#129

State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

LINDA M. HODGDON
Commissioner
(603) 271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

August 11, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

9/3/2014

REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a contract with Direct Energy Business Marketing, LLC, Woodbridge, New Jersey, (Vendor 260206) for the provision of enrolling the state in an electric demand response program to evaluate energy curtailment and emergency generation capabilities with 15% of the proceeds, estimated amount $35,300, of New England Independent System Operator (ISO-NE) payment to fund the contract over a five year period. Effective upon Governor and Council approval through August 31, 2019. **100% Revolving Funds**

EXPLANATION

The purpose of this contract is to enroll the State in an electric demand response program. The Contractor will evaluate the state facilities enrolled in the program and make recommendations regarding energy curtailment and emergency generation capabilities. In addition the Contractor will train state agency personnel regarding proper response during a test or energy crisis event. Initially, twelve state buildings located throughout the state will be included in the program.

Under the terms of the contract, Direct Energy will evaluate and propose an electricity reduction plan for each of the twelve state facilities and any others identified during the contract term. The New England Independent System Operator Program (ISO-NE) will pay the State of New Hampshire quarterly on a per kW basis for the rated capacity of its emergency generators and their proposed electricity demand reduction plan. Direct Energy will retain 15% of the State's quarterly receipts in exchange for their services. In accordance with RSA 21-I:19-f any revenues that result from this program will be deposited in an energy efficiency fund. Any monies in the fund will be utilized to reimburse state agencies for any expenses that may result from the demand response program or to pay for additional energy saving projects at State facilities. We estimate $40,000 in annual revenue and $200,000 total revenue from this program.

Bids were solicited from several ISO-NE certified enrolling participants and responses were received from two companies. Direct Energy's bid maximizes revenue to the State in accordance with the goal of the RFB. Direct Energy provides this service in four New England states as well as most of the Northeast.

Respectfully Submitted,

Joseph Bouchard Asst Comm.

for Linda M. Hodgdon
Commissioner

State of New Hampshire

RFB Results for: Demand Response Services

RFB 167-14

BID OPENING: 06/18/14 at 12:00 Noon

VENDORS	Demand Response Services Contract
Comverge, Inc., East Hanover, NJ	No bid
Conservation Resource Solutions, Cumming, GA	No bid
Constellation NewEnergy, Boston, MA	65%
Direct Energy Business Marketing, LLC, Woodbridge, NJ	Award Made (85%)
EnerNoc, Inc., Boston, MA	No bid
Linde Energy Services, Murray Hill, NJ	No bid
Nxegen, Inc., Middletown, CT	No bid
Vermont Electric Cooperative, Johnson, VT	No bid
Ziphany, LLC, Buffalo, NY	No bid

Subject: **Demand Response Services**

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name State of New Hampshire Administrative Services		1.2 State Agency Address 25 Capitol Street, Room 102 Concord, NH 03301	
1.3 Contractor Name Direct Energy Business Marketing, LLC		1.4 Contractor Address 1 Hess Plaza, Woodbridge, NJ 07095	
1.5 Contractor Phone Number 732-750-6098	1.6 Account Number Multiple	1.7 Completion Date August 31, 2019	1.8 Price Limitation N/A
1.9 Contracting Officer for State Agency Karen L. Rantamaki, State Energy Manager		1.10 State Agency Telephone Number 603-271-2698	
1.11 Contractor Signature [signature]		1.12 Name and Title of Contractor Signatory Kevin George, Manager, Gov't Sales	

1.13 Acknowledgement: State of New Jersey, County of Middlesex

On 7/31/2014, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.

1.13.1 Signature of Notary Public or Justice of the Peace

[signature]

[Seal]

1.13.2 Name and Title of Notary or Justice of the Peace

LOGAN BONDI HANNA
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2447959
MY COMMISSION EXPIRES JULY 16, 2019

1.14 State Agency Signature [signature]	1.15 Name and Title of State Agency Signatory Joseph Bouchard, Assistant Commissioner

1.16 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*

By: Director, On:

1.17 Approval by the Attorney General (Form, Substance and Execution)

By: [signature] On: Aug. 19, 2014

1.18 Approval by the Governor and Executive Council

By: [signature] **DEPUTY SECRETARY OF STATE** SEP 03 2014

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials _____

Date 7/31/14

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

Contractor Initials _____

Date 5/31/14

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $250,000 per claim and $2,000,000 per occurrence; and
14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.
14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.
14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.
15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A *("Workers' Compensation").*
15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials
Date 7/31/19

