CAISO Imbalance Energy Price", also referred to as "Hourly Imbalance Energy Price" is expressed in dollars per megawatt-hour ("$/MWh").

"Campus" means one of the University campuses or medical centers with Accounts covered under this Agreement

"Campuses" means a plural of "Campus"

"Community Choice Aggregation" means an effort by a community to procure energy from an ESP in lieu of bundled UDC service.

"Contractor" means an ESP that has executed this Agreement with University and that has also executed an Exhibit T for Full Requirement Accounts and an Exhibit Z for Variable Requirement Accounts with University.

"Contract Price" means the amount charged per unit of Energy for Full Requirement Accounts included in Exhibit B during the Delivery Period of a particular Exhibit T.

"Contract Quantity" means Energy to be delivered per Exhibit Z

"CPUC" means the California Public Utility Commission

"DASA" means Direct Access Services Agreement

"DASR" means Direct Access Service Request, as defined by the CPUC's rules governing Direct Access.

"Delivery Period" means the period specified in a particular Exhibit T to this Agreement during which specific pricing terms in that Exhibit T are in effect.

"Delivery Point" means any point of interconnection between an applicable third party transmission and distribution system through which Contractor has arranged for Energy to be supplied to University, and the transmission and distribution system of either a UDC or the CAISO.

"Direct Access" means the type of electricity service where an end-use UDC customer elects to procure its electricity, and any other associated CPUC-authorized energy services, directly from an Energy Service Provider ("ESP") instead of the UDC, as such service is governed by California laws and regulations.

"Direct Access Services" means all ancillary services, supply/Scheduling Coordinator services, metering, usage data and dual billing services, and other services as may be required under the CPUC's rules and regulations governing ESP provision of electricity to UDC end-use customers.

"Direct Access Tariffs" means all rates and regulations approved by the CPUC in relation to the provision of Direct Access Services.

"DLF" means Distribution Loss Factor and refers to quantified electric energy resistance losses incurred as power flows through UDC distribution systems.

"Due Date" means fifteen (15) days after receipt by University of Contractor's invoice.

"Energy" means all electric energy requirements for the applicable Accounts not otherwise supplied by WAPA.

"Energy Usage" means metered energy consumption for a given period

"ESP" means a company certified by the California Public Utilities Commission to provide electricity supply and associated services under California's laws and regulations governing Direct Access.

"Exhibit A" means an exhibit to this Agreement that lists all Accounts covered by the Agreement's terms and conditions, subject to amendment by University pursuant to a notice duly given pursuant to Sections 3.7 and 11.11.

"Exhibit B" means an exhibit to this Agreement that contains usage and demand limitations for Full Requirement Accounts pursuant to a corresponding Contract Price in an Exhibit T to this Agreement.

"Exhibit T" means an exhibit to this Agreement that when executed by the Parties establishes a Contract Price and Delivery Period for provision of Energy for Full Requirement Accounts.

"Exhibit Z" means an exhibit to this Agreement that contains pertinent information for pricing for specified Variable Requirement Accounts, as described in Section 3.2

"Forward Purchase" means negotiated pricing for Variable Requirement Accounts under which the Parties agree that, at the request of the University, best efforts will be made to establish a fixed price, similar to a Contract Price, for specified Variable Requirement Accounts. Forward

Purchase pricing shall cover a defined period within a Delivery Period, and a defined Energy usage and demand for specified Variable Requirement Accounts.

"Full Requirement Accounts" means the Accounts shown on Exhibit A that correspond to those applicable to the Contract Price

"'Green-e' certified" means a renewable energy resource or Renewable Energy Certificate ("REC") that has been verified as having met certain environmental and consumer protection standards established by the Green-e Program, as administered by the non-profit organization Center for Resource Solutions.

"Hourly Energy" means the number of kilowatt-hours ("kWh") or megawatt-hours (MWh) used for a particular hour in a billing cycle.

"Hourly Imbalance Energy Price" means is the simple average of the six, 10 minute real time energy prices for a given hour, as published by the CAISO for the NP15 and SP 15 load zones .

"ICE Market Price" means the volumetric weighted average on-peak and off-peak periods price (expressed in kWh) of the day-ahead transactions for the CAISO's NP15 and SP15 Congestion Zone for on-peak and off-peak Energy, as published by the Intercontinental Exchange on www.theice.com.

"Intercontinental Exchange" means the corporate entity by this name that operates a trading platform for electricity sales, and which can be found on the Internet at www.theice.com.

"Interest Rate" means 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.

"kVa" means kilovolt-ampere and is a measure of apparent power.

"kW" means kilowatt and is a unit of power equal to one thousand watts.

"kWh" means kilowatt-hour and is a unit of energy equal to one thousand watt-hours.

"Maximum Hourly Usage" means an amount of energy (in kWh or MWh), if and as expressed for each hour in Exhibit B, used by all Full Requirement Accounts in a given month, which is used to determine the quantity of Energy for a given month that is entitled to receive the Contract Price, and the quantity of Energy that is subject to other pricing terms, according to the terms of Section 3 of this Agreement.

"MDMA" means Meter Data Management Agent.

"MSP" means Meter Service Provider.

"MW" means megawatt and is a unit of power equal to one thousand kilowatts or one million watts.

