

DATA CENTER UNIVERSITY™ by AMERICAN POWER CONVERSION (APC) CANDIDATE AGREEMENT

1. DEFINITIONS

For purposes of this Agreement, the terms defined in this Section shall have the meanings set forth below:

1.1 "Data Center University Associate Certification Program" ("DCUA Program") shall mean the certification program described in this Agreement.

1.2 "Data Center University Certified Associate" ("DCUCA") shall mean an individual who has complied with the certification requirements and acceptance of the terms of this agreement set by the DCUA Program and who, by maintaining current certification as a DCUCA, is entitled to use the DCUA Designations in accordance with this Agreement.

1.3 "Data Center University Certified Associate Designation" ("DCUCA Designation" or "Designation") shall mean any of the titles established by Data Center University by APC under the DCUA Program that you may become authorized to use by passing the Data Center University by APC Associate Certification Examination and complying with the requirements of the DCUA Program.

1.4 "Data Center University Certified Associate Examination" ("DCUCA Exam" or "Exam") shall mean any examination established by Data Center University by APC that DCUA candidates must satisfactorily pass to attain certification through the DCUA Program.

1.5 "Data Center University by APC certification" shall mean achievement of certification status for a particular Data Center University by APC Program in accordance with Data Center University by APC requirements and acceptance of the terms of this Agreement.

1.6 "Candidate Information" shall mean all information related to you collected by Data Center University by APC or any Data Center University by APC Agent, including, without limitation, registration information, examination results and scores, and all other information you submit for purposes of participating in any Data Center University DCUA Program.

1.7 "Data Center University by APC Agents" shall mean all testing facilities, vendors and other service providers authorized by and under contract with Data Center University by APC to provide certain services related to any Data Center University APC DCUA Program.

1.8 "Examination Materials" shall mean Data Center University by APC certification examination(s) and any questions, instructions, responses, answers, worksheets, drawings, or diagrams related to such examination(s) and any accompanying

materials.

1.9 "Marks" shall mean any and all Data Center University by APC titles, trademarks, service marks and/or logos which Data Center University by APC may from time to time expressly designate for use corresponding to the Data Center University by APC certification which you have achieved. The term "Marks" shall not include any other titles, trademarks, service marks or logos of Data Center University by APC.

1.10 "Certification Welcome Kit" shall mean the attached packet of materials concerning the DCUA Program.

2. CERTIFICATION

OBTAINING CERTIFICATION: To obtain certification in any of the applicable DCUCA Designation(s), you must have successfully complied with the initial certification requirements for that Designation. The Certification Welcome Kit will be sent you after you have passed the exam. Receipt of the Certification Welcome Kit indicates that you have complied with the initial certification requirements for this program.

MAINTAINING CERTIFICATION: You acknowledge and agree that Data Center University by APC may, modify any examination, test objective or the requirements for obtaining or maintaining any Data Center University by APC certification at any time at its sole discretion. It is your responsibility to keep informed of any such modifications and for maintaining your Data Center University by APC certification. If any Data Center University by APC certification requirements are modified, this Agreement and your Data Center University by APC certification may be terminated by Data Center University by APC without further notice, unless you complete any applicable continuing Data Center University by APC certification requirements.

NON-DISCLOSURE AGREEMENT. All Data Center University by APC certification exams, including the content and wording of exam questions, constitute confidential Data Center University by APC information protected by trade secret law. You will be required to sign a Non-Disclosure Agreement prior to your exam. If an individual is caught violating the Non-Disclosure Agreement the candidate will be permanently ineligible for any APC certification.

3. TRANSFER OF CERTIFICATION.

You retain your certification status if you leave your current employment. However, you may not transfer your program certification to another person.

4. CONFIDENTIALITY OF EXAMINATION MATERIALS

Examination Materials are proprietary, confidential and copyrighted materials of Data Center University by APC. Any disclosure of the contents of any Exam is strictly prohibited. You agree to maintain the confidentiality of all Examination Materials and you agree not to disclose, publish, reproduce, distribute, post or remove from the examination room, any portion of the Examination Materials. Violators of copyright law are subject to injunctions, civil liability, forfeiture of profits, punitive damages and other

legal sanctions. Data Center University by APC will take appropriate legal action against you to protect Data Center University by APC's rights if you breach the provisions of this Section.

5. CANDIDATE INFORMATION

Data Center University by APC and all Data Center University by APC Agents may collect, save, transmit, transfer, use, deliver and otherwise process Candidate Information for analysis, research, certificate fulfillment, marketing or other purposes deemed necessary or appropriate by Data Center University by APC in connection with any Data Center University by APC Program. Candidate Information may be transmitted or otherwise transferred outside of the country or geographic region in which you reside or in which you took any Data Center University by APC certification examination. You are aware that data protection regulations in other countries, including, without limitation, the United States of America, may not fully correspond with data protection regulations in your region and may provide less effective protection.