EXHIBIT A
SCOPE OF SERVICES

1. The Contractor agrees to manage the State's participation in the applicable Demand Response services, specifically enrolling the State of New Hampshire ("State") in ISO-NE's Demand Response Program ("DRP") in accordance with RFB 167-14 and as described herein. If ISO-NE no longer offers the current DRP as described in RFB 167-14 and herein, either party may discontinue participation in the program without penalty. If however both parties wish to continue participation, the Contractor shall enroll the State into the program that most similarly matches the current program. (A preliminary list of buildings to enroll is attached hereto as Appendix A)

2. The DRS shall include the State's participation in the Real-Time Demand Response Program and the Real-Time Emergency Generator Program. The State reserves the right to expand the program services to other Load Response Programs offered by the Contractor, at which time a mutually agreed upon amendment shall be executed and effective upon the approval of the Governor and Council.

3. The Contractor shall assume all costs associated with equipment, devices, data collection, monitoring and testing. The Contractor is further responsible for managing all aspects of the participation of the programs. Management responsibilities include, but are not limited to, communication with and training for State employees and transfer of funds to the State Energy Efficiency Fund.

4. The Contractor shall arrange for the reuse of existing metering equipment or the installation of new equipment.

5. MANAGED SERVICES: The Contractor agrees to manage the State's participation in the Demand Response Programs as identified in #2 above. The Contractor is responsible for the following services:

a. The determination of the specific facility's possible electric demand reduction and/or on-site generation capabilities through an audit procedure which will include, but not be limited to: interviews with each agency's building operators and energy coordinators, a physical evaluation of end-use equipment, a physical evaluation of on-site generation (if applicable), and a complete evaluation of metering capabilities with attention to possible installation of an Internet-Based Communication System (IBCS);

b. A logical aggregation of the State's capacity reduction - the State prefers aggregation of buildings by agency in order to more easily evaluate performance. However, should any certain agency not reach the required minimums, interagency aggregation may be considered;

c. Periodic re-evaluation of the enrolled capacity level for possible adjustments to ensure the State's curtailable load and/or on-site generation. Any adjustment must ensure a satisfactory operational performance to the DRP as well as the daily needs of the building occupants and their functions. It is expected that the Enrolling Participant will maximize the State of New Hampshire's participation in the ISO Demand Response program;

d. Quarterly reports to the State of New Hampshire on the status of the Demand Response assets enrolled in the program. At a minimum, the report shall include: Facility Name, Address, Contact, Phone Number, Total Load, Load Profile, Target Load Reduction, Monthly Payment, Demand Response Event Dates (including event that payment is based on), Actual Load Reduction/Generation Output, Payment Rate, Amount Payable to State of New Hampshire, and Amount Withheld by Enrolling Participant.

Contractor Initials
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The report shall also include a summary of changes in the State of New Hampshire's participation in the program (i.e. additional load enrollment, facilities exiting the program, etc.) and any other important information regarding the Demand Response program. Reports will be submitted with quarterly payments within 30 days of quarter-end; and

e. Training for facility staff, contractors, and occupants. Training shall be provided at no additional cost to the State. Training shall be on an as-needed basis, take place at the State facility that it pertains to or at a nearby State facility if training can be combined for multiple buildings.

6. The Contractor shall appoint an Account Manager who shall be the main contact and be responsible for all implementation and administration of the contract. The Account Manager is identified as follows:

Paul Gonzalez	732-750-6888
1 Hess Plaza	732-750-6933 (fax)
Woodbridge, NJ 07095	paul.gonzalez@directenergy.com

6. The Contractor is required to be certified by ISO-NE, and maintain certification throughout the term of the contract, as a recognized Demand Response Enrolling Participant.

7. In the event that ISO-NE makes changes to the Demand Response Programs that it offers, the Contractor shall enroll the State's assets in programs similar to those specified herein.

8. No subcontractors have been identified. If the Contractor wishes to subcontract any of the work required by this contract, prior written consent by the State shall be required.

9. The Contractor shall in performing the services as described herein, maintain or have readily available spare parts to support the described systems at the Contractor's cost throughout the duration of the contract.

10. The State reserves the right to require the Contractor to train, counsel or reassign any employee whose actions or appearance are not consistent with the standards of the State and in the best interest of the customers utilizing the Contractor services.

11. If applicable by an Agency, the Contractor shall be required to sign and submit a Confidential Nature of Department Records Form and a Criminal Authorization Records Form, prior to any work being done.

12. All repair services shall be conducted in full compliance with all specified standards in a manner equal to or better that the normal safety and security procedures and standards established by the State, and at no time shall state facilities or its occupants be placed in jeopardy.