"MWh" means megawatt-hour and is a unit of energy and is equal to one thousand kWh.

"Minimum Hourly Usage" means an amount of energy, in kWh or MWh, if and as expressed for each hour in Exhibit B, used by all Accounts in a given month, which is used to determine the Minimum Monthly Bill according to the terms of Section 3 of this Agreement.

"Parties" means the University and the Contractor also referred to individually as "Party"

"RA" means Resource Adequacy, which is a charge imposed on load-serving entities, including UDCs and ESPs to ensure that they have sufficient resources to meet their contractual Energy delivery requirements.

"REC" means Renewable Energy Certificate.

"RPS" means California Renewables Portfolio Standard, as defined by California Public Utilities Code Section 399.12(a).

"Service Fee" means the full amount to be paid Contractor for its Direct Access Services and profit/overhead for energy delivery of WAPA, Spot Market Period and Variable Requirement Accounts, except Forward Purchases, on a $/MWh basis. The Service Fee is to be priced by ESP with each Exhibit T. The Service Fee shall stay in effect during the Delivery Period, and apply to subsequent Spot Market Period, as applicable. Service Fee shall be capped as indicated in Exhibit T; pricing above this cap shall make the Exhibit T invalid at the discretion of University.

"Scheduling Coordinator" means the certified entity responsible for complying with CAISO rules and tariffs governing the scheduling of the Energy supply.

"Spot Market Period" means any period of time during the effective term of the Agreement in which Contractor may be providing Direct Access Energy and Services when there is no effective Delivery Period or Contract Price.

"Term" refers to the term of this Agreement.

"UCSF" means University of California at San Francisco.

"UDC" means Utility Distribution Company, which include Pacific Gas & Electric Company, Southern California Edison, and San Diego Gas and Electric Company, and which is under the jurisdiction of the CPUC.

"Uncontrollable Force" means an event (or events) that is not within the control of the Party affected by the event, and which such Party is unable to prevent or overcome through commercially reasonable efforts.

"University" means The Regents of the University of California.

"Usage Adjustment Pricing" means a credit or a debit to University Contract Pricing invoicing as a result of Energy Usage greater than the Maximum Hourly Usage or less than the Minimum Hourly Usage.

"Variable Requirement Accounts" means the Accounts indicated on Exhibit A that are not included in Exhibit T.

"WAPA" means Western Area Power Administration.

"WAPA Energy" means Energy provided by WAPA to UCSF.

"WECC" means Western Electricity Coordinating Council.

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. Energy Supply and Delivery

1.1 Energy and Services. Contractor shall sell all Energy not otherwise supplied by the Western Area Power Administration as set forth in Section 1.2. The Energy for Accounts, together with all Direct Access Services as described in this Agreement or as otherwise required as a condition of Contractor serving as University's ESP. Contractor shall comply with all laws, rules, regulations, tariffs and orders applicable to the provisions of Direct Access Services under this Agreement, including but not limited to the Direct Access tariffs of UDCs. Contractor shall perform its obligations under this Agreement in a manner so as to avoid imposition of unnecessary cost or charges on University as a result of Contractor's performance or nonperformance.

1.2 Western Area Power Administration (WAPA) Energy: UCSF purchases electric power from WAPA pursuant to WAPA Contract Nos. 00-SNR-00376 as part of UCSF's usage requirements. As part of the Direct Access Services, Contractor shall provide all required scheduling coordinator services for the WAPA Energy in accordance with Section 9 and Exhibits C and D of the UCSF WAPA Contract, as applicable to the Accounts. With respect to energy supplied by WAPA, Contractor will not bear congestion risk and all congestion charges and any CAISO ancillary and other miscellaneous charges for such energy will be paid by University. If WAPA energy is not delivered due to congestion, as University's Scheduling Coordinator, Contractor will liquidate such energy and charge University for replacement energy at the Hourly Imbalance Energy Price, and credit University with the liquidation amount in accordance with all applicable CAISO rules and requirements. Unless due to congestion, as above, Contractor will not be permitted to procure and resell UCSF-allocated WAPA supplied energy but will instead be allowed a Service Fee for each scheduled and delivered MWh.

1.3 Delivery. Contractor shall cause the Energy, including WAPA Energy, to be delivered to the Delivery Point at its sole cost and expense, except for the Service Fee included in paragraphs 1.2 and 3.2. Title to the Energy provided by Contractor shall transfer to University at the Delivery Point.

1.4 Interactions with UDCs. If necessary, University shall execute a limited agency authorization in a form consistent with UDC tariffs, to release University usage information to ESP. Promptly upon execution of both this Agreement and an accompanying Exhibit T, the Parties shall take all steps reasonably necessary to have the Accounts listed in an accompanying Exhibit A placed on Direct Access with Contractor, including but not limited to, the submittal of timely and accurate DASRs by the Contractor in accordance with all applicable regulations and tariff rules. Contractor shall inform University of 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 upon request. After the Accounts have been transferred to service with Contractor, Contractor shall not submit any subsequent DASRs, not included in Exhibit A, without prior written authorization from University.