6. CANDIDATE CONDUCT POLICY

You will not take any action that will compromise the integrity or confidentiality of the Exam or otherwise compromise the integrity of the Data Center University by APC Associate Certification Program. Such actions will include, but are not limited to, the following: (i) giving or receiving from any other candidate, assistance of any kind related to any Data Center University by APC certification examination during such examination; (ii) disseminating actual exam content via web postings, discussion group, chat rooms, study guides, etc. (iii) using any aids, notes, equipment or other materials, except those expressly allowed by Data Center University by APC, during any Data Center University by APC certification examination; (iv) providing falsified documentation as a means of false identity, false address or solicitation of someone else to take a test on another's behalf; (v) causing a disturbance of any kind in a testing facility; (vi) removing or attempting to remove questions and/or responses (in any format) or notes, note board or scratch paper from the testing room; (vii) tampering with the operation of the testing facility computer or attempting to use it for any function other than taking a Data Center University by APC certification examination during such examination; (viii) not abiding by Data Center University by APC's Retake Policy referred to below. If it is determined that you have violated Data Center University by APC's Candidate Conduct Policy, then Data Center University by APC will send you a written notice of violations and applicable sanctions. It will be the candidate's sole responsibility to ensure that Data Center University has current address and email address for the certification candidate. Any candidate determined by Data Center University by APC to have violated Data Center University by APC's Candidate Conduct Policy shall, if determined necessary or appropriate by Data Center University by APC based upon the seriousness of the incident or violation, be made ineligible to register or schedule any Data Center University by APC examination for a minimum period of twelve (12) calendar months from the date of such determination and void all previous certifications from the date of such

determination.

7. RETESTING POLICY

In the event that you fail your first (1st) attempt to pass any Exam, Data Center University by APC does not require any waiting period for you second (2nd) attempt to pass the Exam. However, should you require a more attempts to pass the exam, you will be required to wait for a period of at least fourteen (14) calendar days from the date of your last attempt to pass the exam. In the event that you pass any Data Center University by APC certification examination, you shall be required to wait for a period of twelve (12) calendar months before retaking the same examination, unless Data Center University by APC has changed the test objectives for such examination. Data Center University by APC beta certification examinations may only be taken one (1) time by each candidate.

8. VIOLATIONS

Any candidate determined by Data Center University by APC to have violated the terms of this Agreement shall, if determined necessary or appropriate by Data Center University by APC based upon the seriousness of the incident or violation: (a) be denied Data Center University by APC certification for the applicable examination for a minimum period of twelve (12) calendar months from the date of such determination; (b) have the Data Center University by APC certification for the applicable examination revoked, if such certification was previously granted Data Center University by APC; (c) have all other Data Center University by APC certifications previously granted to such candidate revoked; (d) not be eligible to register and/or schedule any Data Center University by APC certification examination, or receive any Data Center University by APC certification, for a minimum period of twelve (12) calendar months from the date of such determination; and/or (e) be subject to any and all other appropriate action, including legal remedies, that Data Center University by APC deems necessary or appropriate to enforce the terms of this Agreement.

9. MARKS

Upon your Data Center University by APC certification, Data Center University by APC will grant you a non-exclusive, personal and non-transferable license to use Marks only on promotional, display and advertising materials to publicize your Data Center University by APC certification or to promote your products or services corresponding to your Data Center University by APC certification. Any other use of Marks by you is prohibited. You may not use Marks of any Data Center University by APC Program unless you have completed the Data Center University by APC Program certification requirements and have been notified by Data Center University by APC in writing that you achieved Data Center University by APC certification for that particular Data Center University by APC Program. Any and all uses of Marks by you must be in compliance with any and all Data Center University by APC requirements, guidelines and quality control standards, as established or amended from time to time by Data Center University by APC. Furthermore, Data Center University by APC may, from time to time, amend the Marks, or designate new or different Marks for your use. You agree not to incorporate any Marks, or potentially confusing variations of Marks, as

part of your name or the name of any product or service offered by you or as part of any logo, name, trademark, service mark or other commercial or product designation used by you. You agree not to file any application to register or claim any interest in any Mark or any other logo, name, trademark, service mark or commercial or product designation confusingly similar to any or all Marks. You shall not misrepresent your Data Center University by APC certification status or your qualifications or misrepresent, imply or suggest that Data Center University by APC in any way endorses, sponsors or recommends you, or any of your products or services.