13. All work must be performed in such a manner as not to inconvenience building occupants. The Contractor shall determine the State's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner. This provision is not intended to refer to curtailment events as directed by ISO-NE.

14. The State shall be responsible to provide reasonable means of access to all equipment covered by this agreement and promptly notify the Contractor of any malfunction in the system(s) that comes to the State's attention.

15. The Contractor agrees that any damage or injury to buildings, materials, and equipment or to other property as a result of the performance of this service will be repaired at their own expense.

16. The Demand Response Services shall be in accordance with the requirements and any program rules set forth by the New England Independent System Operator (ISO-NE).

Contractor Initials PG
Date 7/31/14

17. The State agrees to provide the Contractor with at least two contacts at each facility enrolled in the DRP and at least two methods (i.e. office phone, cell phone, email, fax, etc.) for contacting each. This information will be collected during the audit procedure.

18. The Contractor agrees to notify all State participants of an ISO-NE event before the start-time of the event. The State agrees to respond to the event in the timeframe outlined by the specific program in which the facility is enrolled.

19. The term of this contract shall be for five years commencing August 1, 2014 or upon approval by Governor and Council, whichever comes last, and ending five years thereafter on July 31, 2019. The agreement may be renewed for an additional term of two years upon terms and conditions as the parties may mutually agree and upon the approval of the Governor and Council.

Contractor Initials 15/
Date 7/31/14

EXHIBIT B
CONTRACT PRICE / PAYMENT TERMS

1. The Contractor agrees to assume all costs associated with enrolling the State's assets in the program as described in Exhibit A. This includes, but is not limited to, the costs associated with equipment, devices, data collection, monitoring, and testing.

2. The State of New Hampshire will not expend any funds to purchase equipment or services to enroll in the Program.

3. The State will not reimburse the Contractor for any costs associated with travel such as mileage, meals, or staff time.

4. The term "Energy Payment" shall mean the amount that ISO-NE will pay monthly based on the size of the responding assets when an event is called.

5. The term "Event" shall mean a test period or actual energy emergency as determined by ISO-NE.

6. The Contractor shall issue *Energy Payments* to the State of New Hampshire on a quarterly basis within 30 days of the end of the quarter.

7. *Energy Payments* paid to the State of New Hampshire will total no less than 85% of ISO-NE's payment to the Contractor.

8. It is understood that if projected load reductions are not met in any called event, the expected revenues will be adjusted accordingly (up or down) for the following period.

9. Payments shall be submitted in the form of a check payable to the State of New Hampshire – Treasurer and delivered to the address listed in Section 1.2 of this contract.

Contractor Initials _____
Date 5/31/14

EXHIBIT C

SPECIAL PROVISIONS

1. Delete Paragraph 8 and replace in its entirety with the following:

8. EVENT OF DEFAULT/REMEDIES

8.1 Any one or more of the following acts or omissions of or by a Party shall constitute an event of default hereunder ("Event of Default"):

8.1.1 material failure by Contractor to perform Services satisfactorily or on schedule;

8.1.2 failure by Contractor to submit any material report required hereunder;

8.1.3 failure by either party to perform any other material covenant, term or condition of this Agreement;

8.1.4 bankruptcy of insolvency of a party, its guarantor, or its affiliates, however evidenced;

8.1.5 failure of the State to obtain Contractor's consent to a transfer of title or ownership of a participating facility or portion hereof;

8.1.6 failure of a party to satisfy any representations and warranties contained herein.

8.2 Upon the occurrence of any Event of Default the non-defaulting Party may take any one, or more, or all, of the following actions:

8.2.1 give the other Party written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the defaulting Party notice of termination;

8.2.2 give the other Party written notice specifying the Event of Default and suspending all payments or services, as applicable, to be made under this Agreement;

8.2.3 set off against any other obligations, if any, the non-defaulting Party may owe to the defaulting Party any damages the non-defaulting Party suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

8.3 If in the judgment of the State the Contractor's default is not substantial to require termination at that the time and the Contractor is not curing the default, and the default is capable of being cured by another resource without unduly interfering with Contractor's continued performance, the State may at its discretion provide or procure services reasonably necessary to cure the default, and the Contractor shall reimburse the State for the reasonable cost of such services, Contractor must cooperate in the State and resources in any such efforts to cure the default.

8.4 No remedy conferred under the Agreement is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy in the Contract. The State's election of any or more remedies shall not constitute a waiver of its right to pursue other available remedies.

8.5 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of the Contract.