1.5 Renewable Energy. Contractor shall secure for University the minimum renewable energy content during the Delivery Period as specified in Exhibit T. Contractor shall be responsible for meeting its own regulatory minimum content independent of the level stipulated in the applicable Exhibit T. The renewable electricity must come from a technology that meets the definition of an 'eligible renewable energy resource' in the California RPS and University shall retain any right to the credit or the use of the incremental renewable energy component specified in Exhibit T. Contractor shall not use such renewable energy credits to meet its own regulatory mandates. The renewable energy resource must be connected to the WECC transmission system. RECs may be used to meet any portion of the renewable content requirement of this contract as long as they meet the above criteria and are 'Green-e' certified. The percentage content and prices for renewable energy shall be specified in the applicable Exhibit T. Any governmental agency credits resulting therefrom shall be passed through to University. Should any law or regulation increase the minimum renewable energy requirement above the amount specified by the then applicable Exhibit T, Section 6.2 of this Agreement shall apply. University's obligation to pay Contractor for renewable energy shall be limited to quantities of renewable energy provided exclusively for University. Upon University's request Contractor shall provide documentary evidence of Contractor's procurement of the required renewable energy content.

2. Term.

2.1 Condition Precedent. Notwithstanding any other provision in this Agreement, the Parties shall have no rights or obligations under this Agreement unless and until the Parties have executed Exhibit T to this Agreement, establishing a Contract Price and Delivery Period.

2.2 Purchase and Sale of Energy. The purchase and sale of Energy shall commence on the date that the applicable UDC switches service for an Account to Contractor, in which case the Term of this Agreement shall run from the Effective Date through the date the last Account is transferred to another energy provider. During the Term, the Parties may agree to one or more Delivery Period(s) and Contract Price(s) as set forth in Exhibit T or successive Exhibit Ts. Notwithstanding the foregoing, the Term of this Agreement shall not extend beyond June 30, 2011

2.3 Termination. University may terminate this Agreement upon 60 days prior written notice for any reason or no reason if there is no executed Exhibit T. University may also terminate this Agreement at the end of any Delivery Period upon 60 days prior written notice to the ESP. ESP may terminate this Agreement upon 60 days prior written notice to University if: the ESP a) has not executed an Exhibit T that has a current or pending Delivery Period, or b) is not providing Energy for a Z Period as defined by an executed Exhibit Z. If there is a current or pending Delivery Period or Z Period, then the ESP may terminate this Agreement upon prior written notice to University, provided that the date of termination shall be on or after the end of the 240th day following the end of the current or pending Delivery Period. If the ESP is providing Energy on a Spot Market Period Price basis, the ESP may terminate this Agreement upon 240 days prior written notice.

Upon receipt or delivery of a notice of termination pursuant to this Section, Contractor, if applicable, shall commence sending appropriate and timely DASRs to the UDCs to assure all of University's accounts are transferred to another provider as designated by University as close as reasonably practical to the end of the last effective Delivery Period or as soon as possible if termination occurs during a Spot Market Period.

3. Price

3.1 Pricing for Full Requirement Accounts. University shall pay the Contract Price specified in Exhibit T as long as hourly usage is within the parameters for usage set forth in Exhibit B (Demand and Usage Limitations) and as further specified in this Section. Usage shall be adjusted to include the applicable DLF on an account-by-account basis. The Contract Price shall include all Direct Access Services pursuant to California regulation. All applicable California Independent System Operator ("CAISO") charges shall be excluded from the Contract Price as specified in Exhibit T. Such charges shall be passed through to University with no mark-up. CAISO Imbalance Energy charges may not be charged for any usage that is within the parameters specified by Exhibit B and Sections 3.1.1, 3.1.2, and 3.2 below. Contractor's direct costs of complying with the CPUC's RA and RPS requirements applicable to the University's load shall be passed through to University with no mark-up or profit. Contractor shall make commercially reasonable efforts to minimize such RA and RPS costs and upon University's request shall provide documentation sufficient to support Contractor's RA and RPS charges. University shall pay the Contract Price times the Energy Usage, with the following adjustments when Energy Usage exceeds Maximum Hourly Usage or is below Hourly Minimum Usage.

3.1.1 Pricing adjustment for Energy Usage greater than the projected Maximum Hourly Usage. For each hour the Energy Usage exceeds the Hourly Maximum Usage as set forth in Exhibit B, University shall pay a usage adjustment as follows: [Energy Usage – Maximum Hourly Usage] x [Hourly Energy Imbalance Price – Contract Price]

3.1.2 Pricing adjustment for Energy Usage Less than the Minimum Hourly Usage. For each hour Energy Usage is less than the Minimum Hourly Usage as set forth in Exhibit B, University shall pay or be credited a Usage Adjustment as follows: [Energy Usage – Minimum Hourly Usage] x [Hourly Imbalance Energy Price – Contract Price].

3.1.3 Not used

3.1.4. Billing for Usage not Eligible for Contract Price. Unless otherwise directed University, any changes or credits resulting from 3.1.1 or 3.1.2, shall be applied to the applicable Accounts on an equal $/kWh basis.

3.2 Variable Requirement Account Pricing. All of the usage for each specific Account included and annotated as a Variable Requirement Account in Exhibit A shall be excluded from the pricing described in Section 3.1 . The Contract Quantity for Variable Requirement Accounts shall be separately specified for CAISO stipulated on-peak and off-peak periods, and shall be expressed as a constant demand rate (MW or kW) for each such period and set forth in Exhibit Z.

In the event that an index price develops that more closely reflects Contractor's market transactions, Contractor, with the prior written consent of the University (which shall not be unreasonably withheld), may elect to use that index as the ICE Market Price under this Agreement. In the event that the Intercontinental Exchange is unavailable, ceases to exist, or no longer reflects Contractor's market transactions, the ICE Market Price shall correspond to (i) the hourly market price of electricity, as determined by reference to a reliable index of California day-ahead market prices or (ii) Contractor's actual cost of day-ahead electricity if no reliable index of California day-ahead market prices exists.

3.2.1 *For the Variable Requirement Accounts*, University shall pay the applicable ICE Market Price for daily peak and off peak periods plus all applicable CAISO charges, plus a Service Fee per MWh multiplied by the Contract Quantity indicated in Exhibit Z.

3.2.1.1 *Excess quantity*: during any hour of delivery, if University's metered usage including any usage attributable to DLF, exceeds the Contract Quantity specified on Exhibit Z, University shall reimburse Contractor for this excess quantity at the Hourly Imbalance Energy Price plus applicable CAISO charges plus the Service Fee per MWh.

3.2.1.2 *Deficit quantity*: During any hour of delivery, if University's Energy Usage including any usage attributable to DLF, is less than the Contract Quantity specified on Exhibit Z. This difference multiplied by Hourly Imbalance Energy Price during that hour of deficit usage shall be credited by contractor to the University's applicable Variable Requirement Account.

3.2.2. *Forward Purchase price*: In lieu of or in combination with Section 3.2.1, University may enter into a fixed price Forward Purchase term agreement with Contractor for a specified volume of Energy Usage for a Variable Requirement Account. In the event that the purpose of such agreement is to provide supplemental power during a scheduled down time of a cogeneration unit, in lieu of the provisions under 3.2.1, University will provide Contractor with at least 5 days lead time, the down time schedule and Energy requirement for this term. Such short term agreements shall under no circumstances extend beyond the termination date of the Agreement. Each Forward Purchase pricing purchase shall be documented by a fully executed Exhibit Z.

3.3 Spot Market Period Price. During any Spot Market Period for applicable Accounts, University shall pay Contractor the ICE Market Price for Energy sold pursuant to this Agreement, which includes usage attributable to DLF; plus all applicable CAISO charges; plus a Service Fee except for delivery of Energy under the terms of 3.2.2. The Spot Market Period Price is applicable to any Account that is not covered by an executed and effective Exhibit T or an Exhibit Z.

3.4 Taxes. University shall pay all taxes related to its Energy usage. University 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 University invoices. In the event Contractor is assessed any taxes on or resulting from University's Energy Usage, University shall indemnify Contractor for all such assessed tax, including applicable penalties and interest.

3.5 Administrative Fees. Commencing October 1, 2008, and quarterly thereafter, Contractor shall pay an administrative fee of $0.75 per MWh to University according to the formulae in this Section 3 for MWh usage billed and actually collected by Contractor during the preceding quarter from University.

3.6 Sale or Purchase of Surplus Energy. Contractor shall use its commercially reasonable efforts to sell or purchase or develop the ability to sell or purchase surplus electricity produced by individual Campus generation units not subject to other contractual obligations, at a price to be mutually agreed upon by the Parties.

3.7 Adjustments of Energy Requirements. University's Energy and demand requirements may be changed from those stated in Exhibit B due to planned decreases in or expansions of facility operations, the effects of University self-generation or energy management and energy efficiency enhancements, or facility closures, with written notice as described in this Section 3. If University elects to adjust its Energy requirements during any time period where there is a currently effective and Contract Price Delivery Period it shall provide Contractor 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 University's timely notice, Contractor 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, University shall be responsible for the added cost of purchasing the additional power or loss from disposing of the surplus power incurred by Contractor to serve University's increases or decreases from the forecasted Energy requirements for each time University's demand falls outside the minimum or maximum limitations established in Exhibit B, as described in 3.1. 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.

3.8 Adjustment of Energy Usage Requirements. University may adjust its Energy Usage requirements for future unexecuted Delivery Periods without penalty. The Parties shall mutually agree to corresponding adjustments in the minimum and maximum limitations in Exhibit B which accompany a new Contract Price and a new Exhibit T.

3.9 Unplanned Outages of Cogeneration System. In the event of any unplanned outages of University cogeneration systems lasting more than two (2) hours, University shall provide notice to Contractor as soon as possible. Upon receipt of such notice, Contractor agrees to take such steps as are commercially reasonable and practicable to adjust its supply to better match the increased Energy requirements associated with the anticipated outage period.

4. Metering and Data Management Services.

4.1 Contractor's Metering Obligations. For University owned or leased meters, Contractor shall provide or cause to be provided in accordance with all applicable legal and/or regulatory requirements, including but not limited to, tariff requirements, MSP services and meter maintenance services for the Accounts. Contractor shall be responsible for all costs incurred for the MSP and maintenance services including any UDC costs, unless such services are required as a result of University's negligence or are costs related to installing replacement meters for the University radio frequency meters. Contractor or its subcontractor will use commercially reasonable efforts to obtain required meter data from a third party where such data is not supplied directly from University meters.

4.2 Meter Reading. Contractor shall remotely read all interval data recording meters as required for billing, posting interval meter data in accordance with paragraph 4.3, and acquiring the prior day's hourly load data, if necessary, for scheduling purposes under this Agreement, at no charge to University. For those accounts not metered with interval data recording units, Contractor shall obtain monthly meter reads from all applicable MDMAs which information is posted on the pertinent web sites. Current efforts by the utilities acting as MDMAs to install smart metering on all accounts will facilitate obtaining meter read data for all accounts and this technology shall be incorporated by Contractor in its operations as it becomes available.

4.2.1 Contractor shall perform all metering requirements as set forth in Section 16 of the WAPA Contracts.

4.2.2 Contractor shall use University metering, including the metering provided for net output of cogeneration units, and load information as necessary to meet its responsibilities as the ESP and Scheduling Coordinator for University's Accounts and as requested by Campuses. Contractor shall not use University metering and load information for any other purpose, or provide such information to any non-University entity, without express prior written permission by University.

4.2,3 Upon request and without cost, Contractor shall supply to University any metering information received by Contractor from the UDC. University may request, and Contractor shall provide, such information in the format received from the UDC and the MDMA.

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

4.3 Energy Usage Data, Notification and Reports. Contractor will maintain a secure internet protocol system on which it shall post available University interval meter data by Account so that Campuses may obtain up-to-date information about their account usage. University will provide an active phone line required for proper operation of Contractor's internet protocol system. The following information will be posted for each interval data meter account as well as in aggregate form in a manner that corresponds with the loads described in Exhibit B:

- Hourly interval data meter readings posted hourly
- Month-to-date kWh data posted daily

4.4 Campus Usage Reports. Contractor shall provide basic monthly reports to Campuses, which shall include:

- Weekly load data
- Billing quality hourly load data
- KVA peak summary (the meter must be capable of recording KVA)
- Typical days (weekday, weekends and holidays)
- Monthly summary data
- Monthly detail

4.5 University System Summary Reports. Contractor shall submit monthly summary reports for all accounts to the University's Office of the President which shall include the information set out in Section 4.4 - Campus Usage Reports.

4.6 Special Utility Tariff Provisions. University shall notify Contractor of any intended participation in demand response programs and if and when University becomes subject to Community Choice Aggregation efforts.

5. Billing, Payment, Disputes.

5.1 Billing. Contractor shall bill each Campus monthly for Energy Usage and services based on actual meter data for each Account, plus the applicable DLF. Each Campus monthly bill shall identify separately, for each Account, the Energy Usage and the Energy Usage associated with any DLF adjustment. Contractor may estimate charges, including CAISO charges, only if Energy Usage data are not available. Contractor shall use commercially reasonable efforts to obtain actual meter data as soon as practicable and shall adjust the invoice to University during the next billing cycle after the meter data become available. Invoices shall be deemed final, with respect to the Energy Usage component, if no adjustment for estimated usage has been billed within thirty six months of the original invoice date. Contractor shall communicate its best estimates of true billing amounts at University's request so that University may plan for actual expenditures during a fiscal year cycle.

5.2 Payment. Invoices shall be paid to Contractor by check, wire transfer or electronic funds transfer within fifteen (15) days after receipt by University of the invoice ("Due Date"). Late payments shall accrue interest daily at the Interest Rate.

5.3 Disputed Amounts. In the event University disputes all or any part of any bill submitted by Contractor under this Agreement, University shall nevertheless pay the undisputed portion of the invoice when due and shall notify Contractor in writing within three (3) months from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall use best efforts to resolve

the dispute amicably and promptly, and upon determination of the correct billing amount, University 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. 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.

6. Compliance With Laws And Regulations.

6.1 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, and all applicable tariffs, rules and requirements of the CAISO and the UDCs. Each Party shall furnish to the other any information required to enable the requesting Party to comply with such laws, rules, tariffs, and regulations.

6.2 Changes in Law or Regulation. If the scope of Direct Access Services in California is altered by law or regulation, resulting in material increases in costs under this Agreement, but the purchase and sale of Energy under this Agreement is not made illegal or impossible, the parties agree to negotiate in good faith to amend this Agreement within 45 days to accommodate such changes such that the amendment reflects, to the extent possible, the benefits and burdens of the initial agreement between the Parties.

7. Confidentiality.

7.1 Agreement Terms and Conditions. Contractor may disclose the terms and conditions of this Agreement to its contractors or subcontractors retained by it to provide services to University under this Agreement without University'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 University, its officers or employees. Nothing contained in this Section shall be construed as prohibiting Contractor from referring to the fact that University is its customer or providing University's name as a reference to prospective customers. Contractor acknowledges that this Agreement is subject to the California Public Records Act.

7.2 Technical Communications and Records. All technical communications and records originated or prepared by Contractor pursuant to this Agreement, including papers, reports, charts, computer programs (to the extent they are originally and solely prepared by Contractor for exclusive use by or at University and other documentation, but not including Contractor' administrative communications and administrative records relating to this Agreement, shall be delivered to and shall become the exclusive property of University and may be copyrighted by University, as appropriate. Records and information, in whatever form or medium developed by Contractor which contain, reveal or otherwise in any way address proprietary strategies and

activities of Contractor which enable it to discharge its obligations to University 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 University, nor shall Contractor be obligated to deliver such records and information to University.

7.3 Dual Use. Subject to the last sentence of subsection 7.2, the ideas, concepts, know-how, or techniques relating to the provision of Energy, developed during the course of this Agreement jointly by Contractor and University can be used by either Party in any way it may deem appropriate. Nothing in this subsection 7.3 shall limit University's ownership of data as described in Section 7.

7.4 Usage Data. All data regarding University Energy Usage developed by Contractor 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 University. Contractor 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 CAISO or CPUC approved standards for such data. This data shall be provided in a format that allows its ready transfer to a successive ESP of University's choosing, at the expiration or termination of the Agreement and shall be provided in a timely manner at University's request whether or not such expiration or termination is imminent.

7.5 Delivery of Data. Contractor shall deliver the data described in this Section to University upon the conclusion or termination of this Agreement, at the University's request, provided, however, that Contractor shall be entitled at its election to retain a copy of all such data and to the extent covered by the copyright of University. Contractor is hereby granted a nonexclusive, royalty free, perpetual license to use such data in furtherance of its own business activities, but Contractor 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 University's (or their successor's) Scheduling Coordinator and in compliance with standards established under the CAISO tariff. Contractor shall transfer such data no later than ten (10) business days after the date of University's notice to Contractor to transfer the data.

8. Default.

8.1 Events of Default. A Party may terminate this Agreement if the other Party is in material default of this Agreement and such default is not excused under subsection 8.4 (Uncontrollable Forces). A "Default" means:

(a) the failure to make any payment required under this Agreement if not paid within ten (10) business days after receiving notice from the other party of the late payment; or

(b) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within five (5) business days after written notice from the other Party; or

(c) the failure by a Party to perform any material obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate event of Default) and such failure is not cured within twenty (20) business days after receipt of written notice of Default; or

(d) a Party makes an assignment or any general arrangement for the benefit of creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; otherwise becomes bankrupt or insolvent (however evidenced); or is unable to pay its debts as they fall due.

(e) Contractor's default shall include but is not limited to any Contractor's return of Accounts to UDC bundled service that is not a result of: (1) termination, under Sections 8.4 or 11.4; (2) termination as of right under Section 2; or (3) University material default under this Section 8.1.

However, this subsection 8.1(e) shall not apply if University has given prior written consent.

Any obligation created prior to termination of this Agreement, including the obligation to invoice or remit payment, shall survive such termination. Upon termination and notice thereof to the Party in Default, and upon compliance with applicable UDC and other legal requirements, Contractor shall promptly transfer the Accounts to service with any provider that University may designate.

8.2 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.

8.2.1 University's Remedy for Failure to Supply Energy. Regarding the sale of Energy, Contractor shall not be liable to University for any damages occasioned by fluctuations, interruptions or curtailment of Energy, unless caused by Contractor. If Contractor is in Default due to an unexcused failure to supply energy to University under this Agreement, then Contractor shall pay University the amount of University's direct actual damages resulting from Contractor's failure to perform its obligations under the Agreement. Damages shall be calculated as the positive difference between the verified Replacement Price and the Contract Price, multiplied by the amount of Energy to be supplied over the remaining Term of the Agreement as determined by University usage in the corresponding month(s) of the previous year. "Replacement Price" means the weighted average price per kWh, of University's good faith purchase of (or contract to purchase) Replacement Energy, increased by any additional transmission and handling charges incurred by University, applicable ancillary services, brokerage fees, and any out-of-pocket costs resulting from Contractor's failure to deliver Energy. Contractor shall pay University the amounts due under this Section within 15 days of Contractor's receipt of University's invoice. Interest shall accrue on unpaid amounts at the rate and as provided

in Section 5.2 of this Agreement. Notwithstanding any other provision of this Agreement, termination of this Agreement and the payment of damages as set forth in this Section 8.2.1 shall be University's exclusive remedy for Contractor's failure to supply Energy.

8.2.2 Contractor's Remedy for Failure to Purchase Energy. If University is in Default due to University's unexcused failure to receive or to pay for Energy actually supplied by Contractor under this Agreement, then University shall pay Contractor the amount of Contractor's direct actual damages for the unused quantity of forward power purchases made on University's behalf during the Term. Damages shall be calculated as the positive difference between the Contract Price and the Resale Price, multiplied by the unused quantity of forward power purchases. "Resale Price" means the verified, weighted-average price per kWh, at which Contractor, using commercially reasonable efforts and acting in a commercially reasonable manner, resells forward power purchases not received or paid for by University, decreased by any additional transmission and handling charges incurred by Contractor, applicable ancillary services, brokerage fees, and any out-of-pocket costs resulting from University's failure to receive such Energy. University shall pay Contractor the amounts due under this Section 8 within 15 days of University's receipt of Contractor's invoice. Interest shall accrue on unpaid amounts at the rate and as provided in Section 5.2 of this Agreement. Notwithstanding any other provision of this Agreement, contract termination and the payment of damages as set forth in this Section 8.2.2 shall be Contractor's exclusive remedy for University's failure to purchase Energy under this Agreement.

8.3 Reasonable Assurances of Performance. Throughout the Term, Contractor shall have a continuing obligation to notify University, within a commercially reasonable time, of any event or change regarding its financial condition or other circumstance that could have a material adverse impact on its ability to perform its obligations under this Agreement. If University has reasonable grounds for insecurity regarding the performance of any material obligation under this Agreement, whether or not then due, by the Contract, including without limitation the occurrence of a material adverse change after the Effective Date in the creditworthiness of Contractor then University may demand reasonable assurance of performance, including but not limited to, a financial guarantee of applicable damages for default.

8.4 Uncontrollable Forces. 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. 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 (but only to the extent not otherwise subject to Section 8.5 as a change in Law), whether valid or invalid, or the necessity for making unscheduled and

emergency repairs. Uncontrollable Forces does not include economic events, such as changes in market conditions or prices, or changes in demand and usage limitation due to economic conditions.

8.5 Regulatory Termination. In the event that there is a change in laws, orders, rules, regulations and directives of all duly constituted federal, state and local governmental authorities having jurisdiction, and all applicable tariffs, rules and requirements of the CAISO and the UDCs that renders the purchase or sale of Energy pursuant to this Agreement illegal or legally unenforceable in the state of California, this Agreement shall automatically terminate as of the date the last University account is returned to UDC bundled service or other ESP as directed by University to the extent legally permitted.

8.5.1 In such event, Contractor shall:

Sell or otherwise dispose of the Energy identified for the Accounts of University pursuant to this Agreement for any unexpired portion of a Delivery Period or, if applicable, a Z Period. Contractor will consult with University and make best effort to act in good faith to inform University prior to all sale transactions pursuant to this Section 8.5.1. If necessary, there will be monthly settlements until all Energy identified for the Accounts of University has been sold.

Contractor shall promptly calculate and provide University with supporting calculations for a Regulatory Termination Fee or Regulatory Termination Credit using the following equations:

Q x (CP-LV) = Regulatory Termination Credit if the CP is greater than the LV or Regulatory Termination Fee if the LV is greater than the CP;

Where:

- Q = Quantity of Liquidated Energy (MWh).
- CP = Contract Price specified in the applicable executed Exhibit T or the Forward Price in an applicable Exhibit Z. .
- LV = Liquidation Value ($/MWh) is price a bona fide third party would pay at current market prices, less Contractor's cost of sales reasonably incurred costs in connection with such sales, including brokerage fees, commissions and other similar transaction costs.

8.5.2. University may dispute the Regulatory Termination Fee or Regulatory Termination Credit in accordance with Section 10 of this Agreement. Upon resolution of any dispute, or upon written notice of acceptance by University, Contractor shall bill or pay to University the Regulatory Termination Fee or Regulatory Termination Credit within 5 days of the resolution of the dispute or the date of written notice. Any Regulatory Termination Fee will be subject to Section 5.3.

8.5.3 Contractor shall use commercially reasonable efforts to mitigate all costs to University, including but not limited to, maximizing the actual sale price for the

liquidated Energy.

9. Indemnification; Limitation of Liability; Warranties.

9.1 Indemnification.

9.1.1 Contractor Obligations. Contractor 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 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 Contractor, its officers, agents, employees, invitees, and guests.

9.1.2 University Obligations. University shall indemnify, defend and hold harmless Contractor, 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 University, or their respective officers, agents, employees, invitees, and guests.

9.2 Limitation of Damages. Notwithstanding any provision of this Agreement, the liability of a Party and its agents and employees to the other Parties of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise arising out of the performance or non-performance of this Agreement hereunder shall be limited to direct actual damages only and in no event include damages for loss of profits or revenue, or any special, incidental, punitive, indirect or consequential damage of any kind resulting from a Party's performance or failure to perform services pursuant to this Agreement.

9.3 NO WARRANTY. EXCEPT TO THE EXTENT EXPRESSLY STATED IN THIS AGREEMENT, CONTRACTOR MAKES NO WARRANTIES OF ANY KIND AND NATURE TO UNIVERSITY REGARDING THE ENERGY TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR PURPOSE.

9.4 Insurance. Without limiting any liabilities or any other of its obligations, Contractor shall provide and maintain the minimum insurance coverage listed below unless otherwise agreed to in writing. Coverage shall be provided until all obligations under the Agreement are satisfied; provided, however, that Contractor may self-insure all or a portion of the coverages provided for in the following subsections. Contractor may utilize any combination of primary and/or excess coverage to satisfy the insurance requirements contained herein.

9.4.1 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 million dollars ($1,000,000.00).

9.4.2 Liability insurance with a minimum combined single limit of three million dollars ($3,000,000) each occurrence. The policy shall include coverage for bodily injury, property damage, personal injury, contractual liability, and completed operations. Said policy shall contain a severability of interests' provision.

9.4.3 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 accident with respect to Contractor's owned, hired or non-owned vehicles, assigned to or used in performance of this Agreement.

10. Dispute Resolution

10.1 Good Faith Negotiations. If a dispute arises between the Parties regarding this Agreement, the Parties shall attempt in good faith to expeditiously negotiate a resolution to the dispute. The Parties agree (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner; (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute, and; (3) conduct negotiations through a representative or representatives of each Party who is authorized to act for the Party and resolve the dispute without resorting to higher authority.

10.2 Condition Precedent. The exhaustion of the dispute resolution procedure provided for in this Section 10 is a condition precedent to the initiation of legal action in a court of law.

11. GENERAL

11.1 Each Party represents and warrants to the other Party that:

Each is duly organized, validly existing and in good standing under the Laws of the Jurisdiction of its organization and qualified to do business in the State of California. It has the full power and authority to execute and deliver this Agreement and to perform all its obligations hereunder.

The execution, delivery and performance of this Agreement and the performance of its obligations hereunder and the consummation of the transactions described herein have been duly authorized by all requisite action on its part.

Each has obtained all permits and approvals for the performance of its obligations hereunder.

Neither the execution and delivery of this Agreement, its compliance with the terms hereof, nor its fulfillment of any of the terms hereof conflicts with, results in a breach of or constitutes a Default under (i) any of the terms, conditions or provisions of its articles of association, charter, articles of incorporation, by-laws or other constituent documents, (ii) any federal, state or local Law, any order, rule or regulation of any governmental authority having jurisdiction over it or its properties or by which it is bound, or (iii) any agreement or instrument to which it is a party or by which any of its properties is bound or affected.

It has duly executed and delivered this Agreement and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

11.2 Relationship of Parties. The requirements and provisions of this Agreement shall not be construed as creating an association, trust, partnership, agency, or joint venture, or as imposing a trust or partnership duty, obligation, or liability on either Party, or as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Energy. Nothing in this Agreement, nor any action taken hereunder, shall be construed as creating any duty, liability, or standard of care to any person not a Party to this Agreement.

11.3 No Assignment Without Consent. No 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 Contractor subcontracts any of the services to be provided under this Agreement, Contractor shall provide prior notice to University of the identity of the subcontractor(s).

11.4 Funding Availability. NOT USED.

11.5 Nondiscrimination.

11.5.1 *During the performance of this Agreement,* Contractor 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. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

11.5.2 *Contractor 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).

11.5.3 Contractor shall permit access by representatives of the Department of Fair Employment and Housing 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 University shall require to ascertain compliance with Section 11.7.

11.5.4 Contractor 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.

11.5.5 Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

11.6 Compliance With NRLB Orders. In submitting a bid or signing a contract Contractor 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 Contractor within the immediately preceding two-year period because of Contractor's 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.

11.7 Not Used.

11.8 Not Used.

11.9 Not Used.

11.10 Americans With Disabilities Act. Contractor assures University 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 US.C. 12101 et seq.)

11.11 Notices:

11.11.1 University. Any notice may be served upon the University by delivering it, in writing, to the University at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to the University at the aforementioned address, or by sending a facsimile of it to the University facsimile number set forth on the last page of this Agreement.

11.11.2 Contractor. Any notice may be served upon the Contractor by delivering it, in writing, to the Contractor at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to the Contractor at this address, or by sending a facsimile of it to the Contractor facsimile number set forth on the last page of this Agreement.

11.12 Applicable Law. This Agreement is governed by and is intended to be construed under the Laws of the State of California, excluding any conflict of laws rules.

11.13 Waiver. No waiver of any breach of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

11.14 Modification. The provisions of this Agreement, including any exhibits, may only be modified by written agreement duly executed by each Party.

11.15 Severability: Continuity of Service. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to law, the remaining terms and provisions of this Agreement shall continue in force in accordance, unless such condition invalidates the purpose or intent of this Agreement. The Parties shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward affecting the purposes of this Agreement by replacing the provision that is unenforceable, void, or contrary to law.

11.16 Entirety. This Agreement and all Exhibits including an executed Exhibit T supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof and sets forth the entire agreement between the Parties with respect to the provision of All Requirements Service to University by Contractor. To the extent lawful, the relationship of the Parties among themselves shall be governed by the provisions of this Agreement. Provisions of this Agreement shall be construed as a whole according to their common meaning, and not strictly for or against either Party. The Exhibits are considered a part of this Agreement. In the event of an inconsistency between this Agreement and any of the Exhibits, the terms of the Agreement shall govern, except to the extent the then-current Exhibit T contains additional conditions as provided for by Sections 3.1 and 3.2.

11.17 Assignment. This Agreement may not be assigned without the express written consent of the other Parties, which consent shall not be unreasonably withheld. If Contractor subcontracts any of the services to be provided under this Agreement, Contractor shall provide prior notice to University of the identity of the subcontractor(s).

12. Counterparts. This Agreement may be executed in two 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.

13. 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.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	CONSTELLATION NEW ENERGY, INC
BY: Robert C. Dynes ITS: President	BY: Gregory Koster ITS: VP 13 May 2008
University Contact: George Getgen	Contractor Contact: Legal Department
University Address: 1111 Franklin Street, 6th Floor	Contractor Address: 350 Grand Avenue, Suite 3800 Los Angeles, CA90071-3479
University Phone: 510-987-9127	Contractor Phone: 213-576-6000
University Fax: 510-987-0752	Contractor Fax: 888-829-8738

13. 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.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

BY: Katherine N. Lapp
ITS: Executive Vice President

CONSTELLATION NEW ENERGY, INC

BY:
ITS:

University Contact:
George Getgen

University Address:
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University Fax:
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Contractor Contact:
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Contractor Fax:
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