The license granted to you by this Section is conditioned upon and subject to your compliance with the terms of this Agreement. Any attempted assignment, transfer or sublicense of such license by you shall be null and void. Subject to the limited license granted to you by this Section, Data Center University by APC reserves and retains all rights, titles and interests, including, without limitation, all trademark and other intellectual property rights, in and to Marks.

10. TERMINATION

(a) **TERMINATION BY EITHER PARTY.** Either party may terminate this Agreement, with or without cause, by giving at least thirty (30) days' prior notice to the other party.

(b) **TERMINATION BY DATA CENTER UNIVERSITY BY APC.** In addition to any addition to its rights under Section 8(a) above, Data Center University by APC may terminate this Agreement immediately, including termination of any Certifications and Data Center University by APC designations to which this agreement relate and termination of your use of the corresponding Logos upon the occurrence of any one of the following events: (i) if you fail to comply with any applicable continuing Data Center University by APC certification requirements specified by Data Center University by APC from time to time; (ii) you otherwise fail to comply with any of the terms of this Agreement, including, without limitation, the terms governing the use of the Data Center University by APC Designations and Logos (iii) if publicity or other information about you, your products or services, or your use of Marks harms or adversely affects Data Center University by APC or its reputation or goodwill or otherwise damages or diminishes the value of Marks; (iv) you engage in misappropriation or unauthorized disclosure of any trade secret or confidential information of Data Center University by APC (including, but not limited to, any Certification Exam materials or other Data Center University by APC materials with respect to which you are under non-disclosure obligation), or otherwise infringe any other intellectual property right of Data Center University by APC , or engage in any other activities prohibited by law; or (d) you have otherwise violated any rule, regulation or policy of Data Center University by APC or of any Data Center University by APC authorized testing facility related to any Data Center University by APC certification examination. Upon termination of this Agreement, DATA CENTER UNIVERSITY BY APC may revoke your DATA CENTER UNIVERSITY BY APC certification(s) and terminate the licenses and rights granted hereunder.

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL DATA CENTER UNIVERSITY BY APC BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, (INCLUDING LOSS PROFITS OF ANY KIND REGARDLESS OF THE FORM OF ACTION) ARISING FROM OR RELATED TO YOUR CERTIFICATION, FAILURE TO ACHIEVE CERTIFICATION, OR USE OF OR INABILITY TO USE THE DCUCA LOGOS OR DESIGNATIONS, OR ARISING FROM OR RELATED TO THE TERMINATION OF YOUR CERTIFICATION, EVEN IF DATA CENTER UNIVERSITY BY APC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

12. MISCELLANEOUS

12.1 Amendments. Data Center University by APC may revise the terms of this Agreement from time to time. In the event of a revision, your assent to a new agreement may be a condition of your continued Data Center University by APC certification.

12.2 Severability. If a court of competent jurisdiction finds any provision of this agreement to be unenforceable, that provision of the agreement will be enforced to the maximum extent permissible so as to effect of the provision, and the remainder of this provision will continue in full force and effect.

12.3 Notices. Except as otherwise expressly provided in this Agreement, all notices hereunder shall be in writing or delivered via e-mail. Notice to you shall be sent to your last address known by Data Center University by APC.

12.4 DISPUTE RESOLUTION. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE COMMONWEALTH OF MASSACHUSETTS.

You agree that, any and all disputes, claims, controversy or causes of action arising from or related to this Agreement ("Dispute") which the parties are unable to resolve for any reason after applying the process set out above, shall be completely and finally settled by submission of any such Dispute to arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. For resolution of any Dispute, the parties shall select three (3) arbitrators in accordance with such AAA rules. Any arbitration proceeding shall take place in Boston, Massachusetts, USA and shall apply the laws of the Commonwealth of Massachusetts. All arbitration proceedings hereunder shall be conducted in English. The Parties agree that after a notice of arbitration has been filed, they shall, before any arbitration hearing, make discovery and disclosure of all matters relevant to such Dispute to the extent and in the manner provided by the Federal Rules of Civil Procedure. The Parties agree to limit the time period for any discovery to ninety (90)

days after filing of a notice of Arbitration unless such time period is extended by the selected arbitrators upon a showing of good cause by either party.

Judgment on such Award may be entered in any court of appropriate jurisdiction, or application may be made to that court for a judicial acceptance of the Award and an order of enforcement, as the party seeking to enforce that Award may elect. The parties expressly subject themselves to the personal jurisdiction of such court for the entry of any such Award and for the resolution of any dispute arising in connection with the entry of such Award.