2. Delete Paragraph 12 and replace it in its entirety with the following:

12. ASSIGNMENT/DELEGATIONSUBCONTRACTS. Neither party may assign, or otherwise transfer any interest in this Agreement without the prior written consent of the other party. None of the Services shall be subcontracted by the Contractor without the prior consent of the State.

3. Delete Paragraph 16 and replace it in its entirety with the following:

Contractor Initials
Date 7/31/19

16. WAIVER OF BREACH. No failure by either party to endorse any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the non-defaulting party to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the defaulting party.

4. There are no other special provisions of this contract.

Contractor Initials LG
Date 7/31/14

APPENDIX A
STATE BUILDINGS IN DEMAND RESPONSE PROGRAM

Location	Building Name	Contact	Phone
Concord	Department of Safety	Ron White	603-271-6877
	DOT Mechanical Services	Ron White	603-271-6877
	NH State Prison for Men	Jon Hanson	603-271-1888
	Women's Prison (2016)	Jon Hanson	603-271-1888
	New Hampshire Hospital - APS	Don Ficken	603-271-5270
	DMV	Ron White	603-271-6877
	Brown Building	David Clapp	603-271-9501
	Tobey Building	Ernie Liakas	603-229-4412
Berlin	Northern NH Correctional Facility	Jon Hanson	603-271-1888
Carroll County	Superior Courthouse	Sarah Lineberry	603-271-3936
Manchester	Juvenile Justice Services	Harry Hadley	603-625-5471
Tilton	Veterans Home	Jon Bossey	603-527-4452

Contractor Initials
Date 7/31/19

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Direct Energy Business Marketing, LLC, a(n) Delaware limited liability company registered to do business in New Hampshire on April 11, 2013. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law.

In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 16th day of July, A.D. 2014

William M. Gardner
Secretary of State

DIRECT ENERGY BUSINESS MARKETING, LLC

CERTIFICATE OF AUTHORITY

The undersigned, being the duly qualified sole member of Direct Energy Business Marketing, LLC (hereinafter "the Company") does hereby Certify that:

1. The Limited Liability Company was originally formed in Delaware on March 20, 2013 as Hess Energy Marketing, LLC. A Certificate of Amendment was filed May 29, 2014 changing the name of the company to Direct Energy Business Marketing, LLC.

2. There exists a Limited Liability Company Agreement and that the said Agreement has not been amended or repealed and remains in full force and effect as of this date.

3. This Certificate of Authority is made at the request of the State of New Hampshire in response to the bid submitted by Direct Energy Business Marketing, LLC for a service contract for Demand Response Solutions RFB 167-14.

4. The following person or persons has/have been duly authorized by the Company to execute all documents in connection with said transaction and that the signature appearing to the right of the name(s) is his/her genuine signature.

NAME	OFFICE HELD	SIGNATURE
Mark Taddeo	Head of East Sales	

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Authority this 21 day of July, 2014.

Victoria Dyckman

VICTORIA DYCKMAN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 23, 2016

SOLE MEMBER
DIRECT ENERGY BUSINESS, LLC

By: _____
Name: REAGAN C. BROWN
Title: ASSISTANT SECRETARY

STATE OF Texas }
COUNTY OF Harris }

BEFORE ME, on this 29th day of July, 2014 personally appeared Reagan Brown known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged that he executed same for the purposes and in the capacity herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 29th day of July, 2014.

My Commission Expires:

_____
Notary Public in and for the State of
Texas

(Seal)

Joann L. McLaughlin
Commission Expires
04-23-2017

JoAnn L McLaughlin
(Print Name)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/03/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies)must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Willis Energy, Inc.
920 Memorial City Way
Suite 500
Houston, TX 77024

CONTACT NAME:
PHONE (A/C, NO, EXT): 877-945-7378 FAX (A/C, NO): 888-467-2378
E-MAIL ADDRESS: certificates@willis.com

INSURER(S) AFFORDING COVERAGE	NAIC#
INSURER A: ACE American Insurance Company	22667-302
INSURER B: American Zurich Insurance Company	16535-306
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED

Direct Energy and its majority owned subsidiaries and affiliates including Direct Energy Business Marketing, LLC.
12 Greenway, Suite 20
Houston, TX 77046

COVERAGES **CERTIFICATE NUMBER:** 21805077 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			OGLG25703364	1/1/2014	1/1/2015	EACH OCCURRENCE	$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurence)	$ 100,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 2,000,000
							GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 2,000,000
	POLICY X PRO-JECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC595396900	1/1/2014	1/1/2015	X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach Acord 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

State of New Hampshire, Administrative Services
Attn: Karen L. Rantamaki
25 Capitol Street
Room 102
Concord, